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Presidential Documents

Title 3—

The President

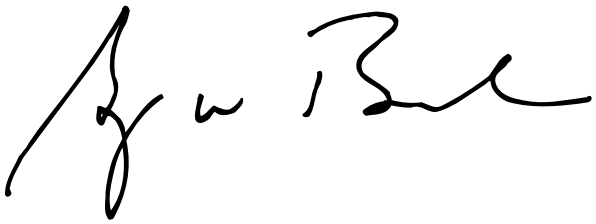
Presidential Determination No. 2004–02 of October 6, 2003

Designation of the Philippines as a Major Non-NATO Ally

Memorandum for the Secretary of State

Consistent with the authority vested in me by section 517 of the Foreign Assistance Act of 1961, as amended (the ''Act''), I hereby designate the Republic of the Philippines as a major non-NATO ally of the United States for the purposes of the Act and the Arms Export Control Act.

You are authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, October 6, 2003.

[FR Doc. 03–26528
Filed 10–17–03; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2004–03 of October 6, 2003

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

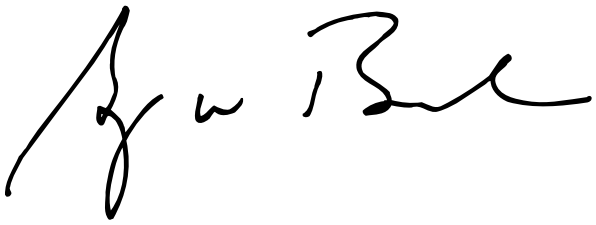
Memorandum for the Secretary of State

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

• Determine that Colombia has 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 country; and

• Waive the prohibition of section 2007(a) of the Act with respect to this country for as long as such agreement remains in force.

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, October 6, 2003.

[FR Doc. 03–26529
Filed 10–17–03; 8:45 am]
Billing code 4710–10–P

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MERIT SYSTEMS PROTECTION BOARD

5 CFR Parts 1201, 1203, 1208, 1209

Interim Regulatory Changes for Implementation of e-Appeal and e-Filing

AGENCY: Merit Systems Protection Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure to provide parties to Board proceedings the option of transacting business electronically, as required by the Government Paperwork Elimination Act. The interim regulations allow appellants to initiate an appeal by using e-Appeal, an interactive application available from the Board's Web site (*http://www.mspb.gov/e-appeal.html*). Parties to appeals and other Board proceedings may engage in electronic case filing on an ongoing basis by making an election to file and receive pleadings and Board documents via electronic mail.

DATES: Effective date October 20, 2003. Written comments should be submitted on or before December 20, 2003.

ADDRESSES: Submit comments to the Office of the Clerk of the Board, Merit Systems Protection Board, 1615 M St., NW, Washington, DC 20419. Comments may be submitted by regular mail to this address, by facsimile to (202) 653–7130, or by e-mail to *mspb@mspb.gov.*

FOR FURTHER INFORMATION CONTACT: Timothy L. Korb, Merit Systems Protection Board, 1615 M Street, NW, Washington, DC 20419; (202) 653–7200; fax: (202) 653–7130; or e-mail: *mspb@mspb.gov.*

SUPPLEMENTARY INFORMATION:

What the Law Requires

Section 1704 of the Government Paperwork Elimination Act, Pub. L. No. 105–277, 112 Stat. 2681–750 (1998), mandated that Federal Executive agencies provide, by October 21, 2003, ''(1) for the option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper; and (2) for the use and acceptance of electronic signatures, when practicable.'' As defined in § 1710 of the Act, an electronic signature means ''a method of signing an electronic message that—(A) identifies and authenticates a particular person as the source of the electronic message; and (B) indicates such person's approval of the information contained in the electronic message.'' 112 Stat. at 2681–751.

The MSPB for some time has been accepting and processing requests submitted by electronic mail (e-mail) under the Freedom of Information and Privacy Acts. The Board has also experimented on a limited basis with accepting pleadings filed as electronic attachments to e-mail in the appeals that come before it. These interim regulations represent the Board's first agency-wide use of electronic filing in case adjudication.

The Board recently announced that it had forwarded to the Office of Management and Budget a proposed information collection: e-Appeal, a new electronic application for filing an appeal with the Board; and MSPB Form 185, a revised MSPB paper Appeal Form. 68 FR 44971 (July 31, 2003). This interim rule makes e-Appeal and Form 185 effective in Board proceedings. It also introduces filing by electronic mail.

Participation in electronic filing (e-Filing) is voluntary. An individual may still initiate a Board appeal by filing a paper appeal by any of the conventional means. Similarly, no party is obligated to participate in e-Filing during the course of a Board proceeding.

Future Plans for E-Filing

Part of the reason for issuing an interim rule is that the electronic case filing procedures we now institute are themselves interim in nature. Our long-term goal is to conduct all e-Filing through the Internet, including both the pleadings filed by the parties with the Board, and the notices, orders, and decisions issued by the Board to the parties. In the future, e-Filing will include automatic notice of filing, and parties will be able to view and download pleadings and Board documents from our Web site. At the present time, however, the only part of e-Filing that is Web-enabled is the initiation of an appeal through e-Appeal.

Commencing a Board Proceeding via e-Appeal

e-Appeal is an interactive Web application that allows appellants or their representatives to create and submit appeals using an interview format. The application includes Help and Question and Answer links appropriate to each section of the interview.

As part of the e-Appeal process, an individual creates a unique user ID and password, which constitutes his or her electronic signature. The filer can print a copy of the appeal either at the time of filing or afterward. The Board will send an electronic confirmation that it has received and is processing the appeal.

Election To Participate in E-Filing by E-Mail

Under the interim rule, electronic filing after the commencement of a Board proceeding will be limited to filing and receiving documents via e-mail. To participate, a party must file an election with the Board which lists the e-mail address from which pleadings will be filed, and to which pleadings and Board documents may be sent. An election to engage in e-Filing, which may itself be filed by e-mail, constitutes consent to accept electronic service of pleadings and Board documents. Such an election also permits a party to file pleadings electronically, but a party who has elected e-Filing may still opt to file any pleading by conventional means. An election to engage in e-Filing may be terminated at any point in a Board proceeding.

Sending a pleading from the designated e-mail address constitutes an electronic signature. Parties can submit a declaration made under penalty of perjury (equivalent to an affidavit) electronically, as described in paragraph (n) of new § 1201.5.

A party who has elected to engage in e-Filing files a pleading by sending an e-mail to the appropriate Board office. If the other party has also elected e-Filing,

service of that party is accomplished by including the party in the address portion of the e-mail. If the other party has not elected e-Filing, service is by conventional means. The Board will confirm receipt of e-mailed pleadings by sending a return e-mail.

Especially where both parties elect to participate, e-Filing should permit faster case processing because the Board and the parties will receive filings the same day they are submitted. This is particularly important for pleadings filed with the Clerk of the Board in Washington, D.C., because mailed pleadings are first sent to Ohio for irradiation. Where only one party elects to engage in e-Filing, the Board will set deadlines so that the party filing and receiving documents by conventional means will have adequate time to prepare and file a response.

Electronic Formats Allowed

Our interim rule allows electronic pleadings to be filed in ''any widely-used electronic format.'' We believe that e-Filing should require as little specialized equipment, software, and expertise as possible. Ideally, all a person should require is a personal computer equipped with a word-processing application, a Web browser, and access to e-mail and the Internet. Keeping technical requirements to a minimum is important in Board proceedings because a significant proportion of the parties appearing before us are representing themselves, or are represented by non-attorneys. To require specialized equipment and software, or significant computer expertise, would preclude many parties from participating in e-Filing. If the Board or receiving party has difficulty viewing or printing an electronic pleading, the regulations require informal attempts to resolve the problem. If such efforts are unsuccessful, the filing party must serve the pleading by conventional means.

The Board expects that the primary pleading in most e-Filings will consist of an electronic attachment to the e-mail such as a word-processing file. However, we will allow the submission of very brief pleadings, one or two paragraphs, in the body of the e-mail message. The reason for this restriction is a concern that the formatting of the pleading may be adversely affected, making it difficult to read. We ask that parties identify the nature of the pleading and the appeal to which it is related in the Subject portion of the e-mail, *e.g.*, Appellant's Prehearing Submission in Doe v. Agency, XX–0752–03–XXXX–I–1.

Hybrid Filings

Only a small proportion of the contents of an MSPB case file typically originate as electronic files created for the Board proceeding. Most are paper documents that could only be converted to electronic format by scanning. For that reason, pleadings that include both an electronic file created for the Board proceeding and one or more paper documents will be common. Such ''hybrid'' filings are allowed under the interim rule. When a pleading contains both an electronic component and a non-electronic component, the party files the electronic component by e-mail, and the non-electronic component by conventional means. Such a pleading is considered filed and served when all components have been filed and served. We note, however, that an e-Appeal is filed when submitted electronically, regardless of when requested attachments are filed. The reason is that our regulations do not require that an appeal include any documentation; they require information only. *See* 5 CFR 1201.24(a).

Large Image Files Limitation

When paper documents have been converted to electronic format by scanning, they consume much more disk space than do electronic text files, such as word-processing files. Because transmitting and downloading image files can consume a great deal of time and resources, our regulations provide that documents that can only be converted to electronic format by scanning must be filed by traditional means when the paper document exceeds 25 pages.

List of Subjects

5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

5 CFR Part 1203

Administrative practice and procedure, Civil rights, Government employees.

5 CFR Part 1208

Administrative practice and procedure, Government employees, Veterans.

5 CFR Part 1209

Administrative practice and procedure, Government employees, Whistleblowing.

■ Accordingly, the Board amends 5 CFR parts 1201, 1203, 1208, and 1209 as follows:

PART 1201—[AMENDED]

■ 1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701, unless otherwise noted.

■ 2. Section 1201.4 is amended by revising paragraphs (i), (k), and (l) and by adding new paragraphs (m), (n), and (o) to read as follows:

§ 1201.4 General definitions.

* * * * *

(i) *Service.* The process of furnishing a copy of any pleading to Board officials, other parties, or both, either by mail, by facsimile, by commercial or personal delivery, or by electronic mail, provided the requirements of § 1201.5 of this part have been met.

* * * * *

(k) *Certificate of Service.* A document certifying that a party has served copies of pleadings on the other parties. If a pleading is served by electronic mail, the address portion of the electronic mail message serves as a certificate of service.

(l) *Date of filing.* A document that is filed with a Board office by personal delivery is considered filed on the date on which the Board office receives it. The date of filing by facsimile is the date of the facsimile. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the submission is presumed to have been mailed five days (excluding days on which the Board is closed for business) before its receipt. The date of filing by commercial delivery is the date the document was delivered to the commercial delivery service. The date of filing by electronic mail is the date on which the electronic mail is sent.

(m) *Internet filing option.* The option that an appellant may exercise to commence an appeal proceeding before the Board by filing through the electronic application (e-Appeal) available at the Board's Web site (*http://www.mspb.gov/e-appeal.html*).

(n) *Electronic mail filing and service.* The process of filing certain pleadings with the Board and serving certain pleadings on other parties using electronic mail.

(o) *Electronic signature.* The term ''electronic signature'' means a method that identifies and authenticates a particular person as the source of the electronic message and indicates such person's approval of the information contained in the electronic message.

■ 3. Subpart A of part 1201 is amended by adding a new § 1201.5 to read as follows:

§ 1201.5 Electronic mail and Internet filing procedures.

(a) *Scope*. This section sets forth the rules applicable to the filing and service of pleadings by electronic mail and the Board's Internet filing option for matters within the Board's original jurisdiction (as explained in § 1201.2 of this subpart) and matters within the Board's appellate jurisdiction (as explained in § 1201.3 of this subpart). The electronic submission of a pleading commencing an appeal proceeding before the Board in a matter identified in § 1201.3 of this subpart must be filed using the Board's Internet filing option available at the Board's Web site (*http://www.mspb.gov/e-appeal.html*). Except for matters identified in paragraph (b) of this section, pleadings relating to the adjudication of a matter identified in either § 1201.2 or § 1201.3 of this subpart may be filed using electronic mail, provided the requirements of this section are satisfied.

(b) *Matters not covered*. Matters that may not be filed by electronic mail or the Internet filing option are:

(1) A request to hear a case as a class appeal and any opposition thereto (§ 1201.27 of this subpart),

(2) Service of subpoenas (§ 1201.83 of this subpart),

(3) The initial filing in a Special Counsel complaint seeking disciplinary action (§ 1201.122 of subpart D),

(4) The initial filing in a Special Counsel complaint seeking corrective action (§ 1201.128 of subpart D),

(5) The initial filing in a Special Counsel request for a stay (§ 1201.134 of subpart D),

(6) The initial filing in an agency action seeking to discipline an administrative law judge (§ 1201.137 of subpart D),

(7) The initial filing in a case involving a proposal to remove a career appointee from the Senior Executive Service (§ 1201.143 of subpart D), and

(8) Filings with the Special Panel (§ 1201.173 of subpart E).

(c) *Internet filing option*. The electronic filing of an appeal is only allowed by using the Board's Internet filing option (e-Appeal) available at the Board's Web site (*http://www.mspb.gov/e-appeal.html*). The Internet filing option allows an appellant to contest various types of agency actions and decisions and to raise various types of defenses and claims. The Internet filing option also includes the option of designating a representative and provides for an electronic signature. Detailed instructions explaining how to use the Board's Internet filing option are available at the Board's Web site.

(d) *Filing electronic mail pleadings with the Board*. With the exception of pleadings commencing an appeal before the Board and the exceptions noted in paragraphs (b)(1) through (b)(8) of this section, a party may make any filing regarding a matter covered by this section by electronic mail if the party has completed the authorization under paragraph (f) of this section. All electronic mail filings should be addressed to the appropriate regional or field office or to the Clerk of the Board for matters pending at Headquarters. Electronic mail addresses to be used when filing with the Board will be specified in acknowledgement orders.

(e) *Electronic mail service by the Board and parties*. The Board may serve upon any party a document regarding a matter covered by this section by electronic mail provided that the party being served has authorized electronic mail service and acceptance of electronic mail service in accordance with paragraph (f) of this section. A party may serve upon any party a pleading or document regarding a matter covered by this section by electronic mail provided that both the sending and receiving parties have authorized electronic mail service and acceptance of electronic mail service in accordance with paragraph (f) of this section.

(f) *Election to engage in electronic mail filing*. (1) A party may elect to engage in electronic mail filing during a Board proceeding by filing with the judge or Board, and serving upon the other parties, a written statement of such election that includes the electronic mail address at which the party agrees to receive service. An election to engage in electronic mail filing constitutes consent to accept electronic service of pleadings and Board issuances at the electronic mail address specified. Such an election may be filed by any means provided in paragraph (i) of § 1201.4 of this part, including electronic mail.

(2) All electronic mail filings must be sent from the electronic mail address specified in the election.

(3) A pleading or Board issuance served electronically on a party who has made an election under this section is deemed received on the date of electronic submission.

(4) A party who elects to engage in electronic mail filing may file any pleading, or portion of a pleading as described in paragraph (k) of this section, by non-electronic means.

(5) A party may rescind an election to engage in electronic mail filing at any time by filing notice of the rescission with the judge or, if applicable, the Clerk and serving notice of the rescission on the other parties.

(g) *Board acknowledgement of electronic filing*. The Board will acknowledge receipt of a pleading filed by electronic mail by sending an electronic mail confirmation of receipt.

(h) *Failed electronic mail service*. If an attempt to serve a pleading or document upon the Board or a party by electronic mail is unsuccessful, the sending party must attempt to resolve the problem. If electronic service cannot be accomplished within a reasonable period, the sending party must serve a copy of the pleading by one of the other means authorized in, and as provided by, § 1201.26(b)(2) of subpart B.

(i) *Requirements relating to electronic mail*. Parties should include the title of the pleading, the Board docket number, and the case title, *e.g.* Doe v. Agency, in the subject heading of any electronic mail served upon the Board or another party. Pleadings up to two paragraphs in length may be included in the body of an electronic mail. Pleadings exceeding two paragraphs in length must be served as an attachment, or attachments, to an electronic mail.

(j) *Attachments to electronic mail pleadings*. (1) Electronic mail attachments may be in any widely-used electronic format.

(2) If a recipient is unable to view, open, or print an electronic mail attachment sent with a pleading, the recipient shall be responsible for informing the sender of the problem as soon as practicable and identifying all attachments that could not be viewed, opened, or printed. In response to such a report, the sending party shall attempt to resolve the problem as soon as practicable. In the event that problems relating to the transmission of the document cannot be resolved, the sending party shall have three calendar days to send a paper copy of all identified attachments to the complaining party.

(3) Electronic mail documents and all attachments must be formatted so that they will print on standard 8½ inch by 11 inch paper.

(4) Documents that can only be converted to electronic format by scanning may not be filed electronically if the length of the paper document exceeds 25 pages.

(k) *Hybrid pleadings containing both electronic files and paper documents*. A party who has elected electronic mail filing under this section may file a hybrid pleading in which part of the pleading is submitted electronically, and part of the pleading consists of one or more paper documents filed by non-electronic means. When a hybrid

pleading is submitted, the electronic mail submission shall inform the Board and the other party of the portions of the pleading being submitted by non-electronic means. A hybrid pleading is deemed filed and served when all parts of the pleading have been filed and served.

(l) *Certificates of Service for e-mail pleadings filed or served by electronic mail.* If a pleading is served by electronic mail, the address portion of the electronic-mail message shall serve as the certificate of service.

(m) *Use of electronic filing and service subject to control by the Judge and the Clerk of the Board.* In the event that the Board or the parties encounter repeated or unexplained difficulties filing, serving, or receiving electronic mail pleadings, documents, or attachments, the judge or the Clerk of the Board may order a party to cease filing and serving pleadings by electronic mail and may cease the Board's use of electronic mail to serve documents. In such instances, filing and service shall be undertaken in accordance with § 1201.26 of subpart B. The authority to order the cessation of the use of electronic mail may be for a particular submission, a particular time frame, or for the duration of the pendency of a case.

(n) *Requirements relating to documents requiring a signature.* An electronic document filed by a party who has elected to engage in electronic mail filing pursuant to this section shall be deemed to be signed for purposes of any regulation in part 1201, 1203, 1208, or 1209 of this title that requires a signature. An electronically filed document shall constitute a declaration made under penalty of perjury if it contains the statement required by 28 U.S.C. 1746, as set forth in Appendix IV of this part.

(o) *Authority of a judge or the Clerk of the Board to require signed submissions.* A judge or the Clerk of the Board may require that any document filed electronically be submitted in non-electronic form and bear the written signature of the submitter. A party receiving such an order from a judge or the Clerk of the Board shall, within 5 calendar days, serve on the judge or Clerk of the Board by regular mail, by facsimile, or by commercial or personal delivery a signed non-electronic copy of the document.

■ 4. Section 1201.22 is amended by revising paragraph (d) and by adding new paragraphs (e) and (f) to read as follows:

§ 1201.22 Filing an appeal and responses to appeals.

* * * * *

(d) *Method of filing an appeal.* Filing of an appeal must be made with the appropriate Board office by personal or commercial delivery, by facsimile, by mail, or by the Internet filing option described in paragraph (e) of this section.

(e) *Internet filing option.* An appeal may be filed electronically by using the electronic filing option available at the Board's Web site (*http://www.mspb.gov/e-appeal.html*).

(f) *Filing a response.* Filing of a response must be made with the appropriate Board office by personal or commercial delivery, by facsimile, by mail, or by electronic mail as specified in § 1201.5 of this part.

■ 5. Section 1201.24 is amended by revising paragraph (a), subparagraph (a)(9), and paragraph (c) to read as follows:

§ 1201.24 Content of an appeal; right to hearing.

(a) *Content.* Only an appellant, his or her designated representative, or a party properly substituted under § 1201.35 may file an appeal. Appeals may be in any format, including letter form. Electronic appeals must be filed using the Board's Internet filing option. All appeals must contain the following:

* * * * *

(9) The signature of the appellant or, if the appellant has a representative, of the representative. If using the Internet filing option, the appellant or the appellant's representative must complete the electronic signature portion of the Board's Internet filing option in accordance with instructions at the Board's Web site, as set forth in § 1201.5 of this part.

* * * * *

(c) *Use of Board form or Internet filing option.* An appellant may comply with paragraph (a) of this section, and with § 1201.31 of this part, by completing MSPB Form 185, or by completing all requests for information marked as required in the Internet filing option. Both MSPB Form 185 and the Internet filing option can be accessed at the Board's Web site (*http://www.mspb.gov/e-appeal.html*).

■ 6. Section 1201.26 is amended by revising paragraph (a), paragraph (b)(2), and paragraph (c) to read as follows:

§ 1201.26 Number of pleadings, service, and response.

(a) *Number.* The appellant must file two copies of both the appeal and all attachments with the appropriate Board office, unless the appellant files an appeal under the Board's Internet filing option.

(b) Service—(1) * * *

(2) *Service by the parties.* The parties must serve on each other one copy of each pleading, as defined by § 1201.4(b), and all documents submitted with it, except for the appeal. They may do so by mail, by facsimile, by personal or commercial delivery, or by electronic mail in accordance with § 1201.5 of this part. Documents and pleadings must be served upon each party and each representative. A certificate of service stating how and when service was made must accompany each pleading. The parties must notify the appropriate Board office and one another, in writing, of any changes in the names, or addresses on the service list.

(c) *Paper size.* Pleadings and attachments must be filed on 8½ by 11-inch paper, except for good cause shown. This requirement enables the Board to comply with standards established for U.S. courts. Requirements for pleadings and attachments filed electronically are set forth in §§ 1201.4 and 1201.5 of this part.

■ 7. Section 1201.27 is amended by adding new paragraph (d) as follows:

§ 1201.27 Class appeals.

* * * * *

(d) *Electronic filing.* A request to hear a case as a class appeal and any opposition thereto may not be filed by electronic mail or by using the Board's Internet filing option. Subsequent pleadings may be filed and served as provided in § 1201.5 of this part.

■ 8. Section 1201.31 is amended by revising paragraph (a) to read as follows:

§ 1201.31 Representatives.

(a) *Procedure.* A party to an appeal may be represented in any matter related to the appeal. Parties may designate a representative, revoke such a designation, and change such a designation in a signed submission as follows:

(1) *By written pleading.* Provided the filing and service requirements in § 1201.26 of this subpart are satisfied, parties may designate a representative, revoke a representative's designation, or change representatives, in writing.

(2) *By using the Board's Internet filing option.* Parties are allowed to designate a representative when filing an appeal using the Board's Internet filing option. This means of designation may only be used when filing an appeal using the Internet filing option.

(3) *By electronic mail.* Provided the requirements in § 1201.5 of this part are satisfied, parties may designate a representative, revoke a representative's designation, or change representatives

by e-mail filed with the Board and served on the other parties.

* * * * *

■ 9. Section 1201.114 is amended by revising paragraphs (c), (e), (f) introductory text, and (h) to read as follows:

§ 1201.114 Filing petition and cross petition for review.

* * * * *

(c) *Place for filing.* A petition for review, cross petition for review, responses to those petitions, and all motions and pleadings associated with them must be filed with the Clerk of the Merit Systems Protection Board, Washington, DC 20419, by personal or commercial delivery, by facsimile, by mail, or by electronic mail in accordance with § 1201.5 of this part.

* * * * *

(e) *Extension of time to file.* The Board will grant a motion for extension of time to file a petition for review, a cross petition, or a response only if the party submitting the motion shows good cause. Motions for extensions must be filed with the Clerk of the Board before the date on which the petition or other pleading is due. The Board, in its discretion, may grant or deny those motions without providing the other parties the opportunity to comment on them. A motion for an extension must be accompanied by an affidavit or sworn statement under 28 U.S.C. 1746. (*See* appendix IV to part 1201.) The affidavit or sworn statement must include a specific and detailed description of the circumstances alleged to constitute good cause, and it should be accompanied by any available documentation or other evidence supporting the matters asserted.

(f) *Late filings.* Any petition for review, cross petition for review, or response that is filed late must be accompanied by a motion that shows good cause for the untimely filing, unless the Board has specifically granted an extension of time under paragraph (e) of this section, or unless a motion for extension is pending before the Board. The motion must be accompanied by an affidavit or sworn statement under 28 U.S.C. 1746. (*See* appendix IV to part 1201.) The affidavit or sworn statement must include:

* * * * *

(h) *Service.* A party submitting a pleading must serve a copy of it on each party and on each representative as provided in § 1201.5 or § 1201.26(b)(2) of this part.

* * * * *

■ 10. Section 1201.122 is amended by revising paragraphs (b) and (d) and by adding a new paragraph (e) to read as follows:

§ 1201.122 Filing complaint; serving documents on parties.

* * * * *

(b) *Initial filing and service.* The Special Counsel must file two copies of the complaint, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing each party or the party's representative. The certificate of service must show the last known address, telephone number, and facsimile number of each party or representative. The Special Counsel must serve a copy of the complaint on each party or the party's representative, as shown on the certificate of service. The initial filing in a complaint may not be filed by electronic mail or by using the Internet filing option.

* * * * *

(d) *Method of filing and service.* Filing may be by mail, by facsimile, or by personal or commercial delivery to the Clerk of the Board. Service may be by mail, by facsimile, or by personal or commercial delivery to each party or the party's representative, as shown on the certificate of service.

(e) *Electronic mail filing.* All pleadings, other than the complaint, may be filed and served by electronic mail, provided the requirements in § 1201.5 of this part are satisfied.

■ 11. Section 1201.128 is amended by revising paragraphs (b) and (d) and by adding a new paragraph (e) to read as follows:

§ 1201.128 Filing complaint; serving documents on parties.

* * * * *

(b) *Initial filing and service.* The Special Counsel must file two copies of the complaint, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing the respondent agency or the agency's representative, and each person on whose behalf the corrective action is brought. The certificate of service must show the last known address, telephone number, and facsimile number of the agency or its representative, and each person on whose behalf the corrective action is brought. The Special Counsel must serve a copy of the complaint on the agency or its representative, and each person on whose behalf the corrective action is brought, as shown on the certificate of service. The initial filing in a complaint may not be filed by electronic mail or by using the Internet filing option.

* * * * *

(d) *Method of filing and service.* A filing may be by mail, by facsimile, or by personal or commercial delivery to the office determined under paragraph (a) of this section. Service may be by mail, by facsimile, or by personal or commercial delivery to each party or the party's representative, as shown on the certificate of service.

(e) *Electronic mail filing.* All pleadings, other than the complaint, may be filed and served by electronic mail, provided the requirements in § 1201.5 of this part are satisfied.

■ 12. Section 1201.134 is amended by revising paragraphs (d) and (f) and by adding a new paragraph (g) to read as follows:

§ 1201.134 Deciding official; filing stay request; serving documents on parties.

* * * * *

(d) *Initial filing and service.* The Special Counsel must file two copies of the request, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing the respondent agency or the agency's representative. The certificate of service must show the last known address, telephone number, and facsimile number of the agency or its representative. The Special Counsel must serve a copy of the request on the agency or its representative, as shown on the certificate of service. The initial filing in a request for a stay may not be filed by electronic mail or by using the Internet filing option.

* * * * *

(f) *Method of filing and service.* A filing may be by mail, by facsimile, or by personal or commercial delivery to the Clerk of the Board. Service may be by mail, by facsimile, or by personal or commercial delivery to each party or the party's representative, as shown on the certificate of service.

(g) *Electronic mail filing.* All pleadings, other than the complaint, may be filed and served by electronic mail, provided the requirements in § 1201.5 of this part are satisfied.

■ 13. Section 1201.137 is amended by revising paragraphs (c) and (e) and by adding a new paragraph (f) to read as follows:

§ 1201.137 Covered actions; filing complaint; serving documents on parties.

* * * * *

(c) *Initial filing and service.* The agency must file two copies of the complaint, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing each party or the party's representative. The certificate of service must show the last known address, telephone number, and facsimile number of each party or representative. The agency must serve a

copy of the complaint on each party or the party's representative, as shown on the certificate of service. The initial filing in a complaint may not be filed by electronic mail or by using the Internet filing option.

* * * * *

(e) *Method of filing and service.* A filing may be by mail, by facsimile, or by personal or commercial delivery to the Clerk of the Board. Service may be by mail, by facsimile, or by commercial or personal delivery to each party or the party's representative, as shown on the certificate of service.

(f) *Electronic mail service and filing.* All pleadings, other than the complaint, may be filed and served by electronic mail, provided the requirements in § 1201.5 of this part are satisfied.

■ 14. Section 1201.143 is amended by revising paragraphs (c) and (e) and by adding a new paragraph (f) to read as follows:

§ 1201.143 Right to hearing; filing complaint; serving documents on parties.

* * * * *

(c) *Initial filing and service.* The appointee must file two copies of the request, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing the agency proposing the appointee's removal or the agency's representative. The certificate of service must show the last known address, telephone number, and facsimile number of the agency or its representative. The appointee must serve a copy of the request on the agency or its representative, as shown on the certificate of service. The initial filing may not be filed by electronic mail or by using the Internet filing option.

* * * * *

(e) *Method of filing and service.* A filing may be by mail, by facsimile, or by personal or commercial delivery, to the office determined under paragraph (b) of this section. Service may be by mail, by facsimile, or by personal or commercial delivery to each party or the party's representative, as shown on the certificate of service.

(f) *Electronic mail service and filing.* All pleadings, other than the initial complaint, may be filed and served by electronic mail, provided the requirements in § 1201.5 of this part are satisfied.

■ 15. Section 1201.153 is amended by revising paragraph (b) to read as follows:

§ 1201.153 Contents of appeal.

* * * * *

(b) *Use of Board form or Internet filing option.* An appellant may comply with paragraph (a) of this section by completing MSPB Form 185, or by completing all requests for information marked as required in the Internet filing option. Both MSPB Form 185 and the Internet filing option can be accessed at the Board's Web site (*http://www.mspb.gov/e-appeal.html*).

■ 16. Section 1201.173 is amended by adding new paragraph (k) to read as follows:

§ 1201.173 Practices and procedures of Special Panel.

* * * * *

(k) *Electronic mail filing and service.* Pleadings in matters before the Special Panel may not be filed or served using electronic mail.

Appendix I to Part 1201—[Reserved]

■ 17. Remove and reserve appendix I to part 1201.

PART 1203—[AMENDED]

■ 18. The authority citation for part 1203 continues to read as follows:

Authority: 5 U.S.C. 1204.

■ 19. Section 1203.13 is amended by revising paragraph (d) to read as follows:

§ 1203.13 Filing pleadings.

* * * * *

(d) *Method and date of filing.* An initial filing in a request for review of a regulation may be filed with the Office of the Clerk either by mail, by personal or commercial delivery, or by facsimile. Pleadings, other than an initial request for a regulation review under this part, may be filed with the Office of the Clerk either by mail, by personal or commercial delivery, by facsimile, or by electronic mail in accordance with § 1201.5 of this chapter. If the document was submitted by certified mail, it is considered to have been filed on the mailing date. If it was submitted by regular mail, it is presumed to have been filed five days before the Office of the Clerk receives it, in the absence of evidence contradicting that presumption. If it was delivered personally, it is considered to have been filed on the date the Office of the Clerk receives it. If it was submitted by facsimile, the date of the facsimile is considered to be the filing date. If it was submitted by commercial delivery, the date of filing is the date it was delivered to the commercial delivery service. If it was submitted by electronic mail, it is considered to have been filed on the date sent.

* * * * *

■ 20. Section 1203.14 is amended by revising paragraph (b) and adding new paragraph (c) to read as follows:

§ 1203.14 Serving documents.

* * * * *

(b) *Method of serving documents.* Pleadings may be served on parties by mail, by personal delivery, by facsimile, or by commercial delivery. Service by mail is accomplished by mailing the pleading to each party or representative, at the party's or representative's last known address. Service by facsimile is accomplished by transmitting the pleading by facsimile to each party or representative. Service by personal delivery or by commercial delivery is accomplished by delivering the pleading to the business office or home of each party or representative and leaving it with the party or representative, or with a responsible person at that address. Regardless of the method of service, the party serving the document must submit to the Board, along with the pleading, a certificate of service as proof that the document was served on the other parties or their representatives. The certificate of service must list the names and addresses of the persons on whom the pleading was served, must state the date on which the pleading was served, must state the method (*i.e.*, mail, personal delivery, facsimile, or commercial delivery) by which service was accomplished, and must be signed by the person responsible for accomplishing service.

(c) *Electronic mail filing and service.* Other than the initial request for a regulation review, pleadings in a regulation review proceeding may be filed with the Board and served upon other parties by electronic mail, provided the requirements in § 1201.5 of this chapter are satisfied.

■ 21. Section 1203.22 is amended by revising paragraph (a) to read as follows:

§ 1203.22 Enforcement of order.

(a) Any party may ask the Board to enforce a final order it has issued under this part. The request may be made by filing a petition for enforcement with the Office of the Clerk of the Board and by serving a copy of the petition on each party to the regulation review. The request may be filed by electronic mail, provided the requirements in § 1201.5 of this part are satisfied. The petition must include specific reasons why the petitioning party believes that there has been a failure to comply with the Board's order.

* * * * *

PART 1208—[AMENDED]

■ 22. The authority citation for part 1208 continues to read as follows:

Authority: 5 U.S.C. 1204(h), 3330a, 3330b, 38 U.S.C. 4331.

■ 23. Section 1208.13 is amended by adding new paragraph (c) to read as follows:

§ 1208.13 Content of appeal; request for hearing.

* * * * *

(c) *Internet filing option.* An appeal may be filed electronically by using the Board's Internet filing option available at the Board's Web site (*http://www.mspb.gov/e-appeal.html*).

■ 24. Section 1208.14 is revised to read as follows:

§ 1208.14 Representation by Special Counsel.

The Special Counsel may represent an appellant in a USERRA appeal before the Board. A written statement (in any format) that the appellant submitted a written request to the Secretary of Labor that the appellant's complaint under 38 U.S.C. 4322(a) be referred to the Special Counsel for litigation before the Board, and that the Special Counsel has agreed to represent the appellant, will be accepted as the written designation of representative required by 5 CFR 1201.31(a). The designation of representative may be filed by electronic mail, provided the requirements in § 1201.5 of this chapter are satisfied.

■ 25. Section 1208.23 is amended by adding new paragraph (c) to read as follows:

§ 1208.23 Content of appeal; request for hearing.

* * * * *

(c) *Internet filing option.* An appeal may be filed electronically by using the Board's Internet filing option available at the Board's Web site (*http://www.mspb.gov/e-appeal.html*).

■ 26. Section 1208.24 is amended by revising paragraph (a) to read as follows:

§ 1208.24 Election to terminate MSPB proceeding.

(a) *Election to terminate.* At any time beginning on the 121st day after an appellant files a VEOA appeal with the Board, if a judicially reviewable Board decision on the appeal has not been issued, the appellant may elect to terminate the Board proceeding as provided under 5 U.S.C. 3330b and file a civil action with an appropriate United States district court. Such election must be in writing, signed, filed with the Board office where the appeal is being processed, and served on the parties. The election is effective immediately on the date of receipt by the Board office where the appeal is being processed. The election may be filed by electronic mail provided the requirements in § 1201.5 of this chapter are satisfied.

* * * * *

PART 1209—[AMENDED]

■ 27. The authority citation for part 1209 continues to read as follows:

Authority: 5 U.S.C. 1204, 1221, 2302(b)(8), and 7701.

■ 28. Section 1209.6 is amended by adding new paragraph (d) to read as follows:

§ 1209.6 Content of appeal; right to hearing.

* * * * *

(d) *Internet filing option.* An appeal may be filed electronically by using the Board's Internet filing option available at the Board's Web site (*http://www.mspb.gov/e-appeal.html*).

■ 29. Section 1209.8 is amended by revising paragraphs (a) and (d) and by adding new paragraphs (e) and (f) to read as follows:

§ 1209.8 Filing a request for a stay.

(a) *Time of filing.* An appellant may request a stay of a personnel action allegedly based on whistleblowing at any time after the appellant becomes eligible to file an appeal with the Board under § 1209.5 of this part, but no later than the time limit set for the close of discovery in the appeal. The request may be filed prior to, simultaneous with, or after the filing of an appeal.

* * * * *

(d) *Method of filing.* A stay request must be filed with the appropriate Board regional or field office by personal delivery, by facsimile, by mail, or by commercial delivery.

(e) *Internet filing option.* An appeal may be filed electronically by using the Board's Internet filing option available at the Board's Web site (*http://www.mspb.gov/e-appeal.html*).

(f) *Electronic mail option.* A stay request, made after the filing of an appeal, may be filed by electronic mail after the filing of the appeal, provided the requirements in § 1201.5 of this chapter are satisfied.

Dated: October 10, 2003.

Bentley M. Roberts,

Clerk of the Board.

[FR Doc. 03–26172 Filed 10–17–03; 8:45 am]

BILLING CODE 7400–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM81; Special Conditions No. 25–ANM–84A]

Special Conditions: Extended Range Operation of Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Amended special conditions.

SUMMARY: These special conditions amend Special Conditions No. 25–ANM–84, applicable to Boeing Model 777 series airplanes. They revise the extended range operations with two-engine airplanes (referred to as ''ETOPS'') test requirements defined in the original special conditions. The revisions include changing the airplane demonstration test requirement from a required 1000 flight cycles to a demonstration of capability in ETOPS flight conditions, and allowing more than one airplane to be used for the airplane demonstration test. In addition, this revision adds post-test inspection requirements for both the engine demonstration test and the airplane demonstration test articles.

EFFECTIVE DATE: October 8, 2003.

FOR FURTHER INFORMATION CONTACT: Steve Clark, FAA, ETOPS Project Manager, Seattle Aircraft Certification Office, Propulsion Branch, ANM–140S, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 917–6496; facsimile (425) 227–1180.

SUPPLEMENTARY INFORMATION:

Background

Because of concerns over engine and airplane reliability, for many years 14 CFR 121.161 has generally prohibited operations of two-engine airplanes on routes including segments that are more than one hour flight time from a suitable airport. This regulation contains an exception that allows such operations when specifically authorized by the Administrator. These extended range operations with two-engine airplanes are referred to as ETOPS. Advisory Circular (AC) 120–42A describes a method for obtaining ETOPS authorization if an operator can demonstrate sufficient engine and airplane reliability. This method is based on a combination of various design features and operational and maintenance procedures. The AC states that eligibility for 120-minute ETOPS

authorization is normally based on a showing of reliable operation for a minimum of 250,000 engine hours of service in the world fleet. Eligibility for 180-minute ETOPS authorization is normally based on a showing of reliable operation for at least one year in 120-minute ETOPS. The AC also describes an option for reducing the number of hours of service if adequate compensating factors are identified to give a reasonably equivalent database.

On May 18, 1994, the FAA issued Special Conditions No. 25–ANM–84 for the Boeing Model 777 series airplanes (59 FR 28234). These special conditions define requirements for 180-minute ETOPS approval concurrent with basic type certification of the airplane without the service experience outlined in AC 120–42A that would normally be necessary. These special conditions define additional safety standards that the FAA considered necessary to establish a level of safety equivalent to that provided by the airworthiness standards for non-ETOPS airplanes.

The current 777 ETOPS special conditions consist of five main elements needed to provide adequate compensation for the service experience normally required for 180-minute ETOPS eligibility described in AC 120–42A. No single element is considered sufficient by itself, but the FAA has found that the five elements combined provide an acceptable substitute for actual airline service experience. The five elements are:

1. Design for reliability
2. Lessons learned
3. Test requirements
4. Demonstrated reliability
5. Problem tracking system

A description of each of these five elements is contained in the preamble to Special Conditions No. 25–ANM–84.

On December 13, 1999, Boeing Commercial Airplane Group applied for an amendment to Type Certificate No. T00001SE to include the new Model 777–200LR and 777–300ER airplanes. The Model 777–200LR, which is a derivative version of the existing Model 777–200 series airplanes, has the following differences from the Model 777–200:

- The wingspan is increased from 199 feet, 11 inches to 212 feet, 7 inches.
- Maximum intended takeoff weight is 750,000 pounds.
- It is capable of carrying from 301 to 440 passengers.
- It has provisions for overhead crew and attendant rest areas.
- Its range capability will be up to 8,800 nautical miles (16,298 kilometers).
- It has 110,100 pounds thrust GE90 engines.
- It has a supplemental electronic tail skid.
- It has provisions for up to 3 auxiliary fuel tanks in the forward area of the aft cargo bay.

The Model 777–300ER, which is a derivative of the Model 777–300 airplanes, has the following differences from the Model 777–300:

- The wingspan is increased from 199 feet, 11 inches to 212 feet, 7 inches.
- Maximum intended takeoff weight is 750,000 pounds.
- It is capable of carrying from 359 to 550 passengers.
- It has provisions for overhead crew and attendant rest areas.
- Its range capability will be up to 7,250 nautical miles (13,427 kilometers).
- It has 115,300 pound thrust GE90 engines.
- It has a supplemental electronic tail skid.
- It has a semi-levered main landing gear.

Both models are currently approved under Type Certificate No. T00001SE.

For the Model 777–300ER and Model 777–200LR, Boeing has proposed certain changes to the ETOPS special conditions in order to take into account the experience from the original baseline Model 777 engine programs and to eliminate any unnecessary burden from the airplane demonstration testing required by paragraph (e)(7) of those special conditions.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Boeing must show that the Boeing Model 777 series airplanes meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. T00001SE or the applicable regulations in effect on the date of application for the change to the type certificate. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. T00001SE for the Boeing Model 777 series airplanes include 14 CFR part 25, as amended by Amendments 25–1 through 25–82. The original type certification basis is listed in Type Certificate Data Sheet No. T00001SE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model 777 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Boeing Model 777 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model.

ETOPS Certification

All two-engine airplanes operating under 14 CFR part 121 are required to comply with § 121.161, which states, in pertinent part, that ''Unless authorized by the Administrator * * * no certificate holder may operate two-engine airplanes * * * over a route that contains a point farther than one hour flying time * * * from an adequate airport.'' Advisory Circular (AC) 120–42A, ''Extended Range Operation With Two-Engine Airplanes (ETOPS),'' provides an acceptable means for obtaining FAA approval for two-engine airplanes to operate over a route that contains a point farther than one hour flying time from an adequate airport. The two basic objectives of this advisory circular are to establish that the airplane and its supporting systems are suitable for the extended range mission and that the maintenance and procedures to be employed in conducting ETOPS operations are adequate. This is accomplished by acquiring a substantial amount of service experience during non-ETOPS operation and then extensively evaluating this experience in the areas of systems reliability, maintenance tasks, and operating procedures. When it is determined that the appropriate reliabilities and capabilities have been achieved, the airplane is found eligible to be considered for use in ETOPS operation by an airline.

When Boeing was developing the Model 777 series airplane, it proposed that the Model 777 be approved for ETOPS operation simultaneously with the issuance of the basic type certificate. At that time, procedures did not exist for a finding of this type. The proposed issuance of ETOPS type design approval

at certification would have precluded using accumulation of service experience, as outlined in AC 120–42A, as a means to meet ETOPS approval requirements. So an alternative method was devised that provided an adequate level of inherent airplane reliability for ETOPS. It is important to note that the requirements for certification of the airplane regarding the design's suitability for ETOPS operation, as described in those special conditions, relate to type certification approval only. Advisory Circular 120–42A contains guidance regarding operational and maintenance practices criteria that must be met by the operator before ETOPS operations can be conducted. It is incumbent upon the operator to apply for operational approval in accordance with appropriate guidance issued by the FAA for such approvals. Compliance with these special conditions does not constitute operational approval.

Special Conditions No. 25–ANM–84 contained the additional safety standards that the Administrator considered necessary to establish a level of safety equivalent to that provided by the airworthiness standards for transport category airplanes for non-ETOPS airplanes. Experience with those special conditions since issuance has provided the FAA with additional data to justify an amendment to Special Conditions No. 25–ANM–84 as described in this document.

Discussion

Boeing has requested the FAA to revise certain parts of the test requirements of Special Conditions No. 25–ANM–84 defined in paragraph (e). The FAA has concurred that some changes are justified based on an analysis of previous experience applying those special conditions to the original three engine types approved for installation on the Model 777 airplane. The specific changes to those requirements and the justification for each proposed change are discussed below.

Paragraph (e)(6) Engine Demonstration Test

The FAA has concluded from a review of in-service experience of the Model 777 series airplanes that the 3000-cycle engine and propulsion system test required by paragraph (e)(6) of Special Conditions No. 25–ANM–84 provides an adequate opportunity to discover cyclic-related failure modes associated with the design, provided that an adequate post-test evaluation is conducted to find conditions that could result in an inflight shutdown, power loss, or inability to control engine thrust. An FAA review of the test data from the 3000-cycle tests for the three original engine types installed on the Model 777 series airplanes has shown that most of the early in-service Model 777 engine failure modes could have been discovered had Boeing and the engine manufacturers conducted a more thorough teardown inspection and analysis of the 3000-cycle test engine and propulsion system hardware. Part conditions noted in the teardown inspection reports for the three baseline Model 777 engine types did later occur in service, and they resulted in engine inflight shutdowns or airplane diversions. However, because the specific condition of those 3000-cycle test parts had been characterized as minor deviations from normal, no specific investigations into how they might progress in service had been required as a prerequisite for ETOPS approval.

Special Conditions No. 25–ANM–84 currently do not require a post-test teardown inspection. However, all three engine companies, in cooperation with Boeing, conducted post-test teardown inspections on the original baseline engines installed on the Model 777 series airplanes based on their own experience of what would constitute an adequate evaluation. In order to provide a consistent standard for a post-test evaluation of the 3000-cycle test hardware, the FAA considers that a change to paragraph (e)(6) to require a complete teardown inspection of the engine and airplane nacelle test hardware after completion of the test is necessary. The inspection must include an analysis of any abnormal conditions found. The analysis must consider the possible consequences of similar occurrences in service to determine if they might become sources of engine inflight shutdowns, power loss, or inability to control engine thrust. The intent of this change to paragraph (e)(6) is to require further design analysis to catch potential sources of engine inflight shutdowns or diversions.

For similar reasons, we consider that adding a new subparagraph (e)(7)(v) to require a post-test external and internal visual inspection of the airplane demonstration test engines and propulsion system hardware is needed. An analysis of the inspection results must identify any potential sources of engine inflight shutdown. Appropriate corrective actions must be performed in accordance with the provisions of the special conditions.

Boeing proposed to delete the word *complete* from the description of the airplane nacelle package required for the 3000-cycle test. The rationale for this proposed change was that without the term *complete,* it is still understood that the test is intended to be a propulsion system test inclusive of the engine buildup items, but some allowance is made for configuration differences necessary to accommodate the test setup. The FAA is concerned that, without this qualifier, it is not clear what nacelle hardware must be installed for this test. It could be misinterpreted in such a way that, for instance, a functioning thrust reverser need not be installed. Therefore, the FAA has concluded that the word *complete* must remain in the requirement. However, we agree with Boeing that those configuration differences associated with test instrumentation and test stand interfaces with the engine nacelle package may be excluded, and we have added that qualification to the requirement in order to clarify this intent.

Paragraph (e)(7) Airplane Demonstration Test

Number of Test Airplanes: Boeing has proposed a change to paragraph (e)(7) to allow the use of more than one airplane to comply with the airplane demonstration test requirement (three test airplanes for the current Model 777–300ER program). Boeing's justification includes the argument that using multiple airplanes is an enhancement to the ETOPS validation program that takes into account airplane-to-airplane variation. The value of obtaining ETOPS data on multiple airplanes versus one is the increased sample size. The FAA agrees that increasing the number of test airplanes in the airplane demonstration test would provide a better evaluation of airplane-to-airplane variability. The limited experience obtained during the airplane demonstration test program is not really sufficient to evaluate end-of-life wear-out failure modes, so accumulating all of the time and cycles on one airplane is not necessary. The main program schedule benefit from using multiple flight test airplanes is that testing can be completed in a shorter period. The FAA agrees to a change to paragraph (e)(7) to require that one or more airplanes must complete the airplane demonstration test required by that paragraph.

Capability Demonstration vs. Reliability Demonstration: The 1000-cycle airplane demonstration test requirement was developed with the intent of exposing the airplane to the conditions where the greatest numbers of inflight shutdowns occur. Most inflight shutdowns occur during takeoff and climb. The failure modes associated

with these takeoff- and climb-related shutdowns tend to be cyclic in nature for a couple of reasons.[1] For failure modes where the risk of failure increases with engine thrust, the takeoff portion of the flight is most critical. Failure modes that occur due to improper maintenance or engine servicing, for instance loss of engine oil due to improper assembly of an oil tube connection, also tend to occur early in the flight. A larger number of airplane flights increases the exposure to these types of failures. The FAA considered a cyclic test to be the most appropriate airplane validation test for the original Model 777 ETOPS special conditions. However, as stated above, we now consider that the 3000-cycle engine and propulsion system test required by paragraph (e)(6) provides an adequate opportunity to discover cyclic-related failure modes associated with the design when the test hardware goes through an appropriate level of post-test teardown and inspection.

For inflight shutdowns where improper maintenance is a main causal factor, the 1000-cycle airplane demonstration test provides multiple opportunities for these types of failures to occur. However, the maintenance procedure validation program required by paragraph (d)(2) is intended to minimize the probability of these occurrences. The airplane used for the airplane demonstration test provides opportunities to demonstrate those maintenance tasks associated with the normal operation of the airplane. The FAA considers that these demonstrations can be accomplished in fewer than 1000 cycles.

Although the fewest inflight shutdowns occur during cruise, this is the phase of flight that is most important to an ETOPS operation. Traditionally, the FAA and industry have avoided trying to differentiate between those inflight shutdowns that may occur during cruise from those that would only occur in a non-ETOPS environment. The main reason for this approach in existing ETOPS policy is that by correcting all causes of inflight shutdowns, the overall integrity of the propulsion system is assured. Since adequate cyclic exposure would be evaluated by an enhanced 3000-cycle engine demonstration test, as proposed for paragraph (e)(6) of these special conditions, the FAA has concluded that the airplane validation program should emphasize exposure to the cruise phase of flight. During the three 1000-cycle tests conducted for the original Model 777 engine installation certification programs, only 91 of the total 1000 cycles were of durations of two hours or more. Since the intent of paragraph (e)(7) is to simulate an actual airline operation, this would better be accomplished through longer duration flight cycles. Long duration flight exposure provides additional confidence in the design against those cruise-related failure modes that cannot be evaluated in a cyclic test environment. Such failure modes could include freezing of entrapped water condensation or binding of propulsion system components, neither of which would likely occur in a sea level test facility.

Based on these considerations, the FAA has determined that the airplane demonstration test requirement should be refocused on those conditions that are most prevalent in an ETOPS operating environment. Those conditions include long flights to a variety of airports with broad variations of airport elevation, temperature, and humidity. It is also important that these flights expose the airplane to several enroute climbs, such as may occur with a fully loaded Model 777–300ER on a long-range flight, and a number of single engine diversions. As such, the airplane demonstration test requirement of paragraph (e)(7) is revised to more clearly state the objectives of the test program. Those objectives include demonstrations that the aircraft, its components, and equipment are capable of long-range operations and airplane diversions, including engine-inoperative diversions, and function properly during those operations and diversions. This change in focus constitutes a significant departure from the original purpose of the 1000-cycle airplane demonstration test requirement, as discussed in the preamble to Special Conditions No. 25–ANM–84.

Reliability of 777

In order to further justify this change in philosophy for the airplane demonstration test requirement from being a demonstration of ''reliability'' to a demonstration of ''capability,'' the FAA reviewed the original intent of Special Conditions No. 25–ANM–84, as documented in the preamble to those special conditions. The purpose of this review was to assess whether the assumptions we made in justifying the special conditions are still valid, or whether they should be revised based on ETOPS certification experience since their issuance in June 1994.

In the preamble to Special Conditions No. 25–ANM–84, the FAA stated that:

> existing practices to achieve airplane certification safety objectives have involved definition of performance requirements, incorporation of safety margins, and prediction of failure probabilities through analysis and test. However, historical evidence, in general, indicates that a period of actual revenue service experience is necessary to identify and resolve problems not observed during the normal certification process. Successful achievement of this experience has been a prerequisite for granting ETOPS type design approval for a specific airplane engine combination. However, several recent airplane engine combinations incorporating new or substantially modified propulsion systems have demonstrated a high level of reliability consistent with ETOPS operation upon entry into revenue service. In addition, this high level of reliability was demonstrated by the small number of problems encountered during basic certification activity. Based on these successful airplane and engine development and certification programs, the special conditions were designed to ''result in a level of airplane reliability that is equivalent to the level of reliability previously found to be acceptable based upon service experience.''

The basic premise behind the engine and airplane demonstration tests required by paragraphs (e)(6) and (e)(7) of the original special conditions was that those tests would provide a final validation of an ''inherent'' level of reliability that was the product of an enhanced design and test process. This is similar to the purpose of the function and reliability testing required by § 21.35(b)(2). The FAA's expectation for these tests was that no significant failures would occur. The probability of significant design failures occurring on a one-airplane flight test is so low that if any *do* occur, that would be indicative of a design that is not suitable for ETOPS approval. This expectation is contained in the ''type and frequency'' requirement of special conditions paragraph (h)(1). Statistical reliability studies have shown that a much larger database would be required to validate a design's true reliability with a significant degree of confidence.

No major engine failures occurred during the 1000-cycle airplane demonstration tests for any of the three engine types certified on the Model 777 series airplane, although several engine design problems were discovered during other certification testing that affected the start and conduct of those tests. The Reliability Assessment Board (RAB) evaluated each of these design problems in compliance with paragraph (g) of the special conditions, and found the Model

[1] Data provided to the Aviation Rulemaking Advisory Committee (ARAC) ETOPS Working Group confirm that the inflight shutdown rate during the takeoff flight phase is on the order of 6 to 16 times the fleet average inflight shutdown rate and during the climb phase is 2.5 to 4.5 times the fleet average.

777 to be suitable for ETOPS type design approval with the incorporation of corrective actions identified in Appendix 1 of the RAB final recommendation reports for the three engine types. There were hardware similarities between engines with the original certified thrust ratings and follow-on higher-thrust-rated engines, and the FAA certified each of those follow-on engine derivatives for ETOPS in consideration of those hardware similarities. The FAA accepted the original baseline engine test programs as showing compliance with the 3000-cycle propulsion system ground test and 1000-cycle airplane demonstration test requirements for the follow-on derivative engines. Although the 3000-cycle and 1000-cycle tests were not repeated for those follow-on derivative engines, Boeing and the engine companies completed reduced ground and flight test demonstrations tailored to the design changes being introduced in compliance with the Test Features requirement of special conditions paragraph (c)(4). Therefore, the follow-on engine derivatives are not included in this analysis of the 1000-cycle airplane demonstration test requirement.

The Boeing Model 777–200 series airplane powered by Pratt & Whitney PW4077 engines was approved for ETOPS on May 30, 1995 and entered service in June 1995. By all accounts, it was a very successful new model introduction. This was followed by ETOPS approval of the Model 777–200 series airplanes powered by General Electric GE90–77B and Rolls-Royce RB211-Trent 877–17 engines in October 1996. The inflight shutdown (IFSD) rate for all three engine types was zero for at least the first year in service. The Pratt & Whitney PW4000 series engines reached a peak 12-month rolling average engine IFSD rate of .018/1000 hours in October 1996. The General Electric GE90 series engines reached a peak of .021 for one month in July 1998 and the Rolls-Royce Trent series engines reached a peak of .016 in December 1997. Although the inflight shutdown rates stayed within the allowable .02/1000 hour standard for 180-minute ETOPS, significant design problems were discovered on each engine type after ETOPS approval.

During the first two years after ETOPS approval of each engine type on the Model 777 series airplanes, the FAA was concerned that the design problems being discovered may have indicated a failure of the early ETOPS process to identify those failure modes before they occurred in service. Some failure modes had the potential to result in inflight shutdowns had they occurred under different circumstances or had they not been detected during maintenance for unassociated reasons. A summary of the actual problem reports for these inflight shutdowns and other events, which were submitted in compliance with paragraph (f) of these special conditions, is contained in Table 1. Had every one of those events resulted in an engine inflight shutdown, the resulting IFSD rates for each engine type would have been significantly higher. Boeing, the engine manufacturers, the FAA, and other regulatory authorities worked together to prevent additional inflight occurrences of these failure types. The actual inflight shutdown rates prove that these early in-service problems were successfully managed to maintain the safety of 777 ETOPS operations worldwide.

TABLE 1

Date occurred	EE–1 #	Engine type	Affected system	Event description
10/1/1995	101	PW	ENGINE—OIL PUMP	Airplane diversion due to low oil quantity. Engine not shut down, but oil quantity indication went to zero. Related to LP01 problem.
5/19/1996	179	PW	ENGINE	Takeoff aborted due to EGT exceedance. A loose B-nut was found on the PS3 line to the 2.95 bleed valve, which caused erratic operation.
5/30/1996	181	PW	ENGINE	Air turnback due to high oil consumption. Oil wetness noted and corrected from previous flights. Consumption continued to be high.
8/24/1996	233	PW	ENGINE	IFSD—Inflight shutdown due to low oil pressure indication. Plastic shipping cap was left in the LPO1 oil line during installation as part of fleet upgrade.
10/5/1996	254	PW	ENGINE	IFSD—Engine was shut down due to low oil quantity and low oil pressure. Loose main oil line at filter housing. Repeat of oil line shipping cap problem.
10/11/1996 ..	261	PW	ENGINE	Air turnback. Engine experienced high vibration during cruise. Vibration indication exceeded EICAS ''Pop-up'' level at 4.06.
3/26/1997	385	PW	ENGINE	Twelve quarts of oil lost after a series of training flights due to a leak of an oil line to the fuel/oil cooler. Oil loss took place over approximately 3 hours of flight time.
2/24/1997	G–65	GE	ENGINE GEARBOX	Air turnback due to loss of right backup generator followed by engine oil filter EICAS message. Root cause was a failed gearbox backup generator pad bearing.
11/4/1997	G–84	GE	ENGINE	IFSD—Engine experienced a power loss during approach. A restart attempt was unsuccessful. Root cause was a sticking bypass valve in the hydromechanical unit (HMU).
11/9/1997	G–87	GE	ENGINE	Flight crew heard a surge toward the end of the takeoff roll and tower reported seeing flames from the engine. At 600 feet, the engine surged again. The flight crew reduced power and returned to the airport.
3/12/1998	G–96	GE	ENGINE	Pilot heard a bang and a tower reported fire from the tailpipe after power was set for takeoff. The takeoff was aborted. Metal was found in the tailpipe.
6/22/1998	G–108	GE	ENGINE	IFSD—After takeoff, the pilot received low oil pressure and low oil quantity indications. The pilot shut down the engine. Two of four oil filter cover bolts were loose due to inserts pulling out of the filter housing casting.

TABLE 1—Continued

Date occurred	EE–1 #	Engine type	Affected system	Event description
7/1/1998	G–110	GE	ENGINE	IFSD—Uncommanded engine inflight shutdown during cruise at flight level 370. Flight crew noted a rapid loss of oil pressure and N2. Root cause was a Number 3 bearing failure.
7/22/1998	G–112	GE	ENGINE	IFSD—During cruise, EICAS indication of low oil quantity. Pilot shut down the engine. Oil filter housing cover bolts were over-torqued resulting in stripped threads in the oil filter housing inserts.
11/20/1998 ..	G–120	GE	IDG Installation	IFSD—Crew started return to departure airport due to indication of complete oil loss. Engine was subsequently shut down when oil pressure dropped to 10 psi. The integrated drive generator (IDG) packing was damaged during installation.
10/11/1996 ..	R–63	RR	ENGINE—RADIAL DRIVE SHROUD.	Flight diverted after crew observed right engine oil quantity loss approx. 5 hours into flight. Found cracked upper radial drive shroud.
10/11/1996 ..	R–64	RR	ENGINE—FUEL NOZZLE	Fuel found leaking from Zone 2 during investigation of R–63 oil loss. Source of fuel leak was a cracked weld on the No. 24 fuel nozzle (top dead center).
10/25/1996 ..	R–65	RR	ENGINE—RADIAL DRIVE SHROUD.	After engine shutdown at the gate, the right engine oil quantity indicated 9 qts. Upper radial drive shroud found cracked.
11/12/1996 ..	R–67	RR	ENGINE	''ENGINE OIL PRESS R'' EICAS message displayed after landing. Engine shut down. Oil pump drive shaft found sheared.
1/26/1997	R–91	RR	ENGINE—STEP ASIDE GEARBOX	Low oil quantity caused by crack in step aside gearbox housing approximately 4 to 5 inches long.
5/24/1997	R–109	RR	ENGINE	Engine was shut down on takeoff following high power surge. Subsequent borescope inspection revealed HPC rotor 1 blade failure caused by foreign object damage that was consistent with blade damage noted on 5/20/97 inspection.
7/7/1997	R–112	RR	ENGINE	Aircraft diversion caused by excessive oil leakage due to incorrectly installed lower bevel box O-ring seal following radial drive shaft replacement.
7/26/1997		RR	ENGINE	Aircraft diversion due to high oil consumption. Not related to step aside gearbox housing cracking problem.
9/16/1997	R–113	RR	ENGINE	IFSD—Engine shutdown at 400 feet after takeoff due to high-pressure compressor failure.

Reliability of 737 Next Generation (737NG)

As part of the process of reviewing existing methods for ETOPS approval, the FAA also analyzed data from the initial in-service period for Boeing Model 737–600, 737–700, and 737–800 airplanes powered by CFM56–7 engines. As a group, these variants of the Model 737 were referred to as the 737 Next Generation, or ''737NG.'' Even though early ETOPS special conditions were not issued, the 737NG was chosen for this analysis because it followed an ETOPS approval process program that was very similar to what Boeing is proposing for the Model 777–300ER airplane. Several months after entry into service, however, the 737NG did not exhibit an acceptable level of propulsion system reliability for ETOPS approval. Early ETOPS special conditions were intended to identify a design not suitable for ETOPS approval prior to type certification.

Boeing proposed in 1994, prior to the Model 777's type certification, that the 737NG be certified as an early ETOPS airplane in a manner similar to the Model 777, but without all of the testing required in the Model 777 special conditions. Since the success of the Model 777 program was still an unknown at the time of Boeing's request for the 737NG, the FAA did not agree to Boeing's proposed changes to the airplane demonstration test requirement. Early ETOPS special conditions for the 737NG were never issued. Even so, Boeing proceeded with those elements of the Model 777 special conditions that the company had proposed to accomplish. These included the relevant experience assessment, design requirements assessment, 3000-cycle propulsion system ground test, and enhanced problem reporting and resolution.

Although the FAA never issued special conditions for the 737NG program, we agreed that the elements from the Model 777 special conditions that Boeing did accomplish justified a reduction in the service experience normally required for ETOPS type design approval, as outlined in AC 120–42A. Boeing presented the following information in support of its request for a reduction in service experience required for ETOPS certification.

- ''Design involved lessons learned, similar to 777 Early ETOPS process.
- ''APU most thoroughly tested in Allied Signal history—more than 3000-cycle ground test, including hot/cold exposure.
- ''Propulsion system subjected to 3000-cycle ground test, intentionally unbalanced, with three 180-minute diversion cycles.
- ''Flight testing included a Southwest Airlines 50-cycle demonstration, using airline crews and maintenance. During the Function and Reliability testing, 61 ETOPS cycles were conducted with three single engine 180-minute diversions.
- ''A proposed ETOPS problem tracking and resolution system, similar to that used on the 777 that will remain in effect until the fleet attains 250,000 engine fleet hours.''

In its analysis of the 737NG approval process, the FAA noted that these program elements, at the time, had been accomplished with good results. The engines and airplane system had performed well during the test programs, with results comparable to the Model 777 test fleet (all engines). The in-service 737NG airplanes had achieved a 98.96% dispatch reliability rate after 45 days in service, better than any previous Boeing airplane. Boeing's

proposal included an accumulation of 15,000 fleet engine hours of service experience before requesting ETOPS approval. At that time, there would be three airplanes with more than 1000 flight cycles, the total 737NG fleet would have accumulated more than 20,000 flight cycles, and the high-time airplane/engines would have more than 2000 flight cycles. During the 737NG approval process, the FAA concurred with Boeing's proposal to require 15,000 hours of service experience based on the following:

- ''The FAA has agreed to the concept that ETOPS at entry into service can be achieved by appropriate design and testing as evidenced by the 777 special conditions, which have now been validated through actual service experience,
- ''The 737NG/CFM56–7B airframe/engine configuration is a derivative/evolution of the existing 737–300/400/500 which through extensive service experience has demonstrated exceptional reliability, and, is approved for 120-minute ETOPS,
- ''Except for the lack of a dedicated 1000-cycle ETOPS test program, design and testing of the 737NG/CFM56–7B mirrors what was done on the 777 to satisfy Early-ETOPS approval,
- ''The additional 15,000 engine hour in-service evaluation plus the fact that three 180-minute single engine diversions were performed during Function and Reliability testing more than compensates for the omission of a 1000-cycle test,
- ''The satisfactory performance of the 737NG/CFM56–7B airframe/engine configuration during the certification testing, and
- ''The proven ability of Boeing to satisfactorily manage ETOPS airworthiness of the 777 fleet in the face of problems encountered in service. The 737NG proposal includes a problem tracking and resolution system that will remain in effect for a full 250,000 engine hours.''

The Model 737–700 was the first variant of the 737NG to enter service, in December 1997. Section 4.2 of the FAA-approved 120-minute ETOPS Airplane Assessment Report for the Model 737–700, Boeing Document Number D033A003, Revision B, states that the Model 737–700 was designed, manufactured, and tested for extended range operations at entry into service. The following additional supporting statements were also made.

a. ''The 737–700 airplanes have been designed and manufactured based on regimented application of lessons learned from other ETOPS program experience as well as the in-service experience of earlier 737 models.

b. ''The 737–700 airplane was subjected to a rigorous test program as described in following paragraphs. Production equivalent equipment where appropriate, was used to support test objectives. Equipment was production equivalent as defined at the time of the test.''

No significant propulsion system design problems occurred during any of the testing described above. Two inflight shutdowns did occur during certification flight testing. One was caused by an indication fault within the electronic engine control that was corrected with a simple software change. The other was caused by an inappropriate flight test condition.

Boeing stated in the Model 737–700's 120-minute ETOPS Airplane Assessment Report that the fleet reached the 15,000-hour mark during the month of April 1998. At that time, there had been no inflight shutdowns in service. However, on May 9, 1998, before the FAA had completed its assessment of the airplane for ETOPS approval, the first inflight shutdown occurred. A second inflight shutdown occurred during the month of May, and the fleet exceeded the accepted 120-minute ETOPS standard of .05 inflight shutdowns per 1000 engine hours. Three inflight shutdowns occurred in June 1998, and one in July 1998. The peak inflight shutdown rate during this period was .085/1000 hours at the end of June 1998, which clearly did not meet the minimum standard for ETOPS type design approval.

The six engine inflight shutdowns were caused by three different failure root causes. Boeing and CFMI, the engine manufacturer, undertook aggressive actions to correct each of these design problems as they occurred. The high rate of fleet hourly accumulation during this period, however, resulted in new ETOPS reportable events occurring faster than the known problems could be corrected. This delayed FAA consideration of the Model 737–700 for ETOPS approval until the problems were brought under control. A consequence of the high rate of fleet hourly accumulation was that, with no additional inflight shutdowns, the inflight shutdown rate decreased rapidly and was within the ETOPS type design approval standard by the end of 1998. The FAA approved the Model 737–600/–700/–800 (737NG) for 120-minute ETOPS approximately one year after entry into service with over 300,000 engine-hours of service experience and an inflight shutdown rate of .020/1000 hours.

Conclusions From Comparison of Model 777 and 737NG

In comparing the 737NG experience with that of the Model 777, the FAA observes that there is a fleet hourly accumulation rate above which aggressive problem management to qualify for early ETOPS certification may become resource prohibitive. Therefore, when certifying an airplane/engine combination that will be entering service with a high production rate resulting in a rapid accumulation of engine hours, manufacturers may find it more cost-effective to use the service experience criteria of AC 120–42A than to follow the rigorous requirements of the early ETOPS process.

As stated earlier, the Model 777 ETOPS special conditions were designed to ''result in a level of airplane reliability that is equivalent to the level of reliability previously found to be acceptable based upon service experience.'' As previously noted, the current Model 777 ETOPS special conditions consist of five main elements needed to provide adequate compensation for the service experience normally required for 180-minute ETOPS eligibility described in AC 120–42A. No single element is considered sufficient by itself, but the FAA has found that the five elements combined provide an acceptable substitute for actual airline service experience. The five elements are:

1. Design for reliability.
2. Lessons learned.
3. Test requirements.
4. Demonstrated reliability.
5. Problem tracking system.

Even though the overall objective is a level of airplane and propulsion system reliability that is equivalent to that achieved through service experience, we considered the uncertainty of actually achieving that goal in the development of these special conditions. The first three elements focus on designing an airplane to eliminate sources of engine inflight shutdowns and diversions to the greatest practical extent. This is accomplished by an overall design philosophy to preclude sources of engine inflight shutdowns and diversions using the manufacturer's experience with earlier designs to identify successful and unsuccessful design features. The additional testing required by the special conditions focuses on exposing the design to conditions that in the past have contributed to engine failures, such as high engine vibration or repeated exposure to humid and inclement weather on the ground followed by long-range operation at the extreme cold

temperatures at high altitude. These design and test elements do not assure a level of reliability that is equivalent to that based on service experience. Instead, they result in an acceptable level of inherent design reliability from which we can successfully manage ETOPS fleet safety once the airplane enters service.

The fourth element, ''demonstrated reliability,'' provides the FAA with a standard by which to judge a design against existing ETOPS-approved airplanes. This gives the FAA a standard from which to withhold ETOPS approval from airplanes that experience significant failures during certification testing, demonstrating that they are not suitable for ETOPS. However, it does not by itself guarantee that designs showing no significant failures during flight testing will have adequate reliability for ETOPS.

To manage fleet safety after ETOPS approval, we rely on the fifth element of the ETOPS special conditions. Paragraph (f) of the special conditions requires a problem tracking system for the prompt identification of those problems that could impact ETOPS safety. The FAA uses this enhanced problem reporting system to work with the airplane and engine manufacturers to aggressively manage and correct significant design problems identified after ETOPS approval. This requirement is the ''catch-all'' for those design flaws that are not caught by the other elements of the special conditions during airplane design and testing.

The first in-service inflight shutdown of the Model 737–700 variant of the 737NG did not occur until the fleet had accumulated approximately 30,000 engine-hours. The FAA could not have expected that a complete 1000-cycle airplane demonstration test would have had a better chance of discovering the types of problems that occurred in service on the 737NG than the nearly 30,000 hours accumulated on multiple airplanes and engines prior to the first inflight engine shutdown. While significant propulsion system failures occurring during type certification testing, including the additional testing required by the ETOPS special conditions, may indicate that a design is not yet ready to enter ETOPS service, the 737NG experience shows that the reverse cannot be stated with a significant degree of confidence. A lack of significant failures during certification testing does not in itself assure an ETOPS-suitable design at entry into service.

The Model 777 experience shows that a relatively small fleet can be managed successfully during the initial service period based on the data provided by the enhanced problem tracking system required by special conditions paragraph (f). The 737NG experience shows that a larger fleet may require a much more resource-intensive fleet management program. However, had the 737NG received its ETOPS approval as originally proposed prior to its first inflight shutdown in service, the problem reporting system that Boeing had in place gave the FAA timely identification of the problems causing inflight shutdowns so that we could have required appropriate corrective action through the airworthiness directive process to maintain ETOPS safety. Such airworthiness directives could have required the operators to incorporate design changes prior to further ETOPS flight or withdrawn ETOPS approval.

Although we cannot be certain that an airplane approved for ETOPS under the special conditions will have the same maturity at original type certification as an airplane that we have approved based on service experience, our experience with the Model 777 and the 737NG confirms that the five elements of the special conditions, in conjunction with the FAA's normal safety oversight processes, adequately compensate for that uncertainty.

The changes to the engine demonstration test and the airplane demonstration test include enhanced post-test inspection requirements and are intended to address our experience with the original ETOPS special conditions, which identified several shortcomings in the original test requirements. These changes are needed to more clearly focus the testing on the objective of exposing the engines and airplane to those operating conditions that give us the best chance of identifying underlying major design flaws that could jeopardize ETOPS safety in service. These changes provide a better evaluation of the design than the existing requirements, including the 1000-cycle airplane flight test as previously conducted.

The FAA therefore is changing the purpose of the airplane demonstration test requirement of paragraph (e)(7) from a demonstration of reliability to a demonstration of airplane capability under the types of ETOPS operational and diversion scenarios discussed in this document. The requirements of that airplane demonstration test have been changed accordingly.

Aged Engine Requirement

In response to Boeing's request, the FAA is deleting paragraph (e)(7)(ii), which currently requires the installation of the engine and propulsion system from the 3000-cycle engine demonstration test required by paragraph (e)(6), or another suitable aged engine, on the 1000-cycle demonstration test airplane for a minimum of 500 cycles. Boeing provided the following information in support of its request for deleting the aged engine requirement.

Review of the aged engine data from the baseline Model 777 program showed that the nature of the findings, which occurred on the aged engines, was not related to the aging of the engines. Instead, the findings were related to the variation that occurs during manufacturing, assembly, etc. This lesson learned on the aged engines is consistent for each engine manufacturer's baseline Model 777 ETOPS test program.

The lack of findings related to the aging of an engine in the ETOPS flight test program has been demonstrated three times. Based on this consistent demonstration, there is no further need to maintain the requirement for an aged engine in the flight test program. Additionally, flying more airplane/engine combinations will provide increased opportunities for evaluating potential problem areas.

Boeing reported nine events (EE–1 Reports) which occurred during the aged engine portions of the 1000-cycle tests for the three baseline engine types, with an explanation of why the aged engine requirement was not necessary in order to identify each failure. Boeing stated that the lack of any EE–1 reports from the post-test inspections is an indication that there were no significant findings from the aged engine testing.

FAA Analysis of Boeing's Proposal

The original intent of the aged engine requirement was to expose the 3000-cycle test engine, or equivalent, to inflight conditions that cannot be simulated in a ground test environment. This would further validate the propulsion system design out to an age beyond 3000 cycles. Boeing data available at the time the ETOPS special conditions were developed indicated that 95% of all new significant failure modes occur on airplane propulsion systems with 3000 cycles or less. That concept is still valid. The lack of specific findings on the aged engine during the 1000-cycle airplane validation test only confirms the validity of the Reliability Assessment Board's conclusion that those baseline Model 777 engine installations were suitable for 180-minute ETOPS. A number of significant events during the

1000-cycle test program would have jeopardized that conclusion.

The question that the FAA considers to be more relevant is whether or not a greater benefit would come from a more thorough teardown inspection and analysis of the 3000-cycle test engine and propulsion system hardware than from this additional level of validation. In this regard, the FAA agrees with Boeing that other test articles may provide sufficient experience to uncover the majority of age-related problems independent of the additional exposure provided by the 1000-cycle test inflight exposure.

In consideration of the need to perform a detailed analysis of the 3000-cycle test engine and the extra expense of using a parallel 3000-cycle test engine as ''another suitable aged engine,'' the FAA agrees that the requirement for installation of an aged engine on the ETOPS test airplane can be eliminated provided significantly improved processes are used to analyze the condition of the 3000-cycle test and airplane demonstration test engines at the conclusion of these tests, as reflected in the revised paragraphs (e)(6) and (e)(7).

Miscellaneous Revisions

We are also incorporating the following revisions to the special conditions.

Re-identification of paragraph (e)(7)(iii) as (e)(7)(iv) and revision of the requirement that the 1000-cycle test airplane be operated and maintained using the recommended operations and maintenance procedures to recognize that more than one test airplane may be used.

Replacement of the reference to the ''1000-cycle ETOPS test'' with ''Airplane Demonstration Test'' in paragraph (g)(2) in order to be consistent with the changes to paragraph (e)(7).

Replacement of the reference to the ''1000-flight-cycle ETOPS test'' with ''Airplane Demonstration Test'' in paragraph (h)(1) in order to be consistent with the changes to paragraph (e)(7).

Discussion of Comments

Notice of Proposed Special Conditions No. 25–03–04–SC for the Boeing Model 777 series airplanes was published in the **Federal Register** on June 13, 2003 (68 FR 35335), with a correction to the original publication issued on June 23, 2003 (68 FR 37205). Four comments were received, and all of them concur with the special conditions as proposed. Therefore, the special conditions are adopted as proposed.

Special Conditions Revisions

For clarity, the revised sections of the original Special Conditions No. 25–ANM–84 are printed below. The final special conditions are printed in their entirety, with revisions incorporated, at the end of this document. Portions of the special conditions that remain unchanged are discussed in the preamble to the original Special Conditions No. 25–ANM–84 (59 FR 28234).

Revisions to Special Conditions No. 25–ANM–84

(e)(6) Engine Demonstration Test. One engine of each type to be certificated with the airplane must complete 3000 equivalent airplane operational cycles. The engine must be configured with a complete airplane nacelle package for this demonstration, including engine-mounted equipment except for any configuration differences necessary to accommodate test instrumentation and test stand interfaces with the engine nacelle package. At completion of the engine demonstration test, the engine and airplane nacelle test hardware must undergo a complete teardown inspection. This inspection must be conducted in a manner to identify abnormal conditions that could become potential sources of engine inflight shutdown. An analysis of any abnormal conditions found must consider the possible consequences of similar occurrences in service to determine if they may become sources of engine inflight shutdowns, power loss, or inability to control engine thrust. Any potential sources of engine inflight shutdown identified must be corrected in accordance with paragraph (g)(2).

(e)(7) Airplane Demonstration Test. In addition to the function and reliability testing required by 14 CFR 21.35(b)(2), for each engine type to be certificated with the airplane, one or more airplanes must complete flight testing which demonstrates that the aircraft, its components, and equipment, are capable of and function properly during long range operations and airplane diversions, including engine-inoperative diversions.

(i) The flight conditions must expose the airplane to representative operational variations based on the airplane's system and equipment design and the intended use of the airplane including:

(A) Engine inoperative maximum length diversions to demonstrate the airplane and propulsion system's capability to safely conduct a diversion.

(B) Non-normal conditions to demonstrate the airplane's capability to safely divert under worst case probable system failure conditions.

(C) Simulated airline operations including normal cruise altitudes, step climbs, and maximum expected flight durations out of and into a variety of departure and arrival airports.

(D) Diversions to worldwide airports representative of those intended as operational alternates.

(E) Repeated exposure to humid and inclement weather on the ground followed by long-range operation at normal cruise altitude.

(ii) The flight testing must validate expected airplane flying qualities and performance considering engine failure, electrical power losses, etc. The testing must demonstrate the adequacy of remaining airplane systems and performance and flightcrew ability to deal with an emergency considering remaining flight deck information following expected failure conditions.

(iii) The engine-inoperative diversions must be evenly distributed among the number of engines in the applicant's flight test program.

(iv) The test airplane(s) must be operated and maintained using the recommended operations and maintenance manual procedures during the airplane demonstration test.

(v) At completion of the airplane demonstration test, the test engines and engine-mounted equipment must undergo a complete external on-wing visual inspection. The engines must also undergo a complete internal visual inspection. These inspections must be conducted in a manner to identify abnormal conditions that could become potential sources of engine inflight shutdowns. An analysis of any abnormal conditions found must consider the possible consequences of similar occurrences in service to determine if they may become sources of engine inflight shutdowns. Any potential sources of engine inflight shutdown that are identified must be corrected in accordance with paragraph (g)(2).

(g)(2) The FAA Reliability Assessment Board will review and evaluate the data from the problem tracking and resolution system to establish compliance with the requirements of paragraph (h). The board will evaluate the overall type design for ETOPS suitability as demonstrated in flight test, and the Airplane Demonstration Test,

(h)(1) For the engine and airplane systems, the type and frequency of failures that occur during the airplane flight test program and the Airplane Demonstration Test must be consistent with the type and frequency of failures or malfunctions that would be expected

to occur on presently certified 180-minute ETOPS airplanes. The failures to be considered are those associated with system components that conform to the type design requested for certification. The Reliability Assessment Board will determine compliance with this requirement based on an evaluation of the problem reporting system data, considering system redundancies, failure significance, problem resolution, and engineering judgment.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 777 series airplanes. Should The Boeing Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as flight testing addressed by the changes incorporated into these final special conditions is imminent for the Boeing Model 777–200LR and 777–300ER series airplanes, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on Boeing Model 777 series airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following amended special conditions are issued as part of the type certification basis for Boeing Model 777 series airplanes.

In addition to the airworthiness requirements of 14 CFR part 25, the Model 777 airplane must comply with the following requirements in order to be eligible for Extended Range Operation with Two-Engine Airplanes (ETOPS) without the requisite operating experience specified in Advisory Circular (AC) 120–42A:

(a) *Introduction.* An approved ETOPS Type Design Assessment Plan covering the engine and each applicable airplane system must be established. The specific methods that will be used to substantiate compliance with the requirements of these special conditions must be defined in the plan. Specific systems that will undergo the complete analysis, testing, and development program tracking defined in paragraph (c) of these special conditions must be identified. Other airplane systems that may contribute to the overall safety of an ETOPS operation, but that do not warrant the rigorous type design requirements and relevant experience assessments defined in paragraph (c) of these special conditions, must be identified and agreed to by the FAA. Compliance must be shown for these other systems with all provisions of these special conditions, except paragraph (c). In showing compliance with these special conditions, tests and analyses conducted to substantiate compliance with the basic airworthiness standards of part 25 may be referenced, if applicable.

(b) *Engine Assessment.* (1) The ETOPS eligibility of the engine must be determined specifically for the airplane installation for which early ETOPS type design approval is requested.

(2) Procedures for an engine condition monitoring program must be defined and validated at the time of ETOPS type design approval. The engine condition monitoring program must be able to predict when an engine is no longer capable of providing, within certified engine operating limits, the maximum thrust required for a single engine diversion.

(c) *ETOPS Type Design Assessment.* (1) *Design Requirements Assessment.* 14 CFR part 25, including applicable amendments, defines most of the requirements necessary to design an airplane that is suitable for ETOPS operation, as long as the ETOPS mission is considered in applying these requirements for all anticipated dispatch configurations. In addition to these requirements, the propulsion system must be designed to preclude failures or malfunctions that could result in an engine inflight shutdown. The applicant must identify and list methods of compliance for each of the applicable ETOPS requirements, including those specific part 25 requirements for which methods of compliance relative to the ETOPS mission are different from those traditionally used for two-engine airplanes. Paragraph (c)(3) of these special conditions lists certain design feature categories that may be affected by a consideration of the ETOPS mission in the design of these systems. The effects of the applicable ETOPS requirements on the design of any of those design feature categories listed in paragraph (c)(3) must be specifically addressed by this assessment.

(2) *Relevant Experience Assessment.* For each system covered by the ETOPS Type Design Assessment, there must be an assessment of the relevant design, manufacturing, and operational problems experienced on previous airplanes built by the applicant. The assessment must include the applicable relevant service experience of vendor supplied systems or, to the extent possible, the service experience of components on aircraft built by other manufacturers. Specific corrective actions taken to preclude similar problems from occurring on the new airplane must be identified.

(3) *Design Features.* (i) The applicant must define any design features implemented to comply with the design requirements listed in paragraph (c)(1). Consideration of the following design feature categories must be specifically addressed:

(A) Airplane capabilities and capacities of the ETOPS mission;

(B) Fuel system integrity, including consideration of uncontained main engine rotor burst and fuel availability as affected by cross-feed capability and electrical power to pumps and other components;

(C) Fuel quantity indication to the flightcrew, including alerts that consider the fuel required to complete the mission, abnormal fuel management or transfer between tanks, and possible fuel leaks between the tanks and the main engines;

(D) Communication systems for the ETOPS environment;

(E) Navigation systems for the ETOPS environment;

(F) Minimum single engine cruise altitude capability; and

(G) Failure tolerant designs of cockpit indicating systems or avionics systems to prevent unnecessary airplane diversions.

(ii) The applicant must define the specific design features used to address problems identified in the relevant service experience assessment of paragraph (c)(2).

(4) *Test Features.* The applicant must define specific new tests, or enhanced tests, that will be used to assure engine and airplane system design integrity. These test features may be derived from the requirements assessment of paragraph (c)(1) and the relevant service experience assessment of paragraph (c)(2).

(5) *Analysis Features.* The applicant must define specific new analyses, or enhanced analyses, that will be used to assure engine and airplane system design integrity. These analysis features may be derived from the requirements assessment of paragraph (c)(1) and the relevant service experience assessment of paragraph (c)(2).

(6) *Manufacturing, Maintenance, or Operational (Other) Features.* The applicant must define specific new, or enhanced, manufacturing processes or procedures, and maintenance or operational procedures that are being implemented to assure engine and airplane system integrity. These ''other'' features may be derived from the requirements assessment of paragraph (c)(1) of this section and the relevant service experience assessment of paragraph (c)(2).

(d) *Additional ETOPS Analysis Requirements.* (1) *Performance and Failure Analyses.* Engine and airplane performance and failure analyses required for certification must be expanded to consider ETOPS mission requirements, including exposure times associated with a 180-minute single-engine diversion and a subsequent 15-minute hold in the terminal airspace at the diversion airport. Consideration must be given to crew workload and operational implications of continued operation with failure effects for an extended period of time. The rationale and all assumptions used in the analyses must be documented, justified, and validated, including maintenance interval and maintainability assumptions.

(2) *Maintenance and Flight Operations Evaluation.* The Type Design Assessment Plan must contain a program to systematically detect and correct problems occurring as a result of improper execution of maintenance or flight operations. Corrective actions for any problems found must be identified and implemented through the Problem Tracking and Resolution System required by paragraph (f).

(3) *Manufacturing Variability.* The Type Design Assessment Plan must contain a program to minimize potential manufacturing problems. The plan should address early validation of tooling and procedures, as well as any related problems, as identified in paragraph (c)(2). Corrective actions for problems that impact the safe operation of the airplane must be identified and implemented through the problem tracking and resolution system required by paragraph (f).

(e) *Additional ETOPS Test Requirements.* As part of, or in addition to, the testing identified in paragraph (c)(4), the following specific test requirements apply:

(1) *Configuration Requirements.* All testing defined in paragraph (e) must be conducted with the configuration proposed for certification, and must include sufficient interfacing system hardware and software to simulate the actual airplane installation.

(2) *Completion of Applicable Failure Analyses.* Failure analyses required for ETOPS type design approval must be submitted to the FAA prior to the start of the testing defined in paragraph (e).

(3) *Vibration Testing.* Vibration testing must be conducted on the complete installed engine configuration to demonstrate that no damaging resonances exist within the operating envelope of the engine that could lead to component, part, or fluid line failures. The complete installed engine configuration includes the engine, nacelle, engine mounted components, and engine mounting structure up the strut to wing interface.

(4) *New Technology Demonstration Testing.* Testing must be conducted to substantiate the suitability of any technology new to the applicant, including substantially new manufacturing techniques.

(5) *Auxiliary Power Unit Demonstration Test.* If requesting credit for APU backup electrical power generation, one auxiliary power unit (APU), of the type to be certificated with the airplane, must complete 3000 equivalent airplane operational cycles.

(6) *Engine Demonstration Test.* One engine of each type to be certificated with the airplane must complete 3000 equivalent airplane operational cycles. The engine must be configured with a complete airplane nacelle package for this demonstration, including engine-mounted equipment except for any configuration differences necessary to accommodate test instrumentation and test stand interfaces with the engine nacelle package. At completion of the engine demonstration test, the engine and airplane nacelle test hardware must undergo a complete teardown inspection. This inspection must be conducted in a manner to identify abnormal conditions that could become potential sources of engine inflight shutdown. An analysis of any abnormal conditions found must consider the possible consequences of similar occurrences in service to determine if they may become sources of engine inflight shutdowns, power loss, or inability to control engine thrust. Any potential sources of engine inflight shutdown identified must be corrected in accordance with paragraph (g)(2).

(7) *Airplane Demonstration Test.* In addition to the function and reliability testing required by 14 CFR 21.35(b)(2), for each engine type to be certificated with the airplane, one or more airplanes must complete flight testing which demonstrates that the aircraft, its components, and equipment, are capable of and function properly during long range operations and airplane diversions, including engine-inoperative diversions.

(i) The flight conditions must expose the airplane to representative operational variations based on the airplane's system and equipment design and the intended use of the airplane including:

(A) Engine inoperative maximum length diversions to demonstrate the airplane and propulsion system's capability to safely conduct a diversion.

(B) Non-normal conditions to demonstrate the airplane's capability to safely divert under worst case probable system failure conditions.

(C) Simulated airline operations including normal cruise altitudes, step climbs, and maximum expected flight durations out of and into a variety of departure and arrival airports.

(D) Diversions to worldwide airports representative of those intended as operational alternates.

(E) Repeated exposure to humid and inclement weather on the ground followed by long-range operation at normal cruise altitude.

(ii) The flight testing must validate expected airplane flying qualities and performance considering engine failure, electrical power losses, etc. The testing must demonstrate the adequacy of remaining airplane systems and performance and flightcrew ability to deal with an emergency considering remaining flight deck information following expected failure conditions.

(iii) The engine-inoperative diversions must be evenly distributed among the number of engines in the applicant's flight test program.

(iv) The test airplane(s) must be operated and maintained using the recommended operations and maintenance manual procedures during the airplane demonstration test.

(v) At completion of the airplane demonstration test, the test engines and engine-mounted equipment must undergo a complete external on-wing visual inspection. The engines must also undergo a complete internal visual inspection. These inspections must be conducted in a manner to identify abnormal conditions that could become potential sources of engine inflight shutdowns. An analysis of any abnormal conditions found must

consider the possible consequences of similar occurrences in service to determine if they may become sources of engine inflight shutdowns. Any potential sources of engine inflight shutdown that are identified must be corrected in accordance with paragraph (g)(2).

(f) *Problem Tracking System.* An FAA-approved problem tracking system must be established to address problems encountered on the engine and airplane systems that could affect the safety of ETOPS operations.

(1) The system must contain a means for the prompt identification of those problems that could impact the safety of ETOPS operations in order that they may be resolved in a timely manner.

(2) The system must contain the process for the timely notification to the responsible FAA office of all relevant problems encountered, and corrective actions deemed necessary, in a manner that allows for appropriate FAA review of all planned corrective actions.

(3) The system must be in effect during the phases of airplane development that will be used to assess early ETOPS eligibility, and for at least the first 250,000 engine-hours of fleet operating experience after the airplane enters revenue service. For the revenue service period, this system must define the sources and content of in-service data that will be made available to the manufacturers in support of the problem tracking system. The content of the data provided must include, as a minimum, the data necessary to evaluate the specific cause of all service incidents reportable under Sec. 21.3(c) of part 21, in addition to any other failure or malfunction that could prevent safe flight and landing of the airplane, or affect the ability of the crew to cope with adverse operating conditions.

(4) Corrective actions for all problems discovered during the development and certification test program that could affect the safety of ETOPS operations, or the intended function of systems whose use is relied upon to accomplish the ETOPS mission, must be identified and implemented in accordance with paragraph (g)(2). If, during the certification program, it is discovered that a fault has developed that requires significant rework of manufacturing, maintenance, and/or operational procedures, the FAA will review the ETOPS suitability of the affected system and interfacing hardware and identify any additional actions to be accomplished to substantiate the corrective actions.

(5) For each engine type to be certificated with the airplane, the system must include provisions for an accelerated engine cyclic endurance test program that will accumulate cycles on one representative production-equivalent propulsion system in advance of the high-cycle revenue fleet engine. This test program will assist the applicant and the FAA in identifying and correcting problems before they occur in revenue service. This program must be in place for, at a minimum, the first 250,000 engine-hours of fleet operating experience after the airplane enters revenue service. The representative production-equivalent propulsion system may, at the manufacturer's discretion, be used for other fleet support activities.

(g) *Reliability Assessment Board.* (1) An FAA Reliability Assessment Board will be formed to evaluate the suitability of the airplane for ETOPS approval and make a recommendation to the Manager, Transport Airplane Directorate, regarding the adequacy of the type design for 180-minute ETOPS operation. The purpose of this board will be:

(i) To periodically review the development and certification flight test program accomplishments from both type design and operational perspectives;

(ii) To ensure that all specific problems, as well as their implications on the effectiveness of the Early ETOPS process, are resolved; and

(iii) To assess the design suitability for ETOPS. The board will consider design, maintenance, manufacturing, and operational aspects of the type design when finding suitability for ETOPS approval.

(2) The FAA Reliability Assessment Board will review and evaluate the data from the problem tracking and resolution system to establish compliance with the requirements of paragraph (h). The board will evaluate the overall type design for ETOPS suitability as demonstrated in flight test, and the Airplane Demonstration Test, considering all resolutions of problems. The following suitability criteria will be applied:

(i) Sources of engine shutdown/thrust loss, engine anomalies, or airplane system problems that have a potential significant adverse effect on in-service safety will be resolved.

(ii) Resolutions are identified for all items in paragraph (i) with analysis and/or testing to show all resolutions are effective. These resolutions may be accomplished through one or more of the following categories:

Design change
Operating procedure revision
Maintenance procedure revision
Manufacturing change

(iii) The resolutions of paragraphs (i) and (ii) will be incorporated prior to entry into service.

(iv) The engine shutdown history of the test program indicates that the engine reliability of the configuration is suitable for the ETOPS approval being considered.

(v) Where interim resolutions having operational impact are defined, the cumulative effect must be determined to be acceptable.

(vi) System or component failures experienced during the program are consistent with the assumptions made in the failure analyses.

(h) *Reliability Demonstration Acceptance Criteria.*

(1) For the engine and airplane systems, the type and frequency of failures that occur during the airplane flight test program and the Airplane Demonstration Test must be consistent with the type and frequency of failures or malfunctions that would be expected to occur on presently certified 180-minute ETOPS airplanes. The failures to be considered are those associated with system components that conform to the type design requested for certification. The Reliability Assessment Board will determine compliance with this requirement based on an evaluation of the problem reporting system data, considering system redundancies, failure significance, problem resolution, and engineering judgment.

(2) Corrective action for any of the following classes of problems occurring during the testing identified in paragraph (h)(1) that requires a major system redesign would delay ETOPS type design approval, or result in approval of a reduced single-engine diversion time, unless corrective action has been substantiated to, and accepted by, the FAA Reliability Assessment Board:

(i) Any source of unplanned inflight shutdown or loss of thrust.

(ii) Any problem that jeopardizes the safety of an airplane diversion.

(3) The FAA Reliability Assessment Board must determine that the suitability criteria of paragraph (g)(2) have been met.

(i) *Demonstration of Compliance.* In order to be eligible for 180-minute ETOPS type design approval, the following conditions apply:

(1) The engine assessment has been completed and eligibility for ETOPS operation has been approved by the FAA Engine Certification Office.

(2) All design, manufacturing, maintenance, operational, and other features necessary to meet the ETOPS requirements of paragraph (c)(1), and to resolve the problems identified in

paragraph (c)(2), have been successfully implemented.

(3) The identified test and analysis features in paragraph (c)(4) and (c)(5) have been shown to be effective in validating the successful implementation of the features in paragraph (i)(2).

(4) The additional analysis requirements of paragraph (d) have been completed and the results have been approved.

(5) The additional test requirements of paragraph (e) have been successfully completed.

(6) All significant problems identified in accordance with paragraph (f) have been resolved, and fixes substantiated to be effective have been implemented.

(7) The accelerated engine cyclic endurance test program of paragraph (f)(5) must be in place.

(8) Compliance with the reliability demonstration acceptance criteria of paragraph (h) has been found by the Reliability Assessment Board.

Issued in Renton, Washington, on October 8, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–26378 Filed 10–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket Number 030820208–3208–01]

RIN 0607–AA39

Automated Export System Mandatory Filing for Exports (Reexports) of Rough Diamonds

AGENCY: Bureau of the Census, Commerce.

ACTION: Final rule.

SUMMARY: The U.S. Census Bureau (Census Bureau) is amending the Foreign Trade Statistics Regulations (FTSR) to incorporate requirements for the mandatory electronic filing via the Automated Export System (AES) of exports of rough diamonds classified under Harmonized System subheadings 7102.10, 7102.21, and 7102.31 in accordance with the Clean Diamond Trade Act, which authorizes the President to implement the Kimberley Process Certification Scheme (the Kimberley Process) in the United States. The Kimberley Process sets forth an international certification scheme for trade in rough diamonds to combat the use of diamonds to support conflict in Africa and other world areas. This requirement is mandated by the Clean Diamond Trade Act. Executive Order 13312 of July 29, 2003, implements the Clean Diamond Trade Act. This rule provides for AES mandatory filing in the FTSR.

EFFECTIVE DATE: This rule is effective October 20, 2003.

FOR FURTHER INFORMATION CONTACT: C. Harvey Monk, Jr., Chief, Foreign Trade Division, U.S. Census Bureau, Room 2104, Federal Building 3, Washington, DC 20233–6700, (301) 763–2255, by fax (301) 457–2645, or by e-mail: *c.harvey.monk.jr@census.gov.*

SUPPLEMENTARY INFORMATION:

Background

Reporting Requirements

The Census Bureau is responsible for collecting, compiling, and publishing export trade statistics for the United States under the provisions of Title 13, United States Code (U.S.C.), chapter 9, section 301. The paper Shipper's Export Declaration (SED) and the AES are the primary media used for collecting such trade data, and the information contained therein is used by the Census Bureau for statistical purposes only. This information is exempt from public disclosure under the provisions of Title 13, U.S.C., chapter 9, section 301(g). The SED and AES records also are used for export control purposes under Title 50, U.S.C., and Title 22, U.S.C., to detect and prevent the export of certain critical or sensitive commodities to unauthorized destinations or end-users.

Conflict Diamonds

On December 1, 2000, the United Nations General Assembly adopted Resolution 55/56. Provisions of Resolution 55/56 charged the international community with developing proposals and procedures to address the potential negative impact of illicit trade in rough diamonds on world peace, safety, and security. Trade in rough diamonds has in the past been linked to the finance of armed conflicts in certain world areas, specifically in some African nations (referred to as ''conflict'' diamonds). Funds derived from the sale of rough diamonds have been used by rebel groups to finance military activities, overthrow legitimate governments, commit atrocities against unarmed civilians, and subvert international efforts to promote peace and stability within and among the governments of nations.

This trade, if allowed to continue, poses a serious threat to the economies of many producing, processing, exporting, and importing states. Representatives of nations with a stake in resolving the problem of ''conflict'' diamonds, including the United States, along with members of the diamond industry and concerned nongovernmental institutions, have worked together for nearly 3 years to develop a certification scheme, designed to control the worldwide movement of illicit rough diamonds. This process, which culminated in the Interlaken Declaration of November 5, 2002, launched the Kimberley Process. Under the Kimberley Process, participating nations or entities, in cooperation with industry, will establish internal control systems designed to eliminate ''conflict'' diamonds from shipments of rough diamonds imported into and exported from their territories.

Public Law 108–19, April 25, 2003, 117 stat. 631, known as the ''Clean Diamond Trade Act,'' implements the Kimberley Process in the United States by authorizing the President to prohibit the importation into or the exportation from the United States of any rough diamond, from whatever source, unless the rough diamond is controlled through the Kimberley Process Certification Scheme. Executive Order 13312, signed on July 29, 2003, implements these prohibitions, effective July 30, 2003. In accordance with section 15 of the Clean Diamond Trade Act, the President certified in a letter to Congress on July 29, 2003, that an applicable waiver granted by the World Trade Organization is in effect until December 31, 2006.

Section 6 of Public Law 108–19 names the Census Bureau as the exporting authority for the purposes of the Clean Diamond Trade Act. This requires the Census Bureau to validate the Kimberley Process Certificate (the Certificate) for exports of rough diamonds by verifying that an Internal Transaction Number (ITN) provided by the AES is shown on the Certificate. The ITN is the confirmation number provided by the AES when the data transmission for exports of rough diamonds is accepted. Shipments of rough diamonds from the United States must also meet additional Department of the Treasury exporting requirements identified in the Office of Foreign Assets Control's (OFAC) Rough Diamonds Control Regulations, Title 31, Code of Federal Regulations (CFR), part 592. Section 8 of Public Law 108–19 authorizes the Bureau of Customs and Border Protection and the Bureau of Immigration and Customs Enforcement to enforce the provisions of the Clean Diamond Trade Act. OFAC also has enforcement authority pursuant to

section 5(a) of the Clean Diamond Trade Act and the Rough Diamonds Control Regulations (31 CFR part 592).

Program Requirements

To comply with the requirements of the Act and Executive Order 13312, which implements the Clean Diamond Trade Act, the Census Bureau is amending the appropriate sections of the FTSR to specify the requirements for the mandatory electronic filing via the AES for exports of rough diamonds.

The Census Bureau is revising the following sections of the FTSR:

- Section 30.1 is amended to require mandatory filing via AES for exports of rough diamonds;
- Section 30.2 is amended to stipulate that electronic SED filing through the AES is subject to export control regulations;
- Section 30.55 is amended to require filing through AES for all exports of rough diamonds regardless of value;
- Section 30.58 is amended to require filing through AES for exports of rough diamonds destined for Canada;
- Section 30.60 is amended to require mandatory participation in the AES for filers of information on exports of rough diamonds;
- Section 30.61 is amended to require full reporting, that is, reporting of all required information under the AES filing Option 2, prior to exportation for shipments of rough diamonds;
- Section 30.63 is amended to specify the Harmonized System subheadings for rough diamond exports subject to the Clean Diamond Trade Act and the Rough Diamonds Control Regulations (31 CFR part 592) and required to be reported through the AES;
- Section 30.65 is amended to specify the requirements for annotating commercial documents with the proper proof of filing citation when exports of rough diamonds are filed through the AES, and to require the reporting of an AES confirmation number on the Kimberley Process Certificate; and
- Section 30.95 is amended to specify penalty provisions mandated by the Clean Diamond Trade Act.

The Departments of State and Homeland Security concur with the provisions contained in this notice of final rulemaking.

Rulemaking Requirements

Administrative Procedure Act

Executive Order 13312 addresses further threats to international peace and security by the trade in conflict diamonds and implements Public Law 108–19, the Clean Diamond Trade Act. This final rule is issued in response to Public Law 108–19 and is exempt from requirements of section 553 of the Administrative Procedures Act because it deals with a foreign affairs function of the United States (5 U.S.C. 553 (a)(1)). Therefore, the Census Bureau is not required to solicit public comment on this rule or provide a delay in the rule's effective date. No other law requires a notice of proposed rulemaking and an opportunity for public comment on this rule.

Regulatory Flexibility Act

Because a notice and opportunity for public comment are not required by 5 U.S.C. 553, or any other law for a rule regarding a foreign affairs function, a Regulatory Flexibility Analysis is not required and has not been prepared (5 U.S.C. 603 (a)).

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a current, valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., chapter 35, OMB has approved on July 22, 2003, with control number 0607–0152, the collection of all information associated with the AES and the SED under this rule. We estimate that each electronic SED will take approximately 3 minutes to complete; we estimate that each paper SED will take approximately 11 minutes to complete. A decrease of 31 burden hours accounts for the difference in time it takes to complete an AES transaction versus filling out a paper SED.

Executive Order 12866

This rule has been determined to be significant for purposes of Executive Order 12866.

List of Subjects in 15 CFR Part 30

Economic statistics, foreign trade, exports, reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, title 15 CFR part 30, is amended as follows:

PART 30—FOREIGN TRADE STATISTICS

■ 1. Revise the authority citation for part 30 to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C. 301–307; 19 U.S.C. 3901–3913; Reorganization Plan 5 of 1950 (3 CFR 1949–1953 Comp., 1004); E.O. 13312; and Department of Commerce Organization Order No. 35–2A, July 22, 1987, as amended, and No. 35–2B, December 20, 1996, as amended.

Subpart A—General Requirements—U.S. Principal Party in Interest (USPPI)

■ 2. In § 30.1, revise paragraph (c) to read as follows:

§ 30.1 General statement of requirement for Shipper's Export Declarations.

* * * * *

(c) In lieu of filing paper SEDs as provided elsewhere in this section, when an SED would be required, the USPPI or the authorized agent is required to file shipper's export information electronically through the AES for the export of items identified on the CCL of the EAR (15 CFR Supp. No. 1 to part 774) or the USML of the ITAR (22 CFR part 121) as provided for in subpart E of this part, Electronic Filing Requirements—Shipper's Export Information. Information for items identified on the USML, including those exported under an export license exemption, must be filed electronically prior to export, unless exempted from the AES filing requirement by the State Department. For USML shipments, refer to the ITAR (22 CFR parts 120–130) for requirements concerning the AES proof of filing citation and filing time requirements. USPPIs or their authorized agents are required to file export information through the AES for shipments of rough diamonds classified under Harmonized System subheadings 7102.10, 7102.21, and 7102.31 and exported (reexported) in accordance with the Clean Diamond Trade Act and the Rough Diamonds Control Regulations (31 CFR part 592) as provided for in subpart E of this part. Use of the SED form is not permitted for reporting exports of rough diamonds. Entities serving as data entry and other forms of processing centers are not authorized to either collect or file export information on shipments of rough diamonds using any export reporting option. The USPPI or the authorized agent filing SEDs for the export of items not on the CCL, the USML, or exported (reexported) under the provisions of the Clean Diamond Trade Act and the Rough Diamonds Control Regulations (31 CFR part 592) has the option of filing this information electronically as provided for in subpart E of this part.

* * * * *

■ 3. In § 30.2, add paragraph (c) to read as follows:

§ 30.2 Related export control requirements.

* * * * *

(c) Export shipments to all foreign destinations, including those filed electronically through the AES, are subject to export control regulations. This applies to mandatory, as well as voluntary AES filing. Executive Order 13312, signed July 29, 2003, implements the Clean Diamond Trade Act, which authorizes the President to implement the Kimberley Process Certification scheme in the United States. The Kimberley Process was developed to stem the worldwide movement of rough diamond exports linked to the finance of armed conflicts in certain world areas (''conflict'' diamonds), specifically in some Southern African countries. The Kimberley Process Certificate serves as the mechanism to verify the absence of ''conflict'' diamonds from diamonds exported (reexported) from the United States.

Subpart D—Exemptions From the Requirements for the Filing of Shipper's Export Declarations

■ 4. In § 30.55, add paragraph (h)(2)(vi) to read as follows:

§ 30.55 Miscellaneous exemptions.

* * * * *

(h) * * *

(2) * * *

(vi) Classified as rough diamonds under 6-digit Harmonized System subheadings 7102.10, 7102.21, and 7102.31, regardless of value.

* * * * *

■ 5. Amend § 30.58 as follows:

■ a. Redesignate current paragraph (c)(6) as paragraph (c)(7).

■ b. Add a new paragraph (c)(6).

The addition reads as follows:

§ 30.58 Exemptions for shipments from the United States to Canada.

* * * * *

(c) * * *

(6) Shipments of rough diamonds exported (reexported) to Canada for use or consumption in Canada.

* * * * *

Subpart E—Electronic Filing Requirements—Shipper's Export Information

■ 6. In § 30.60, add a new second sentence to paragraph (a) to read as follows:

§ 30.60 General requirements for filing export and manifest data electronically using the Automated Export System (AES).

* * * * *

(a) *Participation.* * * * Filing using the AES also is mandatory for all exports (reexports) of rough diamonds regardless of destination, method of transport, or value. * * *

* * * * *

■ 7. In § 30.61, add sentence (a)(5) to read as follows:

§ 30.61 Electronic filing options.

* * * * *

(a) * * *

(5) Shipments of rough diamonds exported (reexported) in accordance with the Clean Diamond Trade Act and the Rough Diamonds Control Regulations (31 CFR part 592).

* * * * *

■ 8. In § 30.63, add a sentence after the second sentence of paragraph (a)(12) to read as follows:

§ 30.63 Information required to be reported electronically through AES (data elements).

* * * * *

(a) * * *

(12) * * * Shipments of rough diamonds at the 10-digit Schedule B level that are classified under 6-digit Harmonized System subheadings 7102.10, 7102.21, and 7102.31 must be reported electronically through the AES. * * *

* * * * *

■ 9. Amend § 30.65 as follows:

■ a. Revise paragraphs (b) introductory text and (b)(1).

■ b. Redesignate current paragraph (b)(2) as paragraph (b)(4).

■ c. Add new paragraphs (b)(2) and (b)(3).

The additions and revisions read as follows:

§ 30.65 Annotating the proper exemption legends or proof of filing citations for shipments transmitted electronically.

(a) * * *

(b) The USPPI or the authorized agent is responsible for annotating the proper exemption legend or proof of filing citation on the bill of lading, air waybill, or other commercial loading document for presentation to the carrier prior to tendering the cargo to the exporting carrier. The carrier is responsible for transmitting the appropriate exemption legend or proof of filing citation to the CBP Port Director at the port of exportation as stated in § 30.21 and § 30.22 of this part. Such transmittal shall be without material change or amendment of the exemption legend or proof of filing citation as provided to the carrier by the USPPI or the authorized agent. The exemption legend or proof of filing citation will identify that the shipment information has been accepted as transmitted and electronically filed using the AES. The exemption legend or proof of filing citation must appear on the bill of lading, air waybill, or other commercial loading documentation and the manifest and must be clearly visible and include any of the following:

(1) The exemption legend or proof of filing citation will include the statement, ''NO SED REQUIRED—AES,'' followed by the filer's identification number and a unique shipment reference number referred to as the External Transaction Number (XTN) or the returned confirmation number provided by AES when the transmission is accepted, referred to as the Internal Transaction Number (ITN).

(2) Shipments of USML articles must meet the predeparture reporting requirements in the ITAR (22 CFR parts 120–130).

(3) For shipments of rough diamonds, the proof of filing citation shall include the statement, ''NO SED REQUIRED—AES,'' followed by the returned confirmation number provided by the AES when the transmission is accepted, referred to as the ITN. The ITN is required to be shown on the Kimberley Process Certificate for all exports (reexports) of rough diamonds to certify that the diamonds have been controlled through the Kimberley Process Certification Scheme, as defined in section 3 of Public Law 108–19 of the Clean Diamond Trade Act and implemented in the Rough Diamonds Control Regulations (31 CFR part 592).

Subpart H—General Administrative Provisions

■ 10. Revise § 30.95 to read as follows:

§ 30.95 Penalties for violations.

(a) *Exports (reexports) of rough diamonds.*

The Clean Diamond Trade Act, section 8(c), authorizes the Bureau of Customs and Border Protection (CBP) and the Bureau of Immigration and Customs Enforcement (BICE), as appropriate, to enforce the laws and regulations governing exports of rough diamonds, including with respect to the validation of the Kimberley Process Certificate by the exporting authority. The Treasury Department's Office of Foreign Assets Control (OFAC) also has enforcement authority pursuant to section 5(a) of the Clean Diamond Trade Act (the Act), Executive Order 13312, and the Rough Diamonds Control Regulations (31 CFR part 592). The CBP, the BICE, and OFAC, pursuant to section 5(a) of the Act, are further authorized to enforce provisions of section 8(a) of the Act that provide for the following civil and criminal penalties:

(1) A civil penalty not to exceed $10,000 may be imposed on any person who violates, or attempts to violate, any order or regulation issued under the Act.

(2) A criminal penalty not to exceed $50,000, or;

(i) If a natural person, imprisonment for not more than 10 years, or both, may be imposed for willful violation of any license, order, or regulation issued under the Act.

(ii) If a corporation, imprisonment for not more than 10 years, or both may be imposed on any officer, director, or agent of the corporation for willful violation of any license, order, or regulation issued under the Act.

(b) *Exports of other than rough diamonds.* Any person who violates any provisions of this part, except for violations of the provisions relating to delayed filing of documents under bond as provided by § 30.24 and violations of section 8 of Public Law 108–19, the Clean Diamond Trade Act, shall be liable to the United States in an amount not exceeding $1,000 for each violation, as authorized by section 305, chapter 9, title 13 U.S.C.

Dated: October 10, 2003.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 03–26282 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, and 529

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for 12 approved new animal drug applications (NADAs) and 1 abbreviated new animal drug application (ANADA) from Anthony Products Co. to Cross Vetpharm Group, Ltd.

DATES: This rule is effective October 20, 2003.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: *dnewkirk@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Anthony Products Co., 5600 Peck Rd., Arcadia, CA 91006, has informed FDA that it has transferred ownership of, and all rights and interest in, the following 12 approved NADAs and one approved ANADA to Cross Vetpharm Group, Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland.

Application No.	21 CFR Section	Trade Name
NADA 046–780	522.1720	PHEN–BUTA–VET (phenylbutazone) Injection
NADA 096–671	522.1720	PHEN–BUTA–VET (phenylbutazone) Injection
NADA 096–672	520.1720a	PHEN–BUTA–VET (phenylbutazone) Tablets
NADA 098–288	522.1883	PREDNIS–A–VET (prednisolone sodium phosphate) Injection
NADA 099–604	522.540	DEX–A–VET (dexamethasone sodium phosphate) Injection
NADA 099–605	522.540	DEX–A–VET (dexamethasone sodium phosphate) Injection
NADA 099–606	522.540	DEXAMETH–A–VET (dexamethasone) Injection
NADA 099–607	522.540	DEXAMETH–A–VET (dexamethasone) Injection
NADA 118–550	522.1010	FUROS–A–VET (furosemide) Injection
NADA 119–141	522.1962	TRANQUAZINE (promazine hydrochloride) Injection
NADA 138–405	522.2063	Pyrilamine Maleate Injection
NADA 140–583	522.480	ACTH Gel
ANADA 200–115	529.1044a	GENTAMEX 100 (gentamicin sulfate)

Accordingly, the agency is amending the regulations in 21 CFR 520.1720a, 522.480, 522.540, 522.1010, 522.1720, 522.1883, 522.1962, 522.2063, and 529.1044a to reflect the transfer of ownership. Sections 522.1883 and 522.1962 are also being revised to reflect a current format.

Following these changes of sponsorship, Anthony Products Co. is no longer the sponsor of an approved application. Accordingly, § 510.600(c) is being amended to remove the entries for Anthony Products Co.

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

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520, 522, and 529

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 parts 510, 520, 522, and 529 are amended as follows:

PART 510–NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

■ 2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for ''Anthony Products Co.'' and in the table in paragraph (c)(2) by removing the entry for ''000864''.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

§ 520.1720a [Amended]

■ 4. Section 520.1720a *Phenylbutazone tablets and boluses* is amended in paragraph (b)(3) by removing ''000864''.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 5. The authority citation for 21 CFR part 522 continues to read as follows:

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

§ 522.480 [Amended]

■ 6. Section 522.480 *Repository corticotropin injection* is amended in paragraph (b)(2) by removing ''000864'' and by adding in its place ''061623''.

§ 522.540 [Amended]

■ 7. Section 522.540 *Dexamethasone injection* is amended in paragraphs (b)(2)(i) and (c)(2) by removing ''000864'' and by adding in its place ''061623''.

§ 522.1010 [Amended]

■ 8. Section 522.1010 *Furosemide* is amended in paragraph (b)(2) by removing ''000864'' and by adding in its place ''061623''.

§ 522.1720 [Amended]

■ 9. Section 522.1720 *Phenylbutazone injection* is amended in paragraph (b)(1) by removing ''and 059130'' and by adding in its place ''059130, and 061623''; in paragraph (b)(2) by removing ''Nos. 000010 and 000864'' and by adding in its place ''No. 000010''; and by removing paragraph (b)(4).

■ 10. Section 522.1883 is revised to read as follows:

§ 522.1883 Prednisolone sodium phosphate.

(a) *Specifications.* Each milliliter of solution contains 20 milligrams (mg) prednisolone sodium phosphate (equivalent to 14.88 mg of prednisolone).

(b) *Sponsor.* See No. 061623 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* Administer intravenously in a dosage of 2 1/2 to 5 mg per pound of body weight, initially for shock and shock-like states, followed by equal maintenance doses at 1-, 3-, 6-, or 10-hour intervals as determined by the condition of the animal.

(2) *Indications for use.* Administer when a rapid adrenal glucocorticoid and/or anti-inflammatory effect is necessary.

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

■ 11. Section 522.1962 is amended:
■ a. By removing ''injection'' from the heading;
■ b. By removing footnote 1;
■ c. In paragraph (b) by removing ''000864'' and by adding in its place ''061623'';
■ d. By removing paragraphs (c)(3) and (c)(4);
■ e. By revising paragraphs (a) and (c)(2); and
■ f. By adding a heading to (c)(1).
■ The amendments read as follows:

§ 522.1962 Promazine hydrochloride.

(a) *Specifications.* Each milliliter of solution contains 50 milligrams (mg) promazine hydrochloride.

* * * * *

(c) * * *

(1) *Amounts and indications for use.*

(i) * * *

* * * * * *

(2) *Limitations.* Not for use in horses intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.2063 [Amended]

■ 12. Section 522.2063 *Pyrilamine maleate injection* is amended in paragraph (b) by removing ''000864'' and by adding in its place ''061623''.

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 13. The authority citation for 21 CFR part 529 continues to read as follows:

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

§ 529.1044a [Amended]

■ 14. Section 529.1044a *Gentamicin sulfate intrauterine solution* is amended in paragraph (b) by removing ''000864, 057561, and 059130'' and by adding in its place ''057561, 059130, and 061623''.

Dated: October 2, 2003.

Steven D. Vaughn,

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

[FR Doc. 03–26336 Filed 10–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 2003–P–021]

RIN 0651–AB61

January 2004 Revision of Patent Cooperation Treaty Application Procedure

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office) is amending the rules of practice to conform them to certain amendments made to the Regulations under the Patent Cooperation Treaty (PCT) that will take effect on January 1, 2004. These amendments will result in the addition of a written opinion in PCT Chapter I, as well as a simplification of PCT designations and the PCT fee structure. In addition, the Office is adjusting the transmittal, search, and international preliminary examination fees for international applications filed under the PCT to be more closely aligned with the actual average costs of processing a PCT application and conducting a PCT search and international preliminary examination under the new process.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Richard R. Cole, Legal Examiner, Office of PCT Legal Administration (OPCTLA) directly by telephone at (703) 305–6639, or by facsimile at (703) 308–6459.

SUPPLEMENTARY INFORMATION: During the September-October 2002 meeting of the Governing Bodies of the World Intellectual Property Organization (WIPO), the PCT Assembly adopted various amendments to the Regulations under the PCT that enter into force on January 1, 2004. The amended PCT Regulations were published in the PCT Gazette of December 5, 2002 (49/2002), in Section IV, at pages 25004–61. The purposes of these amendments are to: (1) Improve coordination of international search (Chapter I of the PCT) and international preliminary examination (Chapter II of the PCT) through the provision of an enhanced international search and preliminary examination system; (2) simplify the PCT by changing the concept and operation of the designation system and the fee system; and (3) simplify signature and other filing requirements.

Enhanced International Search and Preliminary Examination System: Under the enhanced international search and

preliminary examination system, the written opinion currently established during the Chapter II procedure by the International Preliminary Examining Authority (IPEA) has been added to the Chapter I procedure. Accordingly, the International Searching Authority (ISA) will be responsible for establishing a preliminary and non-binding written opinion on whether the claimed invention appears to be novel, to involve an inventive step and to be industrially applicable. In the event that a Demand for international preliminary examination is timely filed by applicant, the written opinion of the ISA will be considered to be the written opinion of the IPEA. If a Demand is not timely filed, the written opinion of the ISA will form the basis for the issuance, by the International Bureau (IB) on behalf of the ISA, of an ''International Preliminary Report on Patentability (Chapter I of the Patent Cooperation Treaty)'' (''IPRP''), which will be communicated to all designated Offices and made available for public inspection after the expiration of thirty months from the priority date.

Under the revised system, the time limit for filing a Demand for international preliminary examination has changed. Specifically, the Demand must be filed within the later of: (1) Three months from issuance of the international search report and the written opinion of the ISA (or, if a search cannot be made, of the declaration under Article 17.2(a)); or (2) twenty-two months from the priority date. *See* PCT Rule 54*bis*.1(a). Any Demand made after the expiration of this time limit will be considered as if it had not been submitted. *See* PCT Rule 54*bis*.1(b). Any arguments or amendments in response to the written opinion of the ISA must be submitted within the time limit for filing the Demand to ensure consideration by the IPEA. It is noted that applicants may still desire to file the Demand prior to the expiration of nineteen months from the priority date in order to delay entry into the national stage for those few remaining Contracting States that have taken a reservation to the thirty-month time limit in Article 22(1).

As in current PCT Chapter II procedures, the IPEA will still establish an international preliminary examination report, though the report will now bear the title ''International Preliminary Report on Patentability (Chapter II of the Patent Cooperation Treaty).'' This report will be established within the applicable time limit under PCT Rule 69 (usually within twenty-eight months from the priority date).

Under the revised system, payment of the international preliminary examination fee and handling fee is not required until the later of one month from the filing of the Demand or twenty-two months from the priority date. *See* PCT Rules 57.3(a) and 58.1(b). However, where the IPEA and the ISA are the same and the IPEA wishes to start examination at the same time as the international search, the IPEA may require that the examination and handling fees be paid within one month of an invitation by the IPEA to pay such fees. *See* PCT Rule 57.3(c).

Automatic Indication of All Designations Possible under the PCT; Relaxed Signature and other Filing Requirements; Simplified Fee System: Under the amendments to the Regulations of the PCT, upon filing an international application, applicant will obtain automatic and all-inclusive coverage of all designations available under the PCT, including all kinds of protection as well as both national and regional patent protection. *See* PCT Rule 4.9. Similarly, the mere filing of a Demand will constitute the election of all designated States. *See* PCT Rule 53.7. Thus, applicants need not, at the time of filing the international application, specifically designate individual Contracting States, or choose certain kinds of protection or indicate expressly whether national or regional protection is sought. Such matters will be resolved in the national phase.

This automatic and all-inclusive designation system overcomes a current pitfall for applicants who have inadvertently omitted specific designations upon filing the international application and such designations were not, or could not be, timely confirmed under PCT Rule 4.9(c). For example, if the original international application papers did not contain at least one designation, an international filing date could not be accorded as of the initial receipt date of the application papers. *See* PCT Article 11(1)(iii)(b). Furthermore, even in those applications containing at least one designation, PCT Rule 4.9(b) required that any additional States and/or additional kinds of protection be confirmed by the submission of a written notice, accompanied by payment of the appropriate confirmation fee, within a relatively short time period (*i.e.*, fifteen months from the priority date). This time period was frequently overlooked by applicants. Under the new system of automatic designations/elections, the current procedures for precautionary designations and later elections become unnecessary and have been eliminated from the PCT Rules. This will reduce the workload on the PCT Receiving Office (RO) and IPEA by eliminating processing of precautionary designations and later elections, as well as petitions relating to omitted designations.

As a further benefit of the automatic designation system is the simplification of the PCT fee system. Under the current PCT fee structure, both a ''basic'' fee and a ''designation'' fee are required. Moreover, these fees are due at different times in different amounts depending on when they are paid. Under the new system, these fees have been eliminated in favor of a single international filing fee (comprised of two fee components, a first fee component for up to thirty sheets of paper and a second fee component for sheets of paper in excess of thirty) due at one time.

As a consequence of the automatic designation system, applicant/inventors will have to be named in the international application. To alleviate hardships with regard to obtaining signatures of all the applicants named on the Request, PCT Rule 26 has been amended to provide that, for purposes of Article 14(a)(i), the international application will be considered as signed in accordance with the PCT Regulations if the Request has been signed by at least one applicant. *See* PCT Rule 26.2*bis*(a). In addition, if there is more than one applicant, PCT Rule 26.2*bis*(b) provides that, for purposes of PCT Article 14(1)(a)(ii), it is sufficient that the identifying information (*i.e.*, address, residence and nationality) be provided for only one applicant who is entitled under PCT Rule 19.1 to file the international application with the RO. This means that for purposes of filing an international application with the United States Receiving Office (RO/US) as the competent RO, this information must be provided with respect to at least one applicant who is a citizen or resident of the United States. Notwithstanding the amendments to PCT Rule 26, a designated/elected Office may still require applicants to furnish, during the national stage, confirmation of the international application by the signature of any applicant who has not signed the Request and any missing identifying information. *See* PCT Rule 51*bis*.1(a).

PCT Rule 90.4 has been revised to permit the RO, ISA, or IPEA to waive the requirement for a power of attorney, except in instances of applicant initiated withdrawals under PCT Rule 90*bis*.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is amended as follows:

Section 1.14: Sections 1.14(g)(1)(ii) and 1.14(g)(3) are amended to exclude members of the public from obtaining a copy of the written opinion of the United States International Searching Authority (ISA/US) until the expiration of thirty months from the priority date of the international application. Under PCT Rule 44*ter*.1 (as amended), the ISA is not permitted to allow access to the written opinion of the ISA before the expiration of thirty months from the priority date unless authorized by the applicant.

Section 1.413: Section 1.413(c) is amended to reflect the additional major function of the ISA/US of preparing and transmitting written opinions.

Section 1.421: Section 1.421(b) is amended to remove reference to § 1.425 (§ 1.425 is removed). Under PCT Rule 26.2*bis*(a) (as amended), the international application will be considered to satisfy the signature requirement for purposes of PCT Article 14(1)(a)(i) if the request is signed by at least one applicant (except that all of the applicants' signatures will still be required for withdrawals, *see* discussion of § 1.421(g)). Accordingly, the current requirement in § 1.425 that the failure of an inventor to sign the request in an international application designating the United States will only be excused where the inventor could not be found or reached after diligent effort or refused to sign the request will no longer be applicable. Section 1.421(b) is also amended to include the requirement of § 1.424 that joint inventors must jointly apply for an international application. Section 1.424 is removed (*see* discussion of § 1.424).

Section 1.421(c) is amended as a consequence of the change to PCT Rule 4.9, as the United States will always be designated upon filing of an international application.

Section 1.421(d) is amended to reflect the change to PCT Rule 90.4(d) permitting the RO to waive the requirement for a separate power of attorney.

Section 1.421(f) is amended to clarify that for purposes of requests under PCT Rule 92*bis* to effect a change in an indication concerning the applicant, agent or common representative, such requests may be required to be signed by all applicants.

Section 1.421(g) is amended to remove the text of PCT Rule 92*bis* as unnecessary and to clarify that for purposes of withdrawals under PCT Rule 90*bis* of the international application, designations, priority claim, demand or elections, the request for withdrawal must be signed by all applicants. Furthermore, where the request for withdrawal is signed by an attorney, agent, or common representative, a power of attorney from the applicants appointing that attorney, agent or common representative will be required. This clarification is consistent with PCT Rule 90.4(e) (as amended), which prohibits the RO, ISA, IPEA, and IB from waiving the separate power of attorney requirement in cases of withdrawals under Rule 90*bis.* An exception to this signature requirement is made in cases where an inventor cannot be found or reached after diligent effort. *See* PCT Rule 90*bis*.5(b).

Section 1.424: This section is removed. The requirement in § 1.424 regarding the naming of joint inventors in international applications will be moved to § 1.421(b). The further requirement relating to signature requirements of joint inventors, including reference to § 1.425, will no longer be applicable (*see* discussion of § 1.421(b)).

Section 1.425: This section is removed (*see* discussion of § 1.421(b)).

Section 1.431: Section 1.431(b)(3) is amended to remove reference to § 1.424 (§ 1.424 is removed). Sections 1.431(c) and (d) are amended to reflect the new fee structure applicable to international applications under revised PCT Rule 15. Specifically, the international ''basic fee'' and ''designation fee'' have been combined into a single ''international filing fee.'' In addition, the late payment fee provision of § 1.431(c)(1) is amended as a consequence of this new fee structure, consistent with amended PCT Rule 16*bis*.2.

Section 1.432: Section 1.432 is amended to reflect the change to PCT Rule 4.9, which provides that the filing of the request shall constitute: (1) The designation of all Contracting States that are bound by the PCT on the international filing date; (2) an indication that for those States for which PCT Articles 43 or 44 apply, the filing of the request constitutes an indication for the grant of every kind of protection which is available by way of the designation of that State; and (3) an indication that the international application is, for those States to which PCT Article 45(1) applies, for the grant of a regional patent and also, unless PCT Article 45(2) applies, a national patent. As a consequence of the ''automatic'' designation system provided under revised PCT Rule 4.9, the procedure under former PCT Rule 4.9(b) and (c) regarding confirmation of precautionary designations has been eliminated from that rule, and therefore, is removed from § 1.432.

Section 1.434: Section 1.434(d) is amended to remove the requirement that international applications designating the United States must include the address and the signature of the inventor except as provided by §§ 1.421(d), 1.422, 1.423 and 1.425. Under PCT Rule 26.2*bis* (as amended), if there is more than one applicant, it is sufficient that the request is signed by only one of them, and that the address is provided with respect to one of the applicants who is entitled, in accordance with Rule 19.1, to file the international application with the RO. Section 1.434(d)(3) is also redesignated as new § 1.434(e) for clarity.

Section 1.445: Section 1.445(a)(1) is amended to increase the transmittal fee from $240.00 to $300.00. 35 U.S.C. 376(b) authorizes the Office to *(inter alia)* prescribe the transmittal fee, search fee, supplemental search fee, and preliminary examination fee for PCT international applications. This transmittal fee amount more accurately reflects the Office's actual average costs of processing international applications, and is also consistent with the filing fee for applications under 35 U.S.C. 111(a) proposed by the Office in the 21st Century Strategic Plan (information concerning the Office's 21st Century Strategic Plan is available on the Office's Internet Web site *http://www.uspto.gov).*

Section 1.445(a)(2)(i) is amended to reduce the search fee charged by the ISA/US where there is a corresponding prior U.S. application filed under 35 U.S.C. 111(a) from $450 to $300. Section 1.445(a)(2)(i) is also amended to clarify the conditions for obtaining benefit of the reduced search fee where there is such a prior corresponding application.

Pursuant to PCT Rule 42.1, the ISA/US has, in most cases, only three months to establish the International Search Report. In order for the ISA/US to be able to utilize the benefits of a search conducted in a prior corresponding application filed under 35 U.S.C. 111(a), the Office must be informed of the prior corresponding application in sufficient time and in such manner so as to permit the Office to utilize the search and examination conducted in the prior application. Accordingly, § 1.445(a)(2)(i) is amended to require applicants to timely furnish adequate identifying information of the prior U.S. application in order to qualify for the lower search fee. Specifically, applicant must identify the prior nonprovisional application by U.S. application number upon filing the

international application, if such number is known. If such number is not known, then applicant must identify the prior application by filing date, title, and name of applicant (and preferably the application docket number) so that the Office will be able to identify the prior application.

Section 1.445(a)(2)(ii) is amended to increase the search fee charged by the ISA/US in situations not covered by § 1.445(a)(2)(i) from $700 to $1,000. This search fee amount more accurately reflects the Office's actual average costs of searching international applications in situations not covered by § 1.445(a)(2)(i). This search fee amount is higher than the search fee amount for applications under 35 U.S.C. 111(a) as proposed by the Administration because of additional costs associated with both searching international applications and the preparation and transmittal of a written opinion of the ISA. Additionally, international applications must be searched (and examined) under the PCT unity of invention standard, where applications under 35 U.S.C. 111(a) are searched (and examined) under the restriction standard set forth in 35 U.S.C. 121. Moreover, the search fee set forth in § 1.445(a)(2)(i) must also cover preparation of a written opinion (the ''International Preliminary Report on Patentability (Chapter I of the Patent Cooperation Treaty)'' (''IPRP'')) under the revised system.

In addition, the fee charged by the ISA/US for searching an additional invention is increased from $210 to $1,000. This amount more accurately reflects the Office's actual average costs of searching and examining additional inventions. In this regard, it is noted that the search fee and the supplemental search fee charged by every other international searching authority are the same (except for the ISA/JP, which charges a supplemental search fee that is only slightly lower than the search fee).

Section 1.445(a)(4) is deleted, as confirmation fees will no longer be applicable.

Section 1.445(b) is amended to reflect the combining of the basic and designation fees into a single ''international filing fee''.

Section 1.455: Section 1.455(b) is amended to be consistent with PCT Rule 90.4 as it relates to the manner of appointment of agent, attorney or common representative.

Section 1.480: Section 1.480(a) is amended to reflect the new time limits in PCT Rule 57.3 and 58.2 for submitting the handling and preliminary examination fees.

Section 1.480(d) is added, consistent with PCT Rule 53.7 (as amended), to provide that the filing of a Demand shall constitute the election of all Contracting States that are designated and bound by Chapter II of the Treaty on the international filing date. Accordingly, it will no longer be necessary to specify in the Demand those States that are elected.

Section 1.480(e) is added to provide that any Demand filed after the expiration of the applicable time limit in PCT Rule 54*bis*.1(a) shall be considered as if it had not been submitted. *See* PCT Rule 54*bis*.1(b) (as amended).

Section 1.481: Section 1.481(a) is amended to provide that the handling fee and preliminary examination fee that are due are those fees in effect on the date of payment of the handling and preliminary examination fees. *See* PCT Rules 57.3(d) and 58.1(b).

Section 1.482: Section 1.482(a)(1) is amended to increase the preliminary examination fee charged by the IPEA/US from $490 to $600 if the international search fee was paid to the United States Patent and Trademark Office as an ISA (the preliminary examination fee charged by the IPEA/US if the international search fee was not paid to the United States Patent and Trademark Office as an ISA will remain at $750). This increase is necessary to cover the additional cost associated with conducting the preliminary examination by the IPEA/US.

For the same reason, as well as reasons set forth with regard to the increase in the supplemental search fee under § 1.445(a)(3), § 1.482(a)(2) is amended to increase the additional preliminary examination fee for examining additional inventions to $600 (regardless of whether the international search fee was paid to the United States Patent and Trademark Office as an ISA).

Section 1.482(b) is amended to refer to revised PCT Rule 57 as it relates to handling fee requirements.

Section 1.484: Section 1.484(b) is amended to refer to revised PCT Rule 69.1 as to when the IPEA/US may start international preliminary examination. PCT Rule 69.1 was revised to prohibit the IPEA from starting preliminary examination until it is in possession of, *inter alia,* the written opinion of the ISA. PCT Rule 69.1 provides for two exceptions to this requirement. Both exceptions apply when the IPEA and the ISA for the international application are the same authority. The first exception permits the IPEA to start examination at the same time as the international search, subject to certain limitations. *See* PCT Rule 69.1(b). The second exception occurs when the ISA considers the conditions under PCT Article 34(2)(c)(i) to (iii) to be fulfilled. In such cases, a written opinion by the ISA need not be established. *See* PCT Rule 69.1(b)*bis*.

Sections 1.484(e) through (g) are redesignated as §§ 1.484(g) through (i), respectively. Section 1.484(e) now provides, consistent with PCT Rule 66.1*bis*, that the written opinion of the ISA shall be considered to be the written opinion of the IPEA/US.

Section 1.484(f) now provides that the IPEA may establish further written opinions, subject to the conditions specified in § 1.484(d). Establishment of additional written opinions by the IPEA is provided for in PCT Rule 66.4(a).

Section 1.484(g) is amended as a consequence of the amendment to § 1.484(f).

Section 1.484(h) is amended to provide clarification regarding conducting personal and telephonic interviews with the examiner under the revised system.

Response to comments: The Office published a notice proposing changes to the rules of practice to conform them to certain amendments made to the Regulations under the Patent Cooperation Treaty (PCT) that will take effect on January 1, 2004. *See January 2004 Revision of Patent Cooperation Treaty Application Procedure,* 68 FR 32441 (May 30, 2003), 1271 *Off. Gaz. Pat. Office* 147 (June 24, 2003) (proposed rule). The Office received two written comments (one from an intellectual property organization and another by a patent practitioner) in response to this notice. The comments and the Office's responses to the comments follow:

Comment 1: One comment suggested that § 1.14 should provide that the written opinion of the International Searching Authority is available to third parties upon publication of the international application instead of at thirty months as provided in § 1.14.

Response: The suggestion has not been adopted. PCT Rule 44*ter*.1, which is set to enter into force on January 1, 2004, provides that the International Searching Authority, unless requested or authorized by the applicant, shall not allow access to the written opinion of the International Searching Authority by any person before the expiration of thirty months from the priority date. Therefore, the suggested change to § 1.14 would be inconsistent with the requirements of the PCT.

Comment 2: One comment suggested that the rules be amended to provide that if applicant timely files a Demand with Article 34 amendments to the

claims, the examiner be required to render a new written opinion. The comment indicates that without such a provision, the IPEA/US, in adopting the written opinion as established by the ISA, will be delivering to applicants written opinions which are totally inconsistent with the claims as amended.

Response: The suggestion has been adopted in part. Under the enhanced search and examination system, the IPEA/US will not deliver to applicants a written opinion which does not take into account the claims as amended. In general, under the procedures established under the enhanced search and examination system, a written opinion will be established by the ISA, and upon filing of a Demand by applicant, that written opinion will be considered to be the first written opinion of the IPEA. In turn, any amendments under PCT Article 34 which are timely filed, either with or subsequent to the Demand, will be considered to be a response to that written opinion. In response to the Demand and any amendments, the IPEA/US will then issue one of the following: (1) A further written opinion under § 1.484(f) if such is warranted; or (2) an international preliminary examination report under § 1.484(g). In both instances, the response by the IPEA will fully take into consideration any amendments which have been timely filed by the applicant.

Comment 3: One comment also opposed the proposed changes in the PCT fees set forth in §§ 1.445 and 1.482. First, the comment indicated that the transmittal, search, and preliminary examination fees proposed in §§ 1.445 and 1.482 would be sixty percent higher than the filing fee, search fee, and examination fee proposed in the 21st Century Strategic Plan. Second, the comment indicated that an applicant must also pay the preliminary examination fee to obtain the ''same benefits'' under PCT Chapters I and II. The comment further indicated that a truer picture of the proposed fee change is revealed by comparing the existing and revised transmittal, search, and international preliminary examination fees on an item-by-item basis.

Response: The Office indicated that the $300 transmittal fee amount in proposed § 1.445(a)(1) would be consistent with the filing fee for applications under 35 U.S.C. 111(a) proposed by the Office in the 21st Century Strategic Plan ($300). The Office did not state that the sum of the transmittal, search, and international preliminary examination fees would be consistent with the sum of the filing fee, search fee, and examination fees for applications under 35 U.S.C. 111(a) proposed by the Office in the 21st Century Strategic Plan. The Office proposed search and examination fee amounts for international applications that are in certain situations higher than the corresponding fees for applications under 35 U.S.C. 111(a) because: (1) There are additional costs associated with searching international applications and international preliminary examination under the enhanced international search and preliminary examination system (*see January 2004 Revision of Patent Cooperation Treaty Application Procedure*, 68 FR 32441, 32444 (May 30, 2003), 1271 *Off. Gaz. Pat. Office* 147, 149 (June 24, 2003) (proposed rule)); and (2) the examination fee for applications under 35 U.S.C. 111(a) proposed by the Office in the 21st Century Strategic Plan does not recover the Office's cost of examining applications and is subsidized by fees that are not applicable during the PCT international stage (*see* H.R. Rep. 108–241, at 15 (2003)).

The comment correctly notes that a PCT applicant must also pay the preliminary examination fee to amend the claims in an international application and obtain a written opinion reflecting the amended claims. Nevertheless, it is the Office's experience that PCT applicants who file a Demand for international preliminary examination rarely include an amendment under PCT Article 34 with the Demand. Therefore, the enhanced international search and preliminary examination system will reduce costs for most PCT applicants by providing them with the benefits they seek from PCT Chapter II, namely, an extension (from twenty to thirty months) of the time limit for entering the national stage and a written opinion indicating whether the claims are in compliance with PCT Article 33(2)–(4), without requiring them to file a timely Demand for international preliminary examination and pay the international preliminary examination fee.

When making an item-by-item comparison of the existing transmittal, search, and international preliminary examination fees with the revised transmittal, search, and international preliminary examination fees, one would readily appreciate the following: The enhanced international search and preliminary examination system reduces costs for most PCT applicants by providing them with the benefits they seek from PCT Chapter II without requiring them to pay the international preliminary examination fee. The Office's costs for searching international applications are higher under the enhanced international search and preliminary examination system because international applications must be searched (and examined) under the PCT unity of invention standard and the search fee must also cover the preparation of a written opinion. The Office's costs for international preliminary examination will be higher in certain situations under the enhanced international search and preliminary examination system because the Office will be required to provide an international preliminary examination on the basis of one or more amendments under PCT Article 34 since applicants filing a Demand under the revised system will likely be doing so to obtain a positive ''International Preliminary Report on Patentability (Chapter II of the Patent Cooperation Treaty)'' and thus will file one or more amendments under PCT Article 34 in the international application (under the former system, the majority of Demands were filed for the sole purpose of extending the national stage entry period and thus were filed without any substantial amendments to the claims). Finally, the fees set forth in former §§ 1.445 and 1.482 for search and examination of additional inventions were far too low to recover the Office's actual average cost for search and examination of additional inventions.

Rule Making Considerations: Regulatory Flexibility Act: The USPTO published a proposed rule and certified that an initial Regulatory Act Analysis was not required. Only one comment was received which objected, in general, to the fee increases and made no reference to any impact of the fee increases on small entities. The Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes in this final rule will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)).

The changes in this final rule primarily implement corresponding changes required to conform United States rules for international applications to the amendments to the PCT Regulations, which become effective on January 1, 2004. The amendments to the PCT Regulations will simplify the PCT application process and fee structure. The changes to the PCT international stage fees are to adjust these fees to be in alignment with the actual average costs of conducting a PCT search and international

preliminary examination under the new process.

Executive Order 13132: This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866: This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act: This final rule involves information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this final rule have been reviewed and previously approved by OMB under the following control numbers: 0651–0021 and 0651–0031. The United States Patent and Trademark Office is not resubmitting any information collection package to OMB for its review and approval because the changes in this notice do not affect the information collection requirements associated with the information collection under these OMB control numbers.

The title, description and respondent description of the information collection is shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OMB Number: 0651–0021.

Title: Patent Cooperation Treaty.

Form Numbers: PCT/RO/101, PCT/RO/134, PCT/RO/144, PTO–1382, PCT/IPEA/401, PCT/IB/328, PCT/SB/61/PCT, PCT/SB/64/PCT.

Type of Review: Approved through December of 2003.

Affected Public: Individuals or households, business or other for-profit institutions, not-for-profit institutions, farms, Federal Government and State, Local and Tribal Governments.

Estimated Number of Respondents: 331,407.

Estimated Time Per Response: Between 15 minutes and 4 hours.

Estimated Total Annual Burden Hours: 401,202.

Needs and Uses: The information collected is required by the Patent Cooperation Treaty (PCT). The general purpose of the PCT is to simplify the filing of patent applications on the same invention in different countries. It provides for a centralized filing procedure and a standardized application format.

OMB Number: 0651–0031.

Title: Patent Processing (Updating).

Form Numbers: PTO/SB/08A, PTO/SB/08B, PTO/SB/21–27, PTO/SB/30–32, PTO/SB/35–37, PTO/SB/42–43, PTO/SB/61–64, PTO/SB/67–68, PTO/SB/91–92, PTO/SB/96–97, PTO–2053-A/B, PTO–2054-A/B, PTO–2055-A/B, PTOL–413A, eIDS, EFS form.

Type of Review: Approved through July of 2006.

Affected Public: Individuals or households, business or other for-profit institutions, not-for-profit institutions, farms, Federal Government and State, Local and Tribal Governments.

Estimated Number of Respondents: 2,208,339.

Estimated Time Per Response: 1 minute 48 seconds to 8 hours.

Estimated Total Annual Burden Hours: 830,629 hours.

Needs and Uses: During the processing of an application for a patent, the applicant/agent may be required or desire to submit additional information to the Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information Disclosure Statements; Terminal Disclaimers; Petitions to Revive; Express Abandonments; Appeal Notices; Petitions for Access; Powers to Inspect; Certificates of Mailing or Transmission; Statements under § 3.73(b); Amendments, Petitions and their Transmittal Letters; and Deposit Account Order Forms.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (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 to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia, 22313–1450, or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503, Attention: Desk Officer for the United States Patent and Trademark Office.

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 unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

■ For the reasons set forth in the preamble, 37 CFR Part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

■ 2. Section 1.14 is amended by revising paragraphs (g)(1)(ii) and (g)(3) to read as follows:

§ 1.14 Patent applications preserved in confidence.

* * * * *

(g) * * *

(1) * * *

(ii) With respect to the Search Copy (the copy of an international application kept by the Office in its capacity as the International Searching Authority, see PCT Article 12(1)), the U.S. acted as the International Searching Authority, except for the written opinion of the International Search Authority which shall not be available until the expiration of thirty months from the priority date; or

* * * * *

(3) Access to international application files for international applications which designate the U.S. and which have been published in accordance with PCT Article 21(2), or copies of a document in such application files, will be permitted in accordance with PCT Articles 30 and 38 and PCT Rules 44*ter*.1, 94.2 and 94.3, upon written request including a showing that the publication of the application has occurred and that the U.S. was designated.

* * * * *

■ 3. Section 1.413 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1.413 The United States International Searching Authority.

(a) Pursuant to appointment by the Assembly, the United States Patent and Trademark Office will act as an International Searching Authority for international applications filed in the United States Receiving Office and in other Receiving Offices as may be agreed upon by the Director, in

accordance with the agreement between the Patent and Trademark Office and the International Bureau (PCT Art. 16(3)(b)).

* * * * *

(c) The major functions of the International Searching Authority include:

(1) Approving or establishing the title and abstract;

(2) Considering the matter of unity of invention;

(3) Conducting international and international-type searches and preparing international and international-type search reports (PCT Art. 15, 17 and 18, and PCT Rules 25, 33 to 45 and 47), and issuing declarations that no international search report will be established (PCT Article 17(2)(a));

(4) Preparing written opinions of the International Searching Authority in accordance with PCT Rule 43*bis* (when necessary); and

(5) Transmitting the international search report and the written opinion of the International Searching Authority to the applicant and the International Bureau.

■ 4. Section 1.421 is amended by revising paragraphs (b) through (g) as follows:

§ 1.421 Applicant for international application.

* * * * *

(b) Although the United States Receiving Office will accept international applications filed by any resident or national of the United States of America for international processing, for the purposes of the designation of the United States, an international application must be filed, and will be accepted by the Patent and Trademark Office for the national stage only if filed, by the inventor or as provided in §§ 1.422 or 1.423. Joint inventors must jointly apply for an international application.

(c) For the purposes of designations other than the United States, international applications may be filed by the assignee or owner.

(d) A registered attorney or agent of the applicant may sign the international application Request and file the international application for the applicant. A separate power of attorney from each applicant may be required.

(e) Any indication of different applicants for the purpose of different Designated Offices must be shown on the Request portion of the international application.

(f) Requests for changes in the indications concerning the applicant, agent, or common representative of an international application shall be made in accordance with PCT Rule 92*bis* and may be required to be signed by all applicants.

(g) Requests for withdrawals of the international application, designations, priority claims, the Demand, or elections shall be made in accordance with PCT Rule 90*bis* and must be signed by all applicants. A separate power of attorney from the applicants will be required for the purposes of any request for a withdrawal in accordance with PCT Rule 90bis which is not signed by all applicants. The submission of a separate power of attorney may be excused upon the request of another applicant where one or more inventors cannot be found or reached after diligent effort. Such a request must be accompanied by a statement explaining to the satisfaction of the Director the lack of the signature concerned.

§ 1.424 [Removed]

■ 5. Section 1.424 is removed.

§ 1.425 [Removed]

■ 6. Section 1.425 is removed.

■ 7. Section 1.431 is amended by revising paragraphs (b)(3), (c) and (d) to read as follows:

§ 1.431 International application requirements.

* * * * *

(b) * * *

(3) The international application contains at least the following elements (PCT Art. 11(1)(iii)):

(i) An indication that it is intended as an international application (PCT Rule 4.2);

(ii) The designation of at least one Contracting State of the International Patent Cooperation Union (§ 1.432);

(iii) The name of the applicant, as prescribed (note §§ 1.421–1.423);

(iv) A part which on the face of it appears to be a description; and

(v) A part which on the face of it appears to be a claim.

(c) Payment of the international filing fee (PCT Rule 15.2) and the transmittal and search fees (§ 1.445) may be made in full at the time the international application papers required by paragraph (b) of this section are deposited or within one month thereafter. The international filing, transmittal, and search fee payable is the international filing, transmittal, and search fee in effect on the receipt date of the international application.

(1) If the international filing, transmittal and search fees are not paid within one month from the date of receipt of the international application and prior to the sending of a notice of deficiency which imposes a late payment fee, applicant will be notified and given one month within which to pay the deficient fees plus the late payment fee. Subject to paragraph (c)(2) of this section, the late payment fee will be equal to the greater of:

(i) Fifty percent of the amount of the deficient fees; or

(ii) An amount equal to the transmittal fee;

(2) The late payment fee shall not exceed an amount equal to the 25% of the international filing fee not taking into account any fee for each sheet of the international application in excess of thirty sheets (PCT Rule 16*bis*).

(3) The one-month time limit set pursuant to paragraph (c) of this section to pay deficient fees may not be extended.

(d) If the payment needed to cover the transmittal fee, the international filing fee, the search fee, and the late payment fee pursuant to paragraph (c) of this section is not timely made in accordance with PCT Rule 16*bis*.1(e), the Receiving Office will declare the international application withdrawn under PCT Article 14(3)(a).

■ 8. Section 1.432 is revised to read as follows:

§ 1.432 Designation of States by filing an international application.

The filing of an international application request shall constitute:

(a) The designation of all Contracting States that are bound by the Treaty on the international filing date;

(b) An indication that the international application is, in respect of each designated State to which PCT Article 43 or 44 applies, for the grant of every kind of protection which is available by way of the designation of that State; and

(c) An indication that the international application is, in respect of each designated State to which PCT Article 45(1) applies, for the grant of a regional patent and also, unless PCT Article 45(2) applies, a national patent.

■ 9. Section 1.434 is amended by revising paragraph (d) and adding paragraph (e) to read as follows:

§ 1.434 The request.

* * * * *

(d) For the purposes of the designation of the United States of America, an international application shall include:

(1) The name of the inventor; and

(2) A reference to any prior-filed national application or international application designating the United States of America, if the benefit of the filing date for the prior-filed application is to be claimed.

(e) An international application may also include in the Request a declaration of the inventors as provided for in PCT Rule 4.17(iv).

■ 10. Section 1.445 is revised to read follows:

§ 1.445 International application filing, processing and search fees.

(a) The following fees and charges for international applications are established by the Director under the authority of 35 U.S.C. 376:

(1) A transmittal fee (see 35 U.S.C. 361(d) and PCT Rule 14)—$300.00

(2) A search fee (see 35 U.S.C. 361(d) and PCT Rule 16):

(i) If a corresponding prior United States National application filed under 35 U.S.C. 111(a) with the filing fee under § 1.16(a) has been filed and the corresponding prior United States National application is identified by application number, if known, or if the application number is not known by the filing date, title, and name of applicant (and preferably the application docket number), in the international application or accompanying papers at the time of filing the international application—$300.00

(ii) For all situations not provided for in paragraph (a)(2)(i) of this section—$1,000.00

(3) A supplemental search fee when required, per additional invention—$1,000.00

(4) A fee equivalent to the transmittal fee in paragraph (a)(1) of this section for transmittal of an international application to the International Bureau for processing in its capacity as a Receiving Office (PCT Rule 19.4).

(b) The international filing fee shall be as prescribed in PCT Rule 15.

■ 11. Section 1.455 is amended by revising paragraph (b) to read as follows:

§ 1.455 Representation in international applications.

* * * * *

(b) Appointment of an agent, attorney or common representative (PCT Rule 4.8) must be effected either in the Request form, signed by applicant, in the Demand form, signed by applicant, or in a separate power of attorney submitted either to the United States Receiving Office or to the International Bureau.

* * * * *

■ 12. Section 1.480 is amended by revising paragraph (a) and adding paragraphs (d) and (e) to read as follows:

§ 1.480 Demand for international preliminary examination.

(a) On the filing of a proper Demand in an application for which the United States International Preliminary Examining Authority is competent and for which the fees have been paid, the international application shall be the subject of an international preliminary examination. The preliminary examination fee (§ 1.482(a)(1)) and the handling fee (§ 1.482(b)) shall be due within the applicable time limit set forth in PCT Rule 57.3.

* * * * *

(d) The filing of a Demand shall constitute the election of all Contracting States which are designated and are bound by Chapter II of the Treaty on the international filing date (PCT Rule 53.7).

(e) Any Demand filed after the expiration of the applicable time limit set forth in PCT Rule 54*bis*.1(a) shall be considered as if it had not been submitted (PCT Rule 54*bis*.1(b)).

■ 13. Section 1.481 is amended by revising paragraph (a) to read as follows:

§ 1.481 Payment of international preliminary examination fees.

(a) The handling and preliminary examination fees shall be paid within the time period set in PCT Rule 57.3. The handling fee or preliminary examination fee payable is the handling fee or preliminary examination fee in effect on the date of payment.

(1) If the handling and preliminary examination fees are not paid within the time period set in PCT Rule 57.3, applicant will be notified and given one month within which to pay the deficient fees plus a late payment fee equal to the greater of:

(i) Fifty percent of the amount of the deficient fees, but not exceeding an amount equal to double the handling fee; or

(ii) An amount equal to the handling fee (PCT Rule 58*bis*.2).

(2) The one-month time limit set in this paragraph to pay deficient fees may not be extended.

* * * * *

■ 14. Section 1.482 is revised to read as follows:

§ 1.482 International preliminary examination fees.

(a) The following fees and charges for international preliminary examination are established by the Director under the authority of 35 U.S.C. 376:

(1) The following preliminary examination fee is due on filing the Demand:

(i) If an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority—$600.00

(ii) If the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office—$750.00

(2) An additional preliminary examination fee when required, per additional invention—$600.00

(b) The handling fee is due on filing the Demand and shall be as prescribed in PCT Rule 57.

■ 15. Section 1.484 is amended by revising paragraphs (b), (e) through (g) and adding paragraphs (h) and (i) to read as follows:

§ 1.484 Conduct of international preliminary examination.

* * * * *

(b) International preliminary examination will begin in accordance with PCT Rule 69.1.

* * * * *

(e) The written opinion established by the International Searching Authority under PCT Rule 43*bis*.1 shall be considered to be a written opinion of the United States International Preliminary Examining Authority for the purposes of paragraph (d) of this section.

(f) The International Preliminary Examining Authority may establish further written opinions under paragraph (d) of this section.

(g) If no written opinion under paragraph (d) of this section is necessary, or if no further written opinion under paragraph (f) of this section is to be established, or after any written opinion and the reply thereto or the expiration of the time limit for reply to such written opinion, an international preliminary examination report will be established by the International Preliminary Examining Authority. One copy will be submitted to the International Bureau and one copy will be submitted to the applicant.

(h) An applicant will be permitted a personal or telephone interview with the examiner, which may be requested after the filing of a Demand, and must be conducted during the period between the establishment of the written opinion and the establishment of the international preliminary examination report. Additional interviews may be conducted where the examiner determines that such additional interviews may be helpful to advancing the international preliminary examination procedure. A summary of any such personal or telephone interview must be filed by the applicant or, if not filed by applicant be made of record in the file by the examiner.

(i) If the application whose priority is claimed in the international application

is in a language other than English, the United States International Preliminary Examining Authority may, where the validity of the priority claim is relevant for the formulation of the opinion referred to in Article 33(1), invite the applicant to furnish an English translation of the priority document within two months from the date of the invitation. If the translation is not furnished within that time limit, the international preliminary report may be established as if the priority had not been claimed.

Dated: October 10, 2003.

Jon W. Dudas,

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

[FR Doc. 03–26338 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 101403B]

Fisheries of the Economic Exclusive Zone Off Alaska; Trawl Gear in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for groundfish by vessels using trawl gear in the Gulf of Alaska (GOA), except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the 2003 Pacific halibut prohibited species catch (PSC) limit specified for trawl gear in the GOA has been caught.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 15, 2003, until 1200 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 2003 Pacific halibut PSC limit for vessels using trawl was established as 2,000 metric tons (mt) by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003).

The Administrator, Alaska Region, has determined, in accordance with § 679.21(d)(7)(i), that vessels engaged in directed fishing for groundfish with trawl gear in the GOA have caught the 2003 Pacific halibut PSC limit. Therefore, NMFS is closing the directed fishery for groundfish by vessels using trawl gear in the GOA, except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA that remain open to directed fishing for pollock.

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 2003 Pacific halibut PSC limit 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: October 14, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–26392 Filed 10–15–03; 3:31 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021213310–3251–03; I.D. 100203C]

RIN 0648–AP92

Individual Fishing Quota (IFQ) Program for Pacific Halibut and Sablefish; Technical Amendment

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

ACTION: Final rule; technical amendment.

SUMMARY: This document reinstates recordkeeping and reporting regulations implementing the IFQ Cost Recovery Program which were inadvertently removed from regulations in a final rule published in the **Federal Register** on July 29, 2003. That final rule implemented Amendment 72 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (Amendment 72) and Amendment 64 to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (Amendment 64) (collectively, Amendments 72/64) and revised recordkeeping and reporting requirements for the IFQ and CDQ halibut programs. This action is necessary to correct the error and restore the regulations implementing the IFQ Cost Recovery Program.

DATES: Effective October 15, 2003.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7228 or *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION: The IFQ Cost Recovery Program is managed by the NMFS, Alaska Region, Restricted Access Management (RAM). Regulations implementing the IFQ Cost Recovery Program were published in the **Federal Register** on March 20, 2000 (65 FR 14919) and amended by publication in the **Federal Register** on January 28, 2002 (67 FR 4100). Under the regulations, an IFQ permit holder incurs a cost recovery fee liability for each pound of IFQ halibut or sablefish landed on his/her permit(s). The regulations included recordkeeping and reporting requirements at §679.5(l)(7) necessary to implement the IFQ Cost Recovery Program. See 65 FR 14923 (March 20, 2000), amended at 67 FR 4130 (January 28, 2002). A final rule published in the **Federal Register** on

July 29, 2003, implemented additional amendments to §679.5(l) as NMFS intended, but erroneously removed §679.5(l)(7) in its entirety (68 FR 9907). NMFS intended to amend § §679.5(l)(1) through (l)(6), but amendatory instruction number 4 incorrectly removed §679.5(l)(7). This final rule restores §679.5(l)(7) to the recordkeeping and reporting regulations implementing the IFQ Cost Recovery Program.

This final rule must be effective by October 15 to collect information necessary to carry out the IFQ Cost Recovery Program. Under § 679.5(l)(7), an IFQ Registered Buyer that also operates as a shoreside processor and receives and purchases IFQ landings of sablefish or halibut must submit annually to NMFS a complete IFQ Buyer Report for each reporting period in which the Registered Buyer receives IFQ fish. A complete IFQ Buyer Report must be postmarked or received by the Regional Administrator by October 15 following the reporting period in which the IFQ Registered Buyer receives the IFQ fish. Submission of these reports is essential to implementation of the IFQ Cost Recovery Program.

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this final rule is necessary for the conservation and management of the groundfish fisheries of the BSAI and GOA. The Regional Administrator also has determined that this action is consistent with the Magnuson-Stevens Act and other applicable laws.

This rule has been determined to be not significant for purposes of Executive Order 12866.

By this action, NMFS restores the IFQ Cost Recovery Program recordkeeping and reporting requirements that had been in effect from March 15, 2000, to August 28, 2003, when they were erroneously rescinded. The rescission has had no substantive effect on the conduct of persons subject to these recordkeeping and reporting requirements because, the information gathered for the report is collected as part of normal business practices. Additionally, the October 15 deadline for submission of the IFQ Buyer Report had not yet arrived so participants in this fishery have not missed any relevant deadlines.

Accordingly, the Assistant Administrator for Fisheries finds good cause to waive prior notice and opportunity for public comment pursuant to 5 U.S.C. 553(b)(B) because prior notice and opportunity for public comment is unnecessary: neither the erroneous rescission nor this final rule has a substantive effect on the conduct of regulated persons. Because the affected industry gathers this information as part of their normal business practices, additional time is not required to allow them to come into compliance since they are already undertaking the obligation. The Assistant Administrator for Fisheries also finds that there exists good cause to waive the requirement of a 30 day delay in the effective date of this rule pursuant to 5 U.S.C. 553(d)(3), in order to allow participants in the fishery to meet the next deadline for submission of reports.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0648–0398 (see 65 FR 14922, col. 1; March 20, 2000).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information requirement displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: October 14, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*, Title II of Division C, Pub. L. 105 277; Sec. 3027, Pub. L. 106 31; 113 Stat. 57; 16 U.S.C. 1540(f); and Sec. 209, Pub. L. 106 554.

■ 2. In § 679.5, paragraph (l)(7) is added to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(l) * * *

(7) *IFQ cost recovery program.*—(i) *IFQ buyer report.*

(A) *Applicability.* An IFQ registered buyer that also operates as a shoreside processor and receives and purchases IFQ landings of sablefish or halibut must submit annually to NMFS a complete IFQ Buyer Report as described in this paragraph (l) and as provided by NMFS for each reporting period, as described at § 679.5(1)(7)(i)(E), in which the registered buyer receives IFQ fish.

(B) *Due date.* A complete IFQ Buyer Report must be postmarked or received by the Regional Administrator not later than October 15 following the reporting period in which the IFQ registered buyer receives the IFQ fish.

(C) *Information required.* A complete IFQ Buyer Report must include the following information:

(*1*) *IFQ registered buyer identification*, including:

(*i*) Name,

(*ii*) Registered buyer number,

(*iii*) Social Security number or tax identification number,

(*iv*) NMFS person identification number (if applicable),

(*v*) Business address,

(*vi*) Telephone number,

(*vii*) Facsimile telephone number,

(*viii*) Primary registered buyer activity,

(*ix*) Other registered buyer activity, and

(*x*) Landing port location;

(*2*) *Pounds purchased and values paid.* (*i*) The monthly total weights, represented in IFQ equivalent pounds by IFQ species, that were landed at the landing port location and purchased by the IFQ registered buyer;

(*ii*) The monthly total gross ex-vessel value, in U.S. dollars, of IFQ pounds, by IFQ species, that were landed at the landing port location and purchased by the IFQ registered buyer;

(*3*) *Value paid for price adjustments.* (*i*) The monthly total U.S. dollar amount of any IFQ retro-payments (correlated by IFQ species, landing month(s), and month of payment) made in the current year to IFQ permit holders for landings made during the previous calendar year;

(*ii*) Certification, including the signature or electronic PIN of the individual authorized by the IFQ registered buyer to submit the IFQ Buyer Report, and date of signature or date of electronic submittal.

(D) *Submission address.* The registered buyer must complete an IFQ Buyer Report and submit by mail or FAX to:

Administrator, Alaska Region, NMFS, Attn: RAM Program,P.O. Box 21668, Juneau, AK 99802–1668, FAX: (907) 586–7354

or electronically to NMFS via forms available from RAM or on the RAM area

of the Alaska Region Home Page at *http://www.fakr.noaa.gov/ram* .

(E) *Reporting period.* The reporting period of the IFQ Buyer Report shall extend from October 1 through September 30 of the following year, inclusive.

(*ii*) *IFQ permit holder Fee Submission Form*—(A) *Applicability.* An IFQ permit holder who holds an IFQ permit against which a landing was made must submit to NMFS a complete IFQ permit holder Fee Submission Form provided by NMFS.

(B) *Due date and submittal.* A complete IFQ permit holder Fee Submission Form must be postmarked or received by the Regional Administrator not later than January 31 following the calendar year in which any IFQ landing was made.

(C) *Contents of an IFQ Fee Submission Form.* For each of the sections described here, a permit holder must provide the specified information.

(*1*) *Identification of the IFQ permit holder.* An IFQ permit holder with an IFQ landing must accurately record on the identification section of the IFQ Fee Submission Form the following information:

(*i*) The printed name of the IFQ permit holder;

(*ii*) The NMFS person identification number;

(*iii*) The Social Security number or tax ID number of the IFQ permit holder;

(*iv*) The business mailing address of the IFQ permit holder; and

(*v*) The telephone and facsimile number (if available) of the IFQ permit holder.

(*2*) *IFQ landing summary and estimated fee liability.* NMFS will provide to an IFQ permit holder an IFQ Landing Summary and Estimated Fee Liability page as required by § 679.45(a)(2). The IFQ permit holder must either accept the accuracy of the NMFS estimated fee liability associated with his or her IFQ landings for each IFQ permit, or calculate a revised IFQ fee liability in accordance with paragraph (l)(7)(ii)(C)(2)(i) of this section. The IFQ permit holder may calculate a revised fee liability for all or part of his or her IFQ landings.

(*i*) *Revised fee liability calculation.* To calculate a revised fee liability, an IFQ permit holder must multiply the IFQ percentage in effect by either the IFQ actual ex-vessel value or the IFQ standard ex-vessel of the IFQ landing. If parts of the landing have different values, the permit holder must apply the appropriate values to the different parts of the landings.

(*ii*) *Documentation.* If NMFS requests in writing that a permit holder submit documentation establishing the factual basis for a revised IFQ fee liability, the permit holder must submit adequate documentation by the 30th day after the date of such request. Examples of such documentation regarding initial sales transactions of IFQ landings include valid fish tickets, sales receipts, or check stubs that clearly identify the IFQ landing amount, species, date, time, and ex-vessel value or price.

(*3*) *Fee calculation section.*—(*i*) *Information required.* An IFQ permit holder with an IFQ landing must record the following information on the Fee Calculation page: The name of the IFQ permit holder; the NMFS person identification number; the fee liability amount due for each IFQ permit he or she may hold; the IFQ permit number corresponding to such fee liability amount(s) due; the total price adjustment payment value for all IFQ halibut and/or sablefish (e.g., IFQ retro-payments) received during the reporting period for the IFQ Fee Submission Form as described in § 679.5(l)(7)(ii)(D); and the fee liability amount due for such price adjustments.

(*ii*) *Calculation of total annual fee amount.* An IFQ permit holder with an IFQ landing must perform the following calculations and record the results on the Fee Calculation page: add all fee liability amount(s) due for each IFQ permit and record the sum as the sub-total fee liability for all permits; multiply price adjustment payment(s) received for each IFQ species by the fee percentage in effect at the time the payment(s) was received by the IFQ permit holder; add the resulting fee liability amounts due for all price adjustment payments for each IFQ species, then enter the sum as the sub-total fee for price adjustments; add the sub-total fee liability for all permits and the sub-total fee for price adjustments, then enter the resulting sum as the total annual fee amount on the Fee Calculation page and on the Fee Payment page.

(*4*) *Fee payment and certification section.*—(*i*) *Information required.* An IFQ permit holder with an IFQ landing must provide his or her NMFS person identification number, signature, and date of signature on the Fee Payment section of the form or provide the electronic equivalent and record the following: his or her printed name; the total annual fee amount as calculated and recorded on the Fee Calculation page; the total of any pre-payments submitted to NMFS that apply to the total annual fee amount; the remaining balance fee; and the enclosed payment amount.

(*ii*) *Calculation of balance fee payment.* An IFQ permit holder with an IFQ landing must perform the following calculation on the Fee Payment section of the Fee Submission Form: Subtract from the total annual fee amount the total of all pre-payments made (if any) to NMFS and any credits held by NMFS that are applicable to that year's total IFQ cost recovery fees, and record the result as the balance of the fee amount due.

(D) *Reporting Period.* The reporting period of the IFQ Fee Submission Form shall extend from January 1 to December 31 of the year prior to the January 31 due date described in § 679.5(l)(7)(ii)(B).

* * * * *

[FR Doc. 03–26391 Filed 10–15–03; 3:31 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 202
Monday, October 20, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–11–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes, that currently requires a one-time inspection to detect chafing of electrical wires in the cable trough below the cabin floor; repair, if necessary; installation of additional tie-mounts and tie-wraps; and application of sealant to rivet heads. This action would add an additional modification of the electrical wires in certain sections. The actions specified by the proposed AD are intended to prevent chafing of electrical wires, which could result in an uncommanded shutdown of an engine during flight. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 19, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–11–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–nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–11–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 the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Douglas G. Wagner, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7506; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed 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 above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

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 proposed 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 proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–11–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–11–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 28, 1999, the FAA issued AD 99–21–09, amendment 39–11352 (64 FR 54199, October 6, 1999), which superseded AD 98–20–14, amendment 39–10781 (63 FR 50501, September 22, 1998), applicable to certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes. That AD requires a one-time inspection to detect chafing of electrical wires in the cable trough below the cabin floor; repair, if necessary; installation of additional tie-mounts and tie-wraps; and application of sealant to rivet heads. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to prevent chafing of electrical wires, which could result in an uncommanded shutdown of an engine during flight.

Actions Since Issuance of Previous Rule

Since the issuance of AD 99–21–09, Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, has informed us that an uncommanded engine shutdown during flight occurred on a Bombardier Model DHC–8 airplane. The shutdown was due to a short circuit between adjacent wires located in the cable trough below the cabin floor, which sent a 28-volt signal to the fuel shutoff valve. Investigation revealed that the short

circuit was caused by chafing of the wires on the sharp edges of the cherrymax rivets in the cable trough. Such chafing of electrical wires could result in an uncommanded shutdown of an engine during flight.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletin 8–53–80, Revision ''A'', dated July 25, 2000, which describes procedures for an additional modification of the electrical wires in the cable trough below the cabin floor. The modification is to be done in sections X510.00 to X580.50 of the cable trough; those sections were inadvertently omitted from the modification specified in Bombardier Service Bulletin 8–53–66, dated March 27, 1998 (the service bulletin referenced in the existing AD). TCCA classified Service Bulletin 8–53–80, Revision ''A'', as mandatory and issued Canadian airworthiness directive CF–1998–08R2, dated July 10, 2000, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept us informed of the situation described above. We have examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 99–21–09 to continue to require a one-time inspection to detect chafing of electrical wires in the cable trough below the cabin floor; repair, if necessary; installation of additional tie-mounts and tie-wraps; and application of sealant to rivet heads. The proposed AD would add an additional modification of the electrical wires in certain sections. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Difference Between This Proposed AD and Service Bulletin

Although the service bulletin specifies to submit certain information to the manufacturer, the proposed AD does not include such a requirement.

Cost Impact

There are approximately 173 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 99–21–09 take between 80 and 100 work hours per airplane (depending on the airplane model) to accomplish, at an average labor rate of $65 per work hour. Required parts are provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the currently required actions is estimated to be between $5,200 and $6,500 per airplane.

The additional modification that is proposed in this AD action would take approximately 10 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be $112,450, or $650 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed 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 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 proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed 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) 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 is contained 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, pursuant to 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. Section 39.13 is amended by removing amendment 39–11352 (64 FR 54199, October 6, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 2002–NM–11–AD. Supersedes AD 99–21–09, Amendment 39–11352.

Applicability: Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes; serial numbers 3 through 540 inclusive, excluding serial number 462; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of electrical wires, which could result in an uncommanded shutdown of an engine during flight, accomplish the following:

Restatement of Requirements of AD 99–21–09

One-Time Inspection, Corrective Action, and Modification

(a) Perform a one-time general visual inspection to detect chafing of electrical wires in the cable trough below the cabin floor; install additional tie-mounts and tie-wraps; and apply sealant to rivet heads (reference Bombardier Modification 8/2705); in accordance with Bombardier Service Bulletin 8–53–66, dated March 27, 1998, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. If any chafing is detected during the inspection required by this paragraph, prior to further flight, repair in accordance with the service bulletin.

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

(1) For airplanes having serial numbers 3 through 519 inclusive, excluding serial number 462: Inspect within 36 months after October 27, 1998 (the effective date of AD 98–20–14, amendment 39–10781).

(2) For airplanes having serial numbers 520 through 540 inclusive: Inspect within 36 months after November 10, 1999 (the effective date of AD 99–21–09, amendment 39–11352, which superseded AD 98–20–14), or at the next ''C'' check, whichever occurs first.

New Requirements of This AD

Modification

(b) For all airplanes: Within 36 months after the effective date of this AD; modify the electrical wires in the cable trough below the cabin floor at Sections X510.00 to X580.50 (including a general visual inspection and any applicable repair) per Part III, paragraphs 1 through 9 and 12 through 20, of the Accomplishment Instructions of Bombardier Service Bulletin 8–53–80, Revision ''A'', dated July 25, 2000. Any applicable repair must be done before further flight.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in Canadian airworthiness directive CF–1998–08R2, dated July 10, 2000.

Issued in Renton, Washington, on October 14, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–26368 Filed 10–17–03; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–7576–2]

Water Quality Standards for Puerto Rico

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to establish designated uses and associated water quality criteria for six waterbodies and an area of coastal waters known as the *coastal ring* in the Commonwealth of Puerto Rico. These waterbodies are: Mayaguez Bay (from Punta Guanajibo to Punta Algarrobo); Yabucoa Port; Guayanilla and Tallaboa Bays (from Cayo Parguera to Punta Verraco); Ponce Port (from Punta Carenero to Punta Cuchara) and San Juan Port (from the mouth of Río Bayamón to Punta El Morro), as well as the area of coastal waters known as the coastal ring, defined as all coastal waters from 500 meters seaward to a maximum of three miles seaward. If this proposal is promulgated, the Federally designated use of primary contact recreation and the associated water quality criteria will be added to the Commonwealth's designated use for the above-referenced embayments and the coastal ring (referred to collectively below as the ''Subject Waterbodies'').

DATES: EPA will accept public comments on this proposed rule until November 19, 2003. A public hearing will be held on November 6, 2003, from 2 p.m. to 5 p.m. and from 7 p.m. to 9 p.m. Both oral and written comments will be accepted at the hearing.

ADDRESSES: Comments may be submitted by mail to Docket Manager, Proposed Water Quality Standards for Puerto Rico, U.S. EPA Region 2, 290 Broadway, New York, New York 10007, Attention Docket ID No. OW–2003–0072. Comments may also be submitted electronically or through hand delivery/courier. Follow the detailed instructions as provided in Section I.C. of the **SUPPLEMENTARY INFORMATION** section. The public hearing will occur at the Universidad Metropolitana (UMET) Theatre, Ave. Ana G. Mendez, Km 0.3, Cupey, Puerto Rico 00928.

FOR FURTHER INFORMATION CONTACT: Wayne Jackson, U.S. EPA Region 2, Division of Environmental Planning and Protection, 290 Broadway, New York, New York 10007 (telephone: 212–637–3807 or e-mail: *jackson.wayne@epa.gov*) or Claudia Fabiano, U.S. EPA Headquarters, Office of Science and Technology, 1200 Pennsylvania, Avenue NW., Mail Code 4305T, Washington, DC 20460 (telephone: 202–566–0446 or e-mail: *fabiano.claudia@epa.gov*).

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I. General Information

A. Who Is Potentially Affected by This Rule?

Citizens concerned with water quality in Puerto Rico may be interested in this rulemaking. Facilities discharging pollutants to certain waters of the United States in Puerto Rico could be indirectly affected by this rulemaking since water quality standards are used in determining water quality-based National Pollutant Discharge Elimination System (NPDES) permit limits. Categories and entities that may indirectly be affected include:

Category	Examples of potentially regulated entities
Industry	Industries discharging pollutants to the waters identified in § 131.40.
Municipalities	Publicly-owned treatment works discharging pollutants to the waters identified in § 131.40.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility may be affected by this action, you should carefully examine the water bodies identified in § 131.40 of today's proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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 No. OW–2003–0072. 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 under *Proposed Water Quality Standards for Puerto Rico* at Division of Environmental Planning and Protection, U.S. EPA Region 2, 290 Broadway, New York, New York 10007, and Carribean Environmental Protection Division, U.S. EPA Region 2, 1492 Ponce De Leon Avenue, Suite 417, Santurce, Puerto Rico 00907. These Docket Facilities are open from 9 a.m. to 3:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone numbers are 212–637–3807 and 787–977–5836, respectively. A reasonable fee will be charged for copies.

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. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA electronic public docket. 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 section I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. 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 EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket identified in section I.B.1.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

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

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

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID OW–2003–0072. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *OW–Docket@epa.gov,* Attention Docket ID No. OW–2003–0072. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By Mail.* Send your comments to: Docket Manager, Proposed Water Quality Standards for Puerto Rico, U.S. EPA Region 2, 290 Broadway, New York, New York 10007, Attention Docket ID No. OW–2003–0072.

3. *By Hand Delivery or Courier.* Deliver your comments to the address identified in section I.C.2., attention Docket ID OW–2003–0072. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.B.1.

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. Statutory and Regulatory Background

Section 303 (33 U.S.C. 1313) of the Clean Water Act (CWA or ''the Act'') directs States, Territories, and authorized Tribes (hereafter referred to as ''States''), with oversight by EPA, to adopt water quality standards to protect the public health and welfare, enhance the quality of water and serve the purposes of the CWA. Under section 303, States are required to develop water quality standards for navigable waters of the United States within the State. Section 303(c) provides that water quality standards shall include the designated use or uses to be made of the water and water quality criteria necessary to protect those uses. The designated uses to be considered by States in establishing water quality standards are specified in the Act: public water supplies, propagation of fish and wildlife, recreation, agricultural uses, industrial uses and navigation. States are required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standards. The results of this triennial review must be submitted to EPA, and EPA must approve or disapprove any new or revised standards.

Section 303(c) of the CWA authorizes the EPA Administrator to promulgate water quality standards to supersede State standards that have been disapproved or in any case where the Administrator determines that a new or revised standard is needed to meet the CWA's requirements. In an August 11, 2003, Opinion and Order from the United States District Court for the District of Puerto Rico in the case of *CORALations and the American Littoral Society* v. *United States Environmental Protection Agency, et al.* (No. 02–1266 (JP) (D. Puerto Rico)), the Court ordered EPA to prepare and publish new or revised water quality standards for those waters which are currently classified as ''Class SC'' (secondary contact recreation) waters by the Commonwealth of Puerto Rico. EPA is, therefore, proposing Federal water quality standards for these waters in Puerto Rico.

EPA regulations implementing CWA section 303(c) are published at 40 CFR part 131. Under these rules, the minimum elements that must be included in a State's water quality standards include: use designations for all water bodies in the State, water quality criteria sufficient to protect those use designations, and an antidegradation policy (*see* 40 CFR 131.6).

Water quality standards establish the ''goals'' for a water body through the establishment of designated uses. Designated uses, in turn, determine what water quality criteria apply to specific water bodies. Section 101(a)(2) of the Act establishes as a national goal ''water quality which provides for the protection and propagation of fish, shellfish, and wildlife and * * * recreation in and on the water,'' wherever attainable. These national goals are commonly referred to as the ''fishable/swimmable'' goals of the Act. Section 303(c)(2)(A) requires water quality standards to ''protect the public health or welfare, enhance the quality of water, and serve the purposes of this [Act].'' EPA's regulations at 40 CFR part 131 interpret and implement these provisions by requiring that water quality standards provide for fishable/swimmable uses unless those uses have been shown to be unattainable. The mechanism in EPA's regulations used to overcome this presumption is a use attainability analysis (UAA).

Under 40 CFR 131.10(j), States are required to conduct a UAA whenever the State designates or has designated uses that do not include the uses specified in section 101(a)(2) of the CWA or when the State wishes to remove a designated use that is specified in section 101(a)(2) of the CWA or adopt subcategories of uses that require less stringent criteria. Uses are considered by EPA to be attainable, at a minimum, if the uses can be achieved (1) when effluent limitations under section 301(b)(1)(A) and (B) and section 306 are imposed on point source dischargers and (2) when cost effective and reasonable best management practices are imposed on nonpoint source dischargers. 40 CFR 131.10 lists grounds upon which to base a finding that attaining the designated use is not feasible, as long as the designated use is not an existing use: (i) Naturally occurring pollutant concentrations prevent the attainment of the use; (ii) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; (iii) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; (iv) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to

restore the water body to its original condition or to operate such modification in a way which would result in the attainment of the use; (v) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like unrelated to water quality, preclude attainment of aquatic life protection uses; or (vi) Controls more stringent than those required by sections 301(b) and 306 of the CWA would result in substantial and widespread economic and social impact.

A UAA is defined in 40 CFR 131.3(g) as a ''structured scientific assessment of the factors affecting the attainment of a use which may include physical, chemical, biological, and economic factors'' (*see* §§ 131.3 and 131.10). In a UAA, the physical, chemical and biological factors affecting the attainment of a use are evaluated through a water body survey and assessment.

Guidance on water body survey and assessment techniques is contained in the *Technical Support Manual, Volumes I–III: Water Body Surveys and Assessments for Conducting Use Attainability Analyses.* Volume I provides information on water bodies in general; Volume II contains information on estuarine systems; and Volume III contains information on lake systems (Volumes I–II, November 1983; Volume III, November 1984). Additional guidance is provided in the *Water Quality Standards Handbook: Second Edition* (EPA–823–B–94–005, August 1994). Guidance on economic factors affecting the attainment of a use is contained in the *Interim Economic Guidance for Water Quality Standards: Workbook* (EPA–823–B–95–002, March 1995). In developing today's proposal, EPA followed the same procedures set out for States in 40 CFR part 131 and EPA's implementing policies, procedures, and guidance.

EPA regulations effectively establish a ''rebuttable presumption'' that fishable/swimmable uses are attainable and, therefore, should apply to a water body unless it is demonstrated that such uses are not attainable. EPA adopted this approach to help achieve the national goal articulated by Congress that, ''wherever attainable,'' water quality provide for the ''protection and propagation of fish, shellfish and wildlife'' and for ''recreation in and on the water.'' CWA section 101(a). While facilitating achievement of Congress' goals, the rebuttable presumption approach preserves States' paramount role in establishing water quality standards in weighing any available evidence regarding the attainable uses of a particular water body. The rebuttable presumption approach does not restrict the discretion that States have to determine that fishable/swimmable uses are not, in fact, attainable in a particular case. Rather, if the water quality goals articulated by Congress are not to be met in a particular water body, the regulations simply require that such a determination be based upon a credible ''structured scientific assessment'' of use attainability.

EPA's approach in this rulemaking does not undermine the Commonwealth's primary role in designating uses and setting criteria for waters in Puerto Rico. If the Commonwealth reclassifies the Subject Waterbodies to a swimmable designated use or adopts criteria sufficient to protect a swimmable use prior to EPA's finalizing this rule, EPA would expect to approve the Commonwealth's action and not finalize this rule. Alternatively, if the Commonwealth completes a sound analysis of use attainability, taking into account appropriate biological, chemical and physical factors, and concludes that the swimmable use is not attainable for these water bodies, EPA would expect to approve the Commonwealth's action, if it meets all requirements of EPA's regulations at 40 CFR part 131, and not finalize this rule. If the Commonwealth submits an adequate analysis which concludes that the swimmable use is not attainable after EPA takes final action, EPA would expect to initiate a rulemaking to rescind the rule. EPA encourages the Commonwealth to continue evaluating the appropriate use designation for these water bodies.

B. Current Puerto Rico Water Quality Standards

Puerto Rico's water quality standards regulation (PRWQSR) at Article 2 establishes a classification system containing the designated uses for water bodies in the Commonwealth. Puerto Rico has applied these use designations to all coastal, estuarine, and surface waters of the Commonwealth.

The current use designation adopted by the Commonwealth for the Subject Waterbodies is Class SC. Coastal waters designated as Class SC are ''intended for uses where the human body may come into indirect contact with the water (such as fishing, boating, etc.) and for use in propagation and preservation of desirable species, including threatened or endangered species.'' (PRWQSR, at Article 3.2.3.)

EPA's regulations at 40 CFR part 131 require that waters designated for a use less protective than a fishable/swimmable use be supported by a use attainability analysis, because neither the best usage or conditions related to the best usage for these waters include the fishable/swimmable uses, nor do all the criteria necessary to protect those uses apply. ''Fishing'' and ''propagation and preservation of desirable species'' are included as a condition of the best usage. As such, Class SC includes the ''fishable'' use established as a goal in the Clean Water Act. However, primary contact recreation and the criteria necessary to protect this use are not included for Class SC. Puerto Rico uses fecal coliform and enterococci bacteria criteria to protect for the primary contact recreation use. Class SC includes bacteria criteria sufficient to protect secondary contact recreation. However, these criteria do not provide protection from pathogens associated with fecal contamination during direct contact with the water and, therefore, do not protect for the swimming use.

Section 3.2.3 of the PRWQSR contains the use classifications and associated use-specific criteria for Class SC waters for dissolved oxygen, fecal coliforms, pH, color, turbidity, taste and odor producing substances, sulfates, and surfactants as MBAS (methylene blue active substances). With the exception of the criteria for fecal coliforms, which are not fully protective of the primary contact recreation use, these criteria for Class SC waters have been found to be protective of CWA section 101(a) uses and have been previously approved by EPA. These criteria are intended to protect aquatic life and/or general aesthetic conditions in these waters.

Water Quality Criteria for bacteria is the only parameter that is specifically intended to protect the primary contact recreation use. Water quality criteria for bacteria are intended to protect bathers from gastrointestinal illness in recreational waters. The water quality criteria establish levels of indicator bacteria that demonstrate the presence of fecal contamination. These levels should not be exceeded in order to protect bathers in fresh and marine recreational waters. The inclusion of primary contact recreation as a use for Class SC waters and the application of the indicator bacteria criteria described above would result in the Class SC waters being fully ''swimmable.'' The remainder of the criteria that Puerto Rico applies to its coastal waters are sufficient to protect other CWA section 101(a) uses, such as aquatic life protection and human health protection from the consumption of fish based on the level of toxic pollutants in the water and in the fish tissue.

Section 3.1 of the PRWQSR contains narrative water quality criteria and numeric criteria for substances in toxic concentrations including inorganic substances, pesticides, non-pesticide organic substances, carbon tetrachloride, volatile organic substances, and semi-volatile organic substances. The criteria in section 3.1 are applicable to all waters of Puerto Rico, including those waters classified as Class SC. These criteria are protective of all applicable uses, and have been approved by EPA.

The Puerto Rico Environmental Quality Board (EQB) applies the Class SC designation for the bay components of the Subject Waterbodies from the zone subject to the ebb and flow of tides (mean sea level) to 10.3 nautical miles seaward, and from 500m from the shoreline to 10.3 nautical miles seaward for the coastal ring. However, as discussed below, it is clear that State jurisdiction under the CWA is limited to ''navigable waters'' of the United States, including territorial seas which extend only three miles seaward. Accordingly, in this proposal, the new use designation for coastal waters is limited to the territorial seas.

Section 303(c)(2)(A) of the CWA provides that States are to adopt water quality standards for ''navigable waters.'' Under section 303(c)(3) (which provides for EPA review of State water quality standards), if EPA approves the State's water quality standards, they become the standards for the applicable waters of the State. Where the Administrator proposes and promulgates water quality standards, section 303(c)(4) provides that the State water quality standards shall apply to ''navigable waters.''

Section 502(7) of the CWA defines ''navigable waters'' as waters of the United States, including the ''territorial seas.'' Section 502(8) defines ''territorial seas'' to mean ''the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.'' The ''contiguous zone'and ''ocean'' are defined separately (*see* sections 502(9) and (10)).

The CWA also includes two other definitions (for ''effluent limitations'' and ''discharge of a pollutant'') that distinguish navigable waters from the contiguous zone and the ocean. These definitions also indicate that navigable waters are not meant to include the contiguous zone and the ocean. EPA has a long standing interpretation of the statute that does not include the contiguous zone and ocean in the definition of navigable waters which is reflected in its regulations (40 CFR 122.2). The CWA authorizes each State that elects to administer its own NPDES permit program for discharges into navigable waters within its jurisdiction, to submit its program for EPA review (*see* section 402(b)). If EPA approves the State program, EPA suspends its issuance of permits under section 402(a), but only as to those navigable waters subject to the State program (*see* section 402(c)(1)). While the CWA definition of navigable waters includes the territorial sea, it does not include the contiguous zone or the ocean, both of which are defined as regions beyond the territorial sea. Read together, these provisions plainly indicate that Congress intended the State NPDES program jurisdiction to be limited to navigable waters including the territorial sea. States cannot assume NPDES permitting authority beyond the three-mile limit of the territorial sea.

Two decisions in the Ninth Circuit Court have addressed these jurisdictional issues. In *Pacific Legal Foundation et al.* v *Costle, 586 F. 2d 657 (9th Cir. 1978) rev'd on other grounds, 445 U.S. 198.,* the Court held that only the Administrator has authority to issue NPDES permits for waters beyond the territorial seas, and that the contiguous zone and the ocean clearly extend beyond the outer limits of the ''navigable waters'' which mark the extent of the power of the States to administer their own permit programs. The Court noted that ''had Congress intended the power of the States to extend beyond the territorial seas,'' it easily could have so provided.'' *Id.* at 656. Further, citing the definition of ''discharge of a pollutant,'' which distinguishes discharges to navigable waters from discharges to the contiguous zone or the ocean, the Court concluded that ''it is apparent that 'ocean' and 'contiguous zone' waters are not included within the scope of 'navigable waters' * * *'' *Id.*

In *Natural Resources Defense Council* v. *EPA, 863 F.2d 1420, (9th Cir. 1988),* the Court held that ''navigable waters'' include only those waters landward from the territorial sea. *Id.* at 1435. In this case, Florida argued that it had jurisdiction to apply water quality standards more than three miles from the coast. The State contended that its maritime boundaries extended three maritime leagues (approximately 10.3 miles). Florida maintained that EPA must assure that discharges under EPA's general permit would comply with the State's water quality standards out to 10.3 miles. The Court disagreed, finding that the State's jurisdiction is limited to the territorial seas. The Court noted that it is ''difficult to ignore the express language of the Clean Water Act's definition of territorial seas.'' And, further, that ''if there were any doubt that Congress intended to create a uniform three-mile boundary in the (CWA), the legislative history * * * indicates Congress consciously defined the term 'territorial seas' to make clear the jurisdiction limits of this particular legislation and its relationship to other statutes.'' *Id.* at 1436. For these reasons, EPA is proposing the new use designation for coastal waters limited to the territorial seas.

EPA is proposing to include primary contact recreation as a specified designated use for the Subject Waterbodies. In developing today's proposal, EPA evaluated the PRWQSR to determine which bacteria criteria would protect for the ''swimmable'' use, and would therefore ensure achievement of the CWA section 101(a)(2) goals. As a result, EPA is proposing the bacteriological criteria associated with Class SB (primary contact recreation) for fecal coliform and enterococci set out at Section 3.2.2 of the PRWQSR for the Subject Waterbodies because these criteria are protective of primary contact recreation. The proposed water quality standards for these water bodies, if ultimately promulgated, will be the basis for establishing NPDES permit limits by EPA Region 2.

C. Factual Background

1. Summary of Commonwealth and EPA Administrative Actions

In August 1990, the Commonwealth of Puerto Rico adopted revisions to the PRWQSR. These were sent to EPA on September 21, 1990, with the caveat from the Chairman of the EQB that the transmittal may not be the final submittal, since EQB was going to have public hearings on November 1, 1990. Because of this caveat, and because the requisite certification from the Commonwealth's Secretary of Justice was not submitted with the revisions as required by 40 CFR 131.6(e), EPA did not act on these revisions immediately.

From 1991 to 1993, EPA Region 2 worked with EQB on a series of draft revisions to the PRWQSR. These drafts were never adopted by Puerto Rico. In 1992, EPA included Puerto Rico in the National Toxics Rule, in large part because EPA did not consider the 1990 revisions to be officially adopted.

The requisite certification from the Commonwealth's Secretary of Justice was ultimately submitted to EPA on

February 25, 2002. Upon receipt of this certification EPA took final action on all new and revised provisions of the 1990 PRWQSR on March 28, 2002. These revisions included 11 separate new or revised provisions.The 1990 revisions to the PRWQSR, however, did not include any changes to the designation of specific waterbody segments, including upgrades from Class SC to SB.

On March 28, 2003, EQB submitted additional revisions to the PRWQSR that EPA approved on June 26, 2003. These revisions included the reclassification of ten bays/estuaries, previously classified as Class SC waters, to Class SB (Article 2.1.3). These included: Aguadilla Bay (from Punta Boquerón to Punta Borinquen); Arecibo Bay (from Punta Maracayo to Punta Caracoles); Fajardo Bay (from Playa Sardinera to Playa de Fajardo); Roosevelt Roads (from Punta Cabra de Tierra to Punta Cascajo); Port of Naguabo (from Playa de Naguabo to El Morrillo); Jobos Bay and Laguna de la Mareas (from Punta Rodeo to Punta Colchones); Guánica Bay inland waters north of the mouth of the river; Port of Dewey in Culebra; and Port of Isabel Segunda in Vieques and Puerto Real in Vieques between Cayo de Tierra and Cayo Real.

While the March 28, 2003, revisions to the PRWQSR did address ten bays/estuaries that were previously classified as Class SC waters by reclassifying them to Class SB, Puerto Rico recognized that it still needed to address the Subject Waterbodies. In an effort to do so, EQB, in its State Fiscal Year 2003 CWA Section 604(b) Consolidated Workplan, committed to develop a plan to outline a schedule for data collection and analysis and identify the applicable regulatory actions for these waters. EQB is currently completing this plan.

2. Summary of Legal Actions

On February 20, 2002, a complaint was filed in the U.S. District Court for the District of Puerto Rico by three environmental groups: CORALations, American Littoral Society, and the American Canoe Association. In this action, the plaintiffs alleged, among other things, that certain actions by EPA personnel had triggered a mandatory duty under section 303(c) of the CWA for EPA to prepare and propose regulations setting forth a revised water quality standard for any coastal waters that remained classified SC. The Court, in its August 11, 2003, Opinion and Order, ordered EPA to prepare and publish new or revised water quality standards for those coastal waters which are currently classified as Class SC waters.

III. Use Designations and Criteria for Waters Currently Designated as Class SC

A. Proposed Use Designations and Criteria for the Subject Waterbodies

EPA evaluated all available data and information to determine whether the swimmable use is attainable in the Subject Waterbodies. EPA's analysis was informed by the regulatory provisions at 40 CFR part 131 and technical guidance that EPA provided to States for developing use attainability analyses. The information that EPA used in its evaluation of the coastal ring component of the Subject Waterbodies shows that the swimmable use is attainable in these waters. That information included all available Quarterly Reports of the 301(h) Waiver Demonstration Studies for five Regional Wastewater Treatment Plants that discharge to the waters comprising the coastal ring. The ambient water quality data collected as part of these quarterly reports showed that the applicable bacteria criteria to protect primary contact recreation (fecal coliform and enterococci) were being attained in the waters of the coastal ring outside of the designated mixing zones. The quarterly reports also demonstrated that the bacteria criteria to protect primary contact recreation are being met at the edge of the mixing zone (based on the measured end-of-pipe concentrations of bacteria at each Regional Wastewater Treatment Plant and the critical initial dilution that is achieved at each ocean outfall).

As discussed in the *Puerto Rico Water Quality Inventory and List of Impaired Waters—2002 305(b)/303(d) Integrated Report Final Version* (February 2003), there is currently little or no data available on which to determine the attainability of the swimmable use in the bay components of the Subject Waterbodies. According to this report, there is insufficient data to determine the use attainment for 38% of the coastal miles and 89% of the estuarine acres. The Subject Waterbodies with insufficient data to make a use attainment determination include Yabucoa Port, portions of Guayanilla and Tallaboa Bays, and San Juan Port. The EQB determined that the following Subject Waterbodies were attaining water quality standards: Mayaguez Bay, Ponce Port, and portions of Guayanilla and Tallaboa Bays. However, EPA's regulations at 40 CFR part 131 require that water quality standards provide for fishable/swimmable uses unless those uses have been shown to be unattainable, which effectively creates a rebuttable presumption of attainability. If the Commonwealth takes into account the appropriate biological, chemical, and physical factors in completing a sound analysis of use attainability and concludes that the swimmable use is not attainable in these waterbodies, EPA would expect to approve the Commonwealth's action (if it meets all requirements of EPA's regulations at 40 CFR part 131). In an effort to properly characterize the attainability of the bays which remain classified SC, EQB is developing a plan to outline a schedule for data collection and analysis in order to provide the information necessary for EQB to demonstrate whether the swimmable use is attainable in these waters.

The last broad category of information considered by EPA in its decision-making process was monitoring data from a sample of potentially affected dischargers to the water bodies (as reflected in Discharge Monitoring Reports or DMRs). As discussed in section V, EPA analyzed the extent to which the proposed Federal use designations and criteria may lead to the development of more stringent NPDES permit limits and, if so, what types of controls would be needed by potentially affected facilities to meet such limits. Discharger information was used in one of two ways by the Agency. First, EPA used monitoring data to assess point sources to the affected water bodies and to help determine whether their pollutant discharges could contribute to ambient exceedances of criteria. Second, the Agency used the monitoring data to determine whether potentially affected dischargers would need to make significant alterations to their operations (or if they could, in fact, meet permit limits for bacteria that would be associated with the swimmable use). Information indicating that potentially affected dischargers could generally meet such revised limits based on the proposed bacteria criteria would support the presumption that the swimmable use is attainable.

Based upon this approach, EPA evaluated all available data and information to determine whether the swimmable use is attainable for the Subject Waterbodies. As a result, EPA is proposing to include primary contact recreation as a specified designated use for the Subject Waterbodies. In addition, EPA is proposing to include bacteria criteria which are protective of primary contact recreation for the Subject Waterbodies. The proposed bacteria criteria are the same as the Commonwealth's criteria associated with the Class SB use for fecal coliform and enterococci, set out at Section 3.2.2 of the PRWQSR. If Puerto Rico classifies

these waterbodies with use designations consistent with the CWA and 40 CFR part 131 before a final rulemaking, EPA would expect to approve those use designations. This would eliminate the need to promulgate Federal water quality standards for any waterbody so reclassified. EPA notes that a water's use designation of primary contact recreation (made solely for CWA purposes) and adoption of water quality criteria protective of that use are intended to ensure that water quality will protect swimming if it occurs in such waters. A water's use designation of primary contact recreation is not an official government sanction that swimming necessarily is recommended in such waters. There may be other considerations, such as safety, in deciding whether swimming is appropriate.

EPA is soliciting comment for information about use attainability, especially for any Subject Waterbodies with no or limited data.

B. Request for Comment and Data

EPA believes the proposed primary contact recreation designated use and the bacteria criteria to protect primary contact recreation for the Subject Waterbodies are appropriate considering the requirements of the CWA and the information available to EPA at this time. EPA acknowledges that additional information may exist that may further support or contradict the attainability of a proposed primary contact recreation designated use and bacteria criteria in Subject Waterbodies. The Agency will evaluate any new information that is submitted to EPA during the public comment period with regard to the primary contact recreation use and bacteria criteria for the Subject Waterbodies. Based on the evaluation of new information, EPA will decide whether the primary contact recreation use and bacteria criteria for the Subject Waterbodies in today's proposal are appropriate and consistent with the CWA. To help the Agency ensure that this decision is based on the best available information, the Agency is soliciting additional information. The following paragraphs provide guidance on the type of information EPA considers relevant.

Specifically, EPA seeks information on the Subject Waterbodies that would help determine: (1) Whether primary contact recreation is or has been an existing use; (2) whether the designated use and criteria identified above are being attained or have been attained in the past; (3) whether natural conditions or features or human caused conditions prevent the attainment of this use and criteria and whether these conditions can be remedied or would cause more environmental damage to correct than to leave in place; or (4) whether controls more stringent than those required by section 301(b) and 306 of the CWA would be needed to attain the use, and whether implementation of such controls would result in substantial and widespread social and economic impact. Below is a general discussion of the types of data/information requested by the Agency:

Ambient Monitoring Information: (1) Any ambient water quality data for the Subject Waterbodies reflecting either natural conditions or human-caused conditions which cannot be remedied and which prevent the swimmable use or water quality criteria from being attained; (2) any available ambient biological data; (3) any chemical and biological monitoring data that verify improvements to water quality resulting from treatment plant/facility upgrades and/or expansions; and (4) any ambient water quality data reflecting nonpoint sources of pollution or best management practices that have been implemented for nonpoint source control.

Economic Data: Any information relating to costs and benefits associated with or incurred as a result of facility or treatment plant expansions or upgrades, including: (1) Qualitative descriptions or quantitative estimates of any costs and benefits associated with facility or treatment plant expansions or upgrades, or associated with facilities or treatment plants meeting permit limits; (2) any information on costs to households in the community with facility or treatment plant expansions or upgrades, whether through an increase in user fees, an increase in taxes, or a combination of both; (3) descriptions of the geographical area affected; (4) any changes in median household income, employment, and overall net debt as a percent of full market value of taxable property; and (5) any effects of changes in tax revenues if the private-sector entity were to go out of business, including changes in income to the community if workers lose their jobs, and effects on other businesses both directly and indirectly influenced by the continued operation of the private sector entity.

IV. Alternative Regulatory Approaches and Implementation Mechanisms

Today's proposal reflects EPA's determination that primary contact recreation is an appropriate use designation for the Subject Waterbodies based upon the information currently available to EPA. In developing a final rule, EPA will consider any data or information submitted to the Agency during the comment period. However, it is possible that relevant information for these waterbodies may become available after completion of this rulemaking. If EPA ultimately promulgates a Federal ''swimmable'' use designation for these waterbodies, there are several ways to ensure that the use and its implementing mechanisms appropriately take into account such future information.

A. Designating Uses

States have considerable discretion in designating uses. A State may find that changes in use designations are warranted. EPA will review any new or revised use designations adopted by the Commonwealth for these waters to determine if the standards meet the requirements of the CWA and implementing regulations. If approved, EPA would withdraw any final Federal water quality standards which may result from today's proposal.

In adopting recreation uses, the Commonwealth may wish to consider additional categories of recreation uses. For example, Puerto Rico could establish more than one category of primary contact recreation to differentiate between waters where recreation is known to occur and waters where recreation is not known to occur but may be attained based on water quality, flow, and depth characteristics.

EPA cautions the Commonwealth that it must conduct use attainability analyses as described in 40 CFR 131.10(g) when adopting water quality standards that result in uses not specified in section 101(a)(2) of the CWA or that result in subcategories of uses specified in section 101(a)(2) that require less stringent criteria (*see* 40 CFR 131.10(j)).

B. Site-Specific Criteria

The Commonwealth may also develop data indicating a site-specific water quality criterion for a particular pollutant is appropriate and take action to adopt such a criterion into their water quality standards. Site-specific criteria are allowed by regulation and are subject to EPA review and approval. 40 CFR 131.11(a) requires States to adopt criteria to protect designated uses based on sound scientific rationale and containing sufficient parameters or constituents to protect the designated use. In adopting water quality criteria, States should establish numerical values based on 304(a) criteria, 304(a) criteria modified to reflect site-specific conditions or other scientifically defensible methods. Alternatively, States may establish narrative criteria

where numerical criteria cannot be determined or to supplement numeric criteria (*see* 40 CFR 131.11(b)). EPA does not have specific guidance for States and authorized Tribes on developing site-specific criteria for the protection of recreation uses, but this does not preclude the Commonwealth from developing its own scientifically defensible methods. Today's proposed rule does not limit Puerto Rico's ability to modify the criteria applicable to the Federal swimmable use.

C. Variances

Water quality standards variances are another alternative that can give a facility a limited period of time to comply with water quality standards. Puerto Rico has an EPA-approved variance procedure in the PRWQSR (Article 9). As discussed above, the proposed rule contains a Federal variance procedure.

EPA believes variances are particularly suitable when the cause of non-attainment is discharger-specific and/or it appears that the designated use in question will eventually be attainable. EPA has approved the granting of water quality standards variances by States when circumstances might otherwise justify changing a use designation on grounds of unattainability (*i.e.*, the six circumstances described in 40 CFR 131.10(g)). In contrast to a change in standards that removes a use designation for a water body, a water quality standards variance is time-limited and only applies to the discharger to whom it is granted and only to the pollutant parameter(s) upon which the finding of unattainability was based. The underlying standard remains in effect for all other purposes.

For example, if the Commonwealth or a permittee demonstrates that the primary contact recreation use can not be attained pursuant to 40 CFR 131.10(g) because of high levels of fecal coliforms from a wastewater treatment facility, but where an upgraded treatment technology might allow the designated use to be attained, a temporary variance may be appropriate. The variance would allow the discharger's permit to include limits based on relaxed criteria for fecal coliform until the new technology is put in place and it is determined if the underlying designated use is attainable. The practical effect of such a variance is to allow a permit to be written using less stringent criteria, while encouraging ultimate attainment of the underlying standard. A water quality standards variance provides a mechanism for ensuring compliance with sections 301(b)(1)(C) and 402(a)(1) of the CWA while also granting temporary relief to point source dischargers.

While 40 CFR 131.13 allows States to adopt variance procedures for State-adopted water quality standards, such State procedures may not be used to grant variances from Federally promulgated standards. EPA believes that it is appropriate to provide comparable Federal procedures to address new information that may become available. Therefore, under EPA's proposal, the Region 2 Regional Administrator may grant water quality standard variances where a permittee submits data indicating that the primary contact recreation designated use is not attainable for any of the reasons in 40 CFR 131.10(g). This variance procedure will apply to the primary contact recreation use for the Subject Waterbodies.

Today's proposed rule spells out the process for applying for and granting such variances. EPA is proposing to use informal adjudication processes in reviewing and granting variance requests. That process is contained in 40 CFR 131.40(c)(4) of today's proposed rule. Because water quality standards variances are revisions to water quality standards, the proposal provides that the Regional Administrator will provide public notice of the proposed variance and an opportunity for public comment. EPA understands that variance related issues may arise in the context of permit issuance.

The proposed variance procedures require an applicant for a water quality standards variance to submit a request and supporting information to the Regional Administrator (or his/her delegatee). The applicant must demonstrate that the designated use is unattainable for one of the reasons specified in 40 CFR 131.10(g). A variance may not be granted if the use could be attained, at a minimum, by implementing effluent limitations required under sections 301(b) and 306 of the CWA and reasonable best management practices for nonpoint source control.

Under the proposal, a variance may not exceed five years or the term of the NPDES permit, whichever is less. A variance may be renewed if the permittee demonstrates that the use in question is still not attainable. Renewal of the variance may be denied if EPA finds that the conditions of 40 CFR 131.10(g) are not met or if the permittee did not comply with the conditions of the original variance.

EPA is soliciting comment on the need for a variance process for EPA-promulgated use designations, the appropriateness of the particular procedures proposed today, and whether the proposed variance procedures are sufficiently detailed.

V. Economic Analysis

This proposed rule will have no direct impact on any entity because the rule simply establishes water quality standards (*e.g.*, use designations) which by themselves do not directly impose any costs. These standards, however, may serve as a basis for development of NPDES permit limits. In Puerto Rico, EPA Region 2 is the NPDES permitting authority and retains considerable discretion in implementing standards. Thus, until EPA Region 2 implements these water quality standards, there will be no effect on any entity. Nonetheless, EPA prepared a preliminary analysis to evaluate potential costs to NPDES dischargers in Puerto Rico associated with future implementation of EPA's Federal standards.

Any NPDES-permitted facility that discharges to water bodies affected by this proposed rule could potentially incur costs to comply with the rule's provisions. The types of affected facilities may include industrial facilities and publicly owned treatment works (POTWs). EPA did not consider the potential costs for nonpoint sources, such as agricultural and forestry-related nonpoint sources, although EPA recognizes that the Commonwealth may decide to impose controls on these sources to achieve water quality standards. As a technical matter, nonpoint source discharges are difficult to model and evaluate for potential costs because they are intermittent, highly variable, and occur under different hydrologic or climatic conditions than continuous discharges from industrial and municipal facilities, which are evaluated under critical low flow or drought conditions. Thus, the evaluation of nonpoint sources and their effects on the environment is highly site-specific and data-sensitive. In addition, EPA did not address the potential monetary benefits of this proposed rule for Puerto Rico.

A. Identifying Affected Facilities

According to EPA's Permit Compliance System (PCS), there are 593 NPDES-permitted facilities in Puerto Rico. Eighty-four of the facilities are classified as major dischargers, and 509 are minor or general permit dischargers. However, EPA did not include general permit facilities in its analysis because data for such facilities are extremely limited and flows are usually negligible. Furthermore, EPA could not determine if any of these facilities actually

discharge to the affected water bodies because location information is not available in EPA's PCS database. Therefore, EPA's analysis includes a universe of 285 permitted facilities (84 majors and 201 minors).

To identify facilities potentially affected by the proposed rule, EPA assumed that only facilities that have the potential to affect (*i.e.*, cause an increase in fecal coliform levels) the Subject Waterbodies for which EPA is designating a new primary contact recreation use may be affected by the proposed rule. EPA identified these facilities by overlaying PCS facilities with the potentially affected waters and their tributaries currently designated for a Class SC use using GIS software. EPA assumed that only wastewater treatment plants or military facilities with similar effluent characteristics (*i.e.*, facilities having the potential to discharge fecal coliforms) would potentially be affected by the proposed rule. Table 1 summarizes the universe of potentially affected facilities by type and category.

TABLE 1.—ESTIMATED NUMBER OF FACILITIES POTENTIALLY AFFECTED BY THE PROPOSED RULE

Category	Number of facilities		
	Major	Minor	Total
Military	1	2	3
Municipal	19	10	29
Total	20	12	32

B. Method for Estimating Potential Compliance Costs

EPA identified a total of 32 facilities (20 majors and 12 minors) that may be potentially affected by the proposed primary contact designated use. EPA evaluated a sample of facilities based on discharger type and category from this group for potential cost impacts associated with the proposed rule. For these sample facilities, EPA evaluated available effluent data from its PCS database to determine the potential controls that may ultimately be needed as a result of the proposed rule.

EPA estimated on a case-by-case basis the most cost-effective control strategy for each sample facility to achieve compliance with the proposed criteria. EPA assumed that projected effluent limits for fecal coliform would be applied as criteria end-of-pipe (a monthly geometric mean of 200 colonies/100 mL and not more than 20% of samples exceeding 400 colonies/100 mL) because the facilities' current permits apply the current criteria in the same manner. EPA assumed that a sample facility would incur costs if average monthly effluent concentrations (or existing permit limit, whichever is smaller) indicate that the facility would not be in compliance with the most stringent criterion.

EPA evaluated each facility's potential compliance with projected permit limits based on available monthly average fecal coliform values from the Agency's PCS database. If monthly average values are not available, EPA evaluated potential compliance based on maximum monthly values. EPA determined potential compliance with the projected limit for each sample facility based on the relative magnitude of the maximum average monthly values, the pattern of occurrence of such values (*i.e.*, when maximum values occurred), and current treatment performance characteristics (*e.g.*, BOD and TSS concentrations, compliance with current permit). For facilities exceeding their current limits, EPA assumed that facilities would install the necessary controls for compliance with current standards, and would incur costs for additional treatment process optimization (*e.g.*, increase chlorine dose, improve mixing conditions, increase contact time) for compliance with the projected limit. For facilities that are in compliance with their current permit limits but would not comply with the projected limit, EPA also assumed that process optimization of their chlorination process may be necessary for compliance with the projected limit.

C. Results

EPA estimated the potential costs associated with the proposed primary contact designated use for the Subject Waterbodies. Based on evaluation of the sample of potentially affected facilities, EPA estimated that the potential total annual cost associated with the proposed rule is $2.7 million.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency 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 impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). It does not include any information collection, reporting, or recordkeeping requirements.

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.

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.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant

economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business according to RFA default definitions for small business (based on SBA size standards); (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 which is independently owned and operated and is not dominant in its field.

After considering these economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. The RFA requires analysis of the impacts of a rule on the small entities subject to the rule's requirements. *See United States Distribution Companies* v. *FERC,* 88 F.3d 1105, 1170 (D.C. Cir. 1996). Today's proposed rule establishes no requirements applicable to small entities, and so is not susceptible to regulatory flexibility analysis as prescribed by the RFA. (''[N]o [regulatory flexibility] analysis is necessary when an agency determines that the rule will not have a significant economic impact on a substantial number of small entities *that are subject to the requirements of the rule,*'' *United Distribution* at 1170, quoting *Mid-Tex Elec. Co-op* v. *FERC,* 773 F.2d 327, 342 (D.C. Cir. 1985) (emphasis added by *United Distribution* court).)

Under the CWA water quality standards program, States must adopt water quality standards for their waters and must submit those water quality standards to EPA for approval; if the Agency disapproves a State standard and the State does not adopt appropriate revisions to address EPA's disapproval, EPA must promulgate standards consistent with the statutory requirements. EPA also has the authority to promulgate criteria or standards in any case where the Administrator determines that a new or revised standard is necessary to meet the requirements of the Act. These State standards (or EPA-promulgated standards) are implemented through various water quality control programs including the NPDES program, which limits discharges to navigable waters except in compliance with an NPDES permit. The CWA requires that all NPDES permits include any limits on discharges that are necessary to meet applicable water quality standards.

Thus, under the CWA, EPA's promulgation of water quality standards establishes standards that the State generally implements through the NPDES permit process. In this case, however, EPA Region 2 is the NPDES permitting authority in Puerto Rico. As such, EPA Region 2 has discretion in developing discharge limits as needed to meet the standards. While Region 2's implementation of Federally promulgated water quality standards may result in new or revised discharge limits being placed on small entities, the standards themselves do not apply to any discharger, including small entities.

Today's proposed rule, as explained earlier, does not itself establish any requirements that are applicable to small entities. As a result of this action, EPA Region 2 will need to ensure that permits it issues include any limitations on discharges necessary to comply with the standards established in the final rule. In doing so, the Region will have a number of choices associated with permit writing. While the implementation of the rule may ultimately result in some new or revised permit conditions for some dischargers, EPA's action today does not impose any of these as yet unknown requirements on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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. The definition of ''State'' for the purposes of UMRA includes ''a territory or possession of the United States.'' Under section 202 of the UMRA, 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 one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA 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 EPA 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 EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or Tribal governments or the private sector. The proposed rule imposes no enforceable duty on the Commonwealth of Puerto Rico, or any other State, local or Tribal governments or the private sector; rather, this rule proposes a designated use for primary contact recreation and associated bacteria criteria for the Subject Waterbodies, which, when combined with Commonwealth adopted water quality criteria, constitute water quality standards for those waterbodies. The Commonwealth and EPA may use these resulting water quality standards in implementing its water quality control programs. Today's proposed rule does not regulate or affect any entity and, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. As stated, the proposed rule imposes no enforceable requirements on any party, including small governments. Thus, this proposed rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires 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'' is 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 proposed 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. The proposed rule would not affect the nature of the relationship between EPA and States generally, for the rule only applies to waterbodies in Puerto Rico (which is considered a ''State'' for purposes of the water quality standards program). Further, the proposed rule would not substantially affect the relationship of EPA and the Commonwealth of Puerto Rico, or the distribution of power or responsibilities between EPA and the various levels of government. The proposed rule would not alter the Commonwealth's considerable discretion in implementing these water quality standards. Further, this proposed rule would not preclude Puerto Rico from adopting water quality standards that meet the requirements of the CWA. Thus, Executive Order 13132 does not apply to this proposed rule.

Although Executive Order 13132 does not apply to this rule, EPA did consult with representatives of the Commonwealth in developing this rule. Prior to this proposed rulemaking action, EPA had numerous phone calls, meetings and exchanges of written correspondence with EQB to discuss EPA's concerns with the Commonwealth's water quality standards, possible remedies for addressing the inadequate sections of their water quality standards, the use designations and criteria in today's proposal, and the Federal rulemaking process. For a more detailed description of EPA's interaction with the Commonwealth on this proposed rulemaking, refer to section II.C.2. EPA will continue to work with the Commonwealth before finalizing these water quality standards for Puerto Rico. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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 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 proposed rule 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. There are no Indian Tribes in Puerto Rico, where this rule would apply. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency 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 considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Further, it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. This proposed rule, if promulgated, would establish water quality standards to meet the requirements of the CWA and the implementing Federal regulations.

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

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

EPA welcomes comment on this aspect of the proposed rulemaking, and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

List of Subjects in 40 CFR Part 131

Environmental protection, Indians—lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: October 14, 2003.

Marianne Lamont Horinko,

Acting Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 131 as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—[Amended]

2. Section 131.40 is added to read as follows:

§ 131.40 Puerto Rico.

(a) *Use designations for marine waters.* In addition to the Commonwealth's adopted use designations, the following waterbodies in Puerto Rico have the beneficial use designated in this paragraph (a) within the bays specified below, and within the Commonwealth's territorial seas, as defined in section 502(8) of the Clean Water Act, and 33 CFR 2.05–5, except such waters classified by the Commonwealth as SB.

Waterbody segment	From	To	Designated use
Coastal Waters	500m offshore	3 miles offshore	Primary Contact. Recreation.
Guayanilla & Tallaboa Bays	Cayo Parguera	Punta Verraco	Primary Contact. Recreation.
Mayaguez Bay	Punta Guanajibo	Punta Algarrobo	Primary Contact. Recreation.
Ponce Port	Punta Carenero	Punta Cuchara	Primary Contact. Recreation.
San Juan Port	Mouth of Río Bayamón	Punta El Morro	Primary Contact. Recreation.
Yabucoa Port	N/A	N/A	Primary Contact. Recreation.

(b) *Criteria that apply to Puerto Rico's marine waters.* In addition to all other Commonwealth criteria, the following criteria for bacteria apply to the waterbodies in paragraph (a) of this section:

Bacteria: The fecal coliform geometric mean of a series of representative samples (at least five samples) of the waters taken sequentially shall not exceed 200 colonies/100 ml, and not more than 20 percent of the samples shall exceed 400 colonies/100 ml. The enterococci density in terms of geometric mean of at least five representative samples taken sequentially shall not exceed 35/100 ml. No single sample should exceed the upper confidence limit of 75% using 0.7 as the log standard deviation until sufficient site data exist to establish a site-specific log standard deviation.

(c) *Water quality standard variances.* (1) The Regional Administrator, EPA Region 2, is authorized to grant variances from the water quality standards in paragraphs (a) and (b) of this section where the requirements of this paragraph (c) are met. A water quality standard variance applies only to the permittee requesting the variance and only to the pollutant or pollutants specified in the variance; the underlying water quality standard otherwise remains in effect.

(2) A water quality standard variance shall not be granted if:

(i) Standards will be attained by implementing effluent limitations required under sections 301(b) and 306 of the CWA and by the permittee implementing reasonable best management practices for nonpoint source control; or

(ii) The variance would likely jeopardize the continued existence of any threatened or endangered species listed under section 4 of the Endangered Species Act or result in the destruction or adverse modification of such species' critical habitat.

(3) A water quality standards variance may be granted if the applicant demonstrates to EPA that attaining the water quality standard is not feasible because:

(i) Naturally occurring pollutant concentrations prevent the attainment of the use;

(ii) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating Commonwealth water conservation requirements to enable uses to be met;

(iii) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;

(iv) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way which would result in the attainment of the use;

(v) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like unrelated to water quality, preclude attainment of aquatic life protection uses; or

(vi) Controls more stringent than those required by sections 301(b) and 306 of the CWA would result in substantial and widespread economic and social impact.

(4) Procedures. An applicant for a water quality standards variance shall submit a request to the Regional Administrator of EPA Region 2. The application shall include all relevant information showing that the requirements for a variance have been met. The applicant must demonstrate that the designated use is unattainable for one of the reasons specified in paragraph (c)(3) of this section. If the Regional Administrator preliminarily determines that grounds exist for granting a variance, he/she shall provide public notice of the proposed variance and provide an opportunity for public comment. Any activities required as a condition of the Regional Administrator's granting of a variance shall be included as conditions of the NPDES permit for the applicant. These terms and conditions shall be incorporated into the applicant's NPDES permit through the permit reissuance process or through a modification of the permit pursuant to the applicable permit modification provisions of Puerto Rico's NPDES program.

(5) A variance may not exceed five years or the term of the NPDES permit, whichever is less. A variance may be renewed if the applicant reapplies and demonstrates that the use in question is still not attainable. Renewal of the variance may be denied if the applicant did not comply with the conditions of the original variance, or otherwise does not meet the requirements of this section.

[FR Doc. 03–26409 Filed 10–17–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 101403A]

New England Fishery Management Council; Public Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3–day Council meeting on November 4–6, 2003, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, November 4, 2003, beginning at 9 a.m. and on Wednesday and Thursday November 5 and 6, beginning at 8:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, One Newbury Street, Peabody, MA 01960; telephone (978) 535–4600. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, Wednesday, and Thursday, November 4–6, 2003

Following introductions, the Council will receive reports on recent activities from the Council Chairman and Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel and representatives of the U.S. Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission. For the remainder of the day the Council will focus on discussion, selection, and approval of final management measures for inclusion in Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP). This process will continue through mid-day on Wednesday, November 5. At that time the Council has scheduled an open period for public comment on items relevant to Council business, but not otherwise listed on the agenda. The Council will then continue with the Amendment 13 decision-making process through Thursday, November 6. During the afternoon session on November 6 the Council will consider initial action on a framework adjustment that would allow limited access scallop vessels to fish in the Georges Bank areas now closed to protect groundfish. Framework Adjustment 16 to the Sea Scallop FMP/ Framework Adjustment 39 to the Northeast Multispecies FMP could include Total Allowable Catch and possession limits for finfish, seasonal access, gear modifications, mandatory observer coverage and other measures to minimize bycatch. The meeting will adjourn once any other business-related issues have been addressed.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: October 14, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–26395 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[I.D. 063003A]

RIN 0648–AR33

Atlantic Striped Bass Conservation Act; Atlantic Striped Bass Fishery

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

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and notice of scoping process; request for comments.

SUMMARY: Based on recommendations from the Atlantic States Marine Fisheries Commission (Commission) and comments received from an advance notice of proposed rulemaking (ANPR), NMFS announces its intent to prepare an environmental impact statement (EIS) to analyze the impacts on the human environment of potential revisions to Federal Atlantic striped bass regulations for the U.S. Exclusive Economic Zone (EEZ). In addition, NMFS announces that the public will have additional opportunities to comment on potential management measures, including a no action alternative, addressing the Commission's recommendations and on issues that should be considered in development of the EIS during scheduled scoping meetings. The purpose of this notice is to alert the interested public: (1) of NMFS intent to prepare an EIS; (2) that NMFS will be accepting written comments on its intention to draft an EIS; and (3) that NMFS will conduct public scoping hearings for the impact statement during which the public is invited to attend and comment.

DATES: NMFS will discuss and take scoping comments at public meetings in November and December 2003. Written scoping comments will also be accepted and must be received at the appropriate address or facsimile (fax) number (see **ADDRESSES**) no later than 5 p.m. Eastern Standard Time on or before December 22, 2003.

ADDRESSES: Written scoping comments and requests for copies of the scoping document and other information should be sent to: Anne Lange, Chief, State-Federal Fisheries Division, Office of Sustainable Fisheries, NMFS, 1315 East West Highway, Room 13317, Silver Spring, MD 20910. Copies of scoping documents may also be obtained on the State-Federal Fisheries Division's website at *http://www.nmfs.noaa.gov/sfa/state__federal/state__federal.htm* after 5 p.m. Eastern Standard Time on November 3, 2003. Comments may also be sent via fax to (301) 713–0596. Comments submitted via e-mail or Internet will not be accepted.

FOR FURTHER INFORMATION CONTACT: Anne Lange, telephone (301)713-2334.

SUPPLEMENTARY INFORMATION:

Background

NMFS published an ANPR concerning striped bass in the **Federal**

Register on July 21, 2003 (68 FR 43074). In the ANPR, NMFS announced that it was considering whether to propose rulemaking to revise Federal Atlantic striped bass regulations to be compatible with the Commission's Amendment 6 to the Interstate Fishery Management Plan for Atlantic Striped Bass (Amendment 6). Under the Atlantic Striped Bass Conservation Act, NMFS is obligated to regulate striped bass in the EEZ in a manner that is compatible with state management, which is set forth under the Commission's plan. In the ANPR, NMFS sought comments on the Commission's recommendations to the Secretary of Commerce (Secretary) to open the EEZ to the harvest of Atlantic striped bass. NMFS also solicited comments on possible alternative management measures and issues that NMFS should consider relative to these recommendations. The comment period closed on August 20, 2003. The public requested more time to submit comments; NMFS agreed, and reopened the comment period from August 26, 2003, until September 25, 2003 (68 FR 51232).

Atlantic Striped Bass management is based on the Commission's Atlantic Striped Bass Interstate Fishery Management Plan (ISFMP), first adopted in 1981. From 1981 - 1994, four ISFMP Amendments were developed that provided a series of management measures that led to the rebuilding of the stocks. In 1995, the Commission declared the Atlantic striped bass population fully restored and implemented Amendment 5 to the ISFMP to perpetuate the stock so as to allow a commercial and recreational harvest consistent with the long-term maintenance of the striped bass stock. Since then, the Commission has found that the population has expanded to record levels of abundance.

To maintain this recovered population, the Commission approved Amendment 6 to the ISFMP in February 2003 (copies of Amendment 6 are available via the Commission's websiteat *http://www.asmfc.org*). The Commission believes that the measures contained in Amendment 6 are necessary to prevent the overfishing of the Atlantic striped bass resource while allowing growth in both the commercial and recreational fishery. Development of Amendment 6 took almost 4 years and involved extensive input from technical and industry advisors, and provided numerous opportunities for the public to comment on the future management of the species.

Amendment 6 incorporates results of the most recent Atlantic striped bass stock assessment, developed by the Atlantic Coast States, the Commission, NMFS, and the U.S. Fish and Wildlife Service (see section 1.2.2 of Amendment 6). In summary, the 2001 stock assessment concluded that the overall abundance of the stock is very high and fishing mortality remains below the target rate. The stock=s abundance increased steadily between 1982 and 1997 and since then has remained stable. The fishing mortality rate increased steadily until 1999, but decreased slightly in 2000. Amendment 6 also includes recommendations to the Secretary on the development of complementary measures in the EEZ. Management of Atlantic striped bass in the EEZ was one of the issues that was considered throughout development of Amendment 6.

Recommendation to the Secretary

On April 24, 2003, the Secretary received a letter from the Commission with the following three recommendations for implementation of regulations in the EEZ: (1) Remove the moratorium on the harvest of Atlantic striped bass in the EEZ; (2) implement a 28–inch (71.1 cm) minimum size limit for recreational and commercial Atlantic striped bass fisheries in the EEZ; and (3) allow states the ability to adopt more restrictive rules for fishermen and vessels licensed in their jurisdictions.

In support of its request, the Commission provided a number of reasons to justify opening the EEZ to striped bass fishing. These reasons include:

(1) In 1995, due in part to a closure of the EEZ in 1990 to striped bass harvest, the population of this species was declared fully restored by the Commission. The purpose of closing the EEZ was to protect strong year classes entering the population and to promote rebuilding of the overfished population.

(2) The commercial harvest is controlled by hard quotas; when they are reached the fishery is closed; and overages are taken out of next year's quotas. The Commercial quota will be landed regardless of whether or not the EEZ is opened.

(3) Currently, recreational and commercial catches are occurring in the EEZ and these fish are required to be discarded. Opening the EEZ will convert discarded bycatch of striped bass to landings.

(4) Because of management measures implemented since 1990, the striped bass population has recovered to a point where further examination of whether this fishery should occur in the EEZ is appropriate. There are expectations among a number of fishing industry stakeholders that their past sacrifices would result in future opportunities to harvest striped bass, and therefore, there are potential credibility issues associated with keeping the EEZ closed, especially in light of the current status of the Atlantic striped bass stock.

(5) The recommendation to open the EEZ is part of Amendment 6 which incorporates new management standards to ensure stock conservation including targets and thresholds for both mortality and spawning stock biomass. Fishing mortality is currently below the target level, and spawning stock biomass is 1.5 times the target level.

(6) Amendment 6 includes monitoring requirements and triggers that will allow the Commission to respond quickly to increased mortality.

(7) The bulk of the public comment (greater than 75 percent) received in opposition during the Amendment 6 process cited expansion of the commercial fishery as rationale not to open the EEZ. The Commission believes the rationale is incorrect because the commercial fishery is controlled by a hard quota.

The Commission stated that its Atlantic Striped Bass Technical Committee would monitor annually the Atlantic striped bass population, and, if at some point in the future the Commission determines that the Atlantic striped bass population is overfished or that overfishing is occurring, it may recommend further management measures for the EEZ.

Summary of ANPR Comments

In addition to the Commission's reasons for its recommendation to the Secretary, the following summarizes comments in support of opening the EEZ: (1) Opening the EEZ to the harvest of striped bass will not increase pressure on the resource, but will dissipate effort over a larger area and reduce the congestion by small trawlers and recreational boats in state waters; and (2) enforcement of the EEZ closure is difficult, but state controls at the point of landing work, regardless of where the fish are harvested. Comments in opposition to opening the EEZ are summarized as follows: (1) Opening the EEZ could create conflicts between state and Federal jurisdictions, such as in those states with game fish status; (2) bycatch concerns may be more difficult to address if fishing for striped bass is allowed in the EEZ; (3) fishing for striped bass in the EEZ may result in a directed fishery for the larger, older, more successful breeders assumed to concentrate offshore; (4) fishing for striped bass in the EEZ may result in an

increase in mortality because overall harvest may increase; (5) allowing fishing for striped bass in the EEZ may result in landings in excess of target mortality rates set forth in Amendment 6; and (6) opening the EEZ to fishing for striped bass may have impacts on both human and fish health (such concerns relate to PCB consumption and bacterial infections in striped bass). NMFS believes the best way to address the issues and concerns raised during the ANPR comment period is to hold a series of hearings along the Atlantic coast to help determine the scope of the eventual EIS that it intends to develop. This eventual EIS would offer analysis of the aforementioned issues. In addition, during the scoping process, NMFS would like the public to comment further on the Commission's recommendations, including comments both on other potential management measures, including a no action alternative, as well as comments on other issues that the public thinks should to be analyzed in the development of this EIS.

Potential Management Measures Being Considered

All persons affected by or otherwise interested in Atlantic striped bass management in the EEZ are invited to participate in determining the scope and significance of issues to be analyzed in development of an EIS by submitting written comments (see ADDRESSES) or by participating in one or more of the scheduled scoping hearings. Potential management measures being considered include: (1) no action - maintain moratorium in EEZ; and (2) open the entire EEZ, implement a 28–inch (71.1 cm) minimum size limit, and allow states to adopt more restrictive regulations for fishermen and vessels licensed in their state (Commission recommendation). In addition, NMFS will consider additional management measures received during the scoping process that will both benefit the sustainability of this fishery and be compatible with the Commission plan. NMFS will consider, through the EIS, all impacts, including direct, indirect and cumulative, of the potential management measures to be considered. The scoping process will also identify and eliminate from detailed study issues that are not significant. Once an EIS is developed, NMFS will hold public hearings to receive comments, on the draft EIS.

Schedule of Public Scoping Hearings

1. Wednesday, November 5, 2003 - Portsmouth, NH, 7–8:30 p.m.

Urban Forestry Center, 45 Elwin Road, Portsmouth, NH 03801

2. Wednesday, November 12, 2003 - Manteo, NC, 7–9 p.m.

North Carolina Aquarium on Roanoke Island, 374 Airport Road, Manteo, NC 27954

3. Tuesday, November 18, 2003 -Toms River, NJ, 6–9 p.m.

Quality Inn, 815 Route 37, Toms River, NJ 08755

4. Wednesday, November 19, 2003 - Dover, DE, 6:30–7:30 p.m.

Delaware Department of Natural Resources and Environmental Control, Richardson & Robbins Bldg., 89 Kings Highway, Dover, DE

5. Monday, December 1, 2003 - Stony Brook, NY, 7:30–9:30 p.m.

State University of New York at Stony Brook (SUNY), Student Activities Center, Nicolls Road, Stony Brook, NY 11794

6. Tuesday, December 2, 2003 - Old Lyme, CT, 7–9 p.m.

Connecticut Department of Environmental Protection, Marine Headquarters, Boating Education Building, 333 Ferry Road, Old Lyme, CT 06371 7. Monday, December 8, 2003 - Portland, ME, 7–9 p.m.

Holiday Inn By The Bay, 88 Spring Street, Portland, ME 04101

8. Tuesday, December 9, 2003- Bourne, MA, 7–10 p.m.

Canal Club, 100 Trowbridge Road, Bourne, MA 02532

9. Wednesday, December 10, 2003 - Narragansett, RI, 7–9 p.m.

University of Rhode Island, Bay Campus, Corless Auditorium, South Ferry Road, Narragansett, RI

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a NMFS representative will explain the ground rules (e.g., alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the hearing so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the hearing.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tom Meyer, (301) 713–2334, at least 7 days prior to the hearing in question.

Authority: 16 U.S.C. 1851 note.

Dated: October 15, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–26400 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 202
Monday, October 20, 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

Food Safety and Inspection Service

[Docket No. 03–035N]

National Advisory Committee on Meat and Poultry Inspection; Nomination for Membership

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Department of Agriculture (USDA) is soliciting nominations for membership on the National Advisory Committee on Meat and Poultry Inspection (NACMPI). This notice will be used to fill one vacancy on the Committee. The full Committee consists of 16–18 members, and each person selected is expected to serve a 2-year term. The term for the individual selected to fill this vacancy will expire with the current Committee in March 2005.

DATES: The names of the nominees and their typed curricula vitae or resumes must be postmarked no later than November 19, 2003. Applications are available on-line at *http://www.fsis.usda.gov/OPPDE/NACMPI/Nominations.htm*.

ADDRESSES: Nominating materials should be submitted to Dr. Garry L. McKee, Administrator, Food Safety and Inspection Service, USDA, Room 615 Cotton Annex Building, 300 12th Street, SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Ms. Sonya L. West, Meat and Poultry Advisory Committee Staff; telephone (202) 720–2561; Fax (202) 205–0157; e-mail: *sonya.west@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION: USDA is seeking nominees for membership on the National Advisory Committee on Meat and Poultry Inspection. The Committee provides advice and recommendations to the Secretary on the meat and poultry inspection programs, pursuant to sections 7(c), 24, 205, 301(a)(3), 301(a)(4), and 301(c) of the Federal Meat Inspection Act (21 U.S.C. 607(c), 624, 645, 661(a)(3), 661(a)(4)), and 661(c) and the sections 5(a)(3), 5(a)(4), 5(c), 8(b), and 11(e) of the Poultry Products Inspection Act (21 U.S.C. 454(a)(3), 454(a)(4), 454(c), 457(b), and 460(e)). Nominations for membership are generally sought from persons representing producers; processors; exporters and importers of meat and poultry products; academia; Federal and State government officials; and consumers. Due to the resignation of a member appointed in March 2003, we are currently seeking a consumer representative at this time in order to maintain the balance of representation in all areas of interest on the Committee. This appointee will serve out the remainder of this term which ends in March 2005.

Appointments to the Committee will be made by the Secretary. To ensure that recommendations of the Committee take into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, persons with demonstrated ability to represent minorities, women, and persons with disabilities. It is anticipated that the Committee will meet at least twice annually.

Background

On April 15, 2003, the Secretary of Agriculture renewed the charter for the NACMPI. The Administrator of FSIS is the Chairperson of the Committee. The current members of the NACMPI are: Ms. Deanna Baldwin, Maryland Department of Agriculture; Dr. Gladys Bayse, Spelman College; Dr. David Carpenter, Southern Illinois University; Dr. James Denton, University of Arkansas; Dr. Kevin Elfering, Minnesota Department of Agriculture; Ms. Sandra Eskin, American Association of Retired Persons; Mr. Michael Govro, Oregon Department of Agriculture; Dr. Joseph Harris, Southwest Meat Association; Dr. Jill Hollingsworth, Food Marketing Institute; Dr. Alice Johnson, National Turkey Federation; Mr. Michael Kowalcyk, Safe Tables Our Priority; Dr. Irene Leech, Virginia Citizens Consumer Council; Mr. Charles Link, Cargill Meats; Dr. Catherine Logue, North Dakota State University; and Mr. Mark Schad, Schad Meats.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of the notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail Subscription service. In addition, the update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** Notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the ''Constituent Update'' page on the Internet at: *http://www.fsis.usda.gov/oa/update/subscribe.asp*. Click on the ''Subscribe to the Constituent Update Listserv'' link, then fill out and submit the form.

Done in Washington, DC, on October 14, 2003.

Garry L. McKee,

Administrator.

[FR Doc. 03–26387 Filed 10–17–03; 8:45 am]
BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Sacramento Provincial Advisory Committee (SAC PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northwest Sacramento Provincial Advisory Committee (PAC) will meet on December 17, 2003, at the Bureau of Land Management Conference Room, Redding, California. The purpose of the meeting is to discuss issues

relating to implementing the Northwest Forest Plan.

DATE AND TIME: The meeting will be held December 17, 2003 from 9 a.m. to 4 p.m.

LOCATION: The meeting will be held in the Bureau of Land Management Conference Room, 355 Hemsted Road in Redding, California.

FOR FURTHER INFORMATION CONTACT: Julie Nelson, Committee Coordinator, USDA, Shasta-Trinity National Forest, 2400 Washington Ave., Redding, CA 96001, (530) 242–2269; e-mail: *jknelson@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Opportunity will be provided for public input and individuals will have the opportunity to address the Committee at that time.

Dated: October 14, 2003.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 03–26365 Filed 10–17–03; 8:45 am]

BILLING CODE 3410–FK–M

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Shasta County Resource Advisory Committee (RAC) will meet on October 29, 2003, in Redding, California. The purpose of the meeting will be to hear presentations from applicants proposing projects, review project proposals, and receive reports from working committees.

DATES: The meeting will be held on October 29, 2003, from 8 a.m. to noon.

ADDRESSES: The meeting will be held at Northern California Service Center, 6101 Airport Road.

FOR FURTHER INFORMATION CONTACT: Kevin McIver, coordinator, USDA Forest Service, (530) 242–2494. E-mail: *kmciver@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Discussion is limited to Forest Service staff and committee members. However, time will be provided for public input, giving individuals the opportunity to address the committee.

Dated: October 14, 2003.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 03–26364 Filed 10–17–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension for a currently approved information collection in support of the program for the Annual Survey of Farmer Cooperatives, as authorized in the Cooperative Marketing Act of 1926.

DATES: Comments on this notice must be received by December 19, 2003, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: E. Eldon Eversull, (Acting) Director, Statistics Staff, RBS, U.S. Department of Agriculture, STOP 3256, 1400 Independence Avenue, SW., Washington, DC 20250–3256, Telephone (202) 690–1415 or send an e-mail message to: *eldon.eversull@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Annual Survey of Farmer Cooperatives.

OMB Number: 0570–0007.

Expiration Date of Approval: April 30, 2004.

Type of Request: Intent to extend and revise a currently approved information collection.

Abstract: The primary objective of Rural Business-Cooperative Service (RBS) is to promote understanding, use and development of the cooperative form of business as a viable option for enhancing the income of the agricultural producers and other rural residents. RBS' direct role is providing knowledge to improve the effectiveness and performance of farmer cooperative businesses through technical assistance, research, information, and education. The annual survey of farmer cooperatives collects basic statistics on cooperative business volume, net income, members, financial status, employees, and other selected information to support RBS' objective and role. Cooperative statistics are published in various reports and used by the U.S. Department of Agriculture, cooperative management, educators and others in planning and promoting the cooperative form of business.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour or less per response.

Respondents: Farmer cooperatives.

Estimated Number of Respondents: 1,766.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 1.

Estimated Total Annual Burden on Respondents: 1,685 Hours.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Division, at (202) 692–0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of the RBS' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or forms of information technology. Comments may be sent to Cheryl Thompson, Regulation and Paperwork Management ranch, support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: October 6, 2003.

John Rosso,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 03–26366 Filed 10–17–03; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's intention to request an extension for a currently approved information collection in support of the program for Research on Rural Cooperative Opportunities and Problems.

DATES: Comments on this notice must be received by December 19, 2003 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stafford, Director, Cooperative Marketing Division, Rural Business-Cooperative Service, U.S. Department of Agriculture (USDA), STOP 3252, 1400 Independence Avenue, SW., Washington, DC 20250–3252, Telephone (202) 690–0368, Fax (202) 690–2723 or send an e-mail message to *thomas.stafford@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Research on Rural Cooperative Opportunities and Problems.

OMB Number: 0575–0028.

Expiration Date of Approval: February 29, 2004.

Type of Request: Intent to extend and revise a currently approved information collection.

Abstract: The mission of Rural Business-Cooperative Service, USDA (RBS) is to improve the quality of life in rural America by financing community facilities and businesses, providing technical assistance and creating effective strategies for rural development. One of RBS's direct roles is in providing knowledge to improve the effectiveness and performance of farmer cooperative businesses.

This information collection is for the purpose of responding to a solicitation for proposals to conduct research through cooperative agreements. Research proposals are to be on critical issues vital to the development and sustainability of user-owned cooperatives as a means of improving the quality of life in America's rural communities. The availability of funds will be announced on an annual basis. The announcement will seek proposals from institutions of higher education and nonprofit organizations. The funds will be awarded on a competitive basis using specific selection criteria.

Estimate of Burden: Public reporting burden for this collection of information is estimated to range from 10 minutes to 15 hours per response.

Respondents: Not-for-profit institutions and institutions of higher education.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 5.

Estimated Number of Responses: 248.

Estimated Total Annual Burden on Respondents: 1,339.

Copies of this information collection can be obtained from Renita Bolden, Regulations and Paperwork Management Branch, at (202) 692–0035.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of RBS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 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. Comments may be sent to Renita Bolden, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: October 8, 2003.

Peter J. Thomas,

Acting Administrator, Rural Business—Cooperative Service.

[FR Doc. 03–26417 Filed 10–17–03; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101503A]

Proposed Information Collection; Comment Request; Applications and Reporting Requirements for Small Take of Marine Mammals by Specified Activities Under the Marine Mammal Protection Act

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 19, 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 Kenneth R. Hollingshead, fishery biologist, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225 (telephone 301–713–2055, ext 128).

SUPPLEMENTARY INFORMATION:

I. Abstract

The taking by harassment, injury, or mortality of marine mammals is prohibited by the Marine Mammal Protection Act (MMPA) unless exempted or authorized by permit. The incidental-take program authorizes the taking of marine mammals incidental to maritime activities (military, oil industry, oceanographic research). It is the responsibility of the activity to determine if it might have a ''taking'' and, if it does, to apply for an authorization. Applications are necessary for NOAA to know that an authorization is needed and to determine whether authorization can be made under the MMPA. Reporting requirements are mandated by the MMPA and are necessary to ensure that determinations made in regard to the impact on marine mammals are valid.

II. Method of Collection

Information is supplied in response to regulations or other guidance. No forms are involved.

III. Data

OMB Number: 0648–0151.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; not-for-profit institutions; Federal government; and State, Local, or Tribal Government.

Estimated Number of Respondents: 67.

Estimated Time Per Response: 483 hours for a request for new or the renewal of regulations; 45 hours for an application for Letter of Authorization (response times vary significantly based on the complexity of the application); 200 hours for an application for an Incidental Harassment Authorization; and 93–120 hours for a 90–day, quarterly, or annual report under a Letter of Authorization or Incidental Harassment Authorization.

Estimated Total Annual Burden Hours: 15,912.

Estimated Total Annual Cost to Public: $24,200.

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: October 14, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–26397 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101503B]

Proposed Information Collection; Comment Request; Shelf Rockfish Habitat in the Southern California Bight

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 19, 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 John Harms, 2725 Montlake Blvd E, Seattle, WA 98112, (206) 860–3414, or *john.harms@noaa.gov*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Northwest Fisheries Science Center (NWFSC) seeks to expand its information base for shelf rockfish within the Southern California Bight by developing a hook and line survey. In order to most efficiently sample the Bight, the NWFSC is interested in collaborating with local sport and commercial fishermen familiar with bocaccio and other shelf rockfish. Specifically, the NWFSC would like to solicit industry input on habitat and location information (such as, latitude and longitude for locations known to contain shelf rockfish; the predominant species of rockfish found at that location; general information on the name of the bank or reef at that location; and the depth of the water at that location) for shelf rockfish that will then be directly incorporated into the design and site selection for the resulting hook and line study. The information collected will be on a voluntary basis.

II. Method of Collection

The NWFSC will develop a questionnaire that can be distributed in both paper and electronic formats. that will Various means will be used to distribute the questionnaire including word of mouth, placing the questionnaire on the Internet, working through industry groups, personal contact, etc.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households, business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 25.

Estimated Total Annual Cost to Public: $10. (Respondents who are not able to respond electronically or by fax would incur standard postage fees which are not expected to exceed the cost of a $.37 stamp.)

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: October 14, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–26398 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101503C]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Subsistence Fishery for Pacific Halibut on Waters Off Alaska: Registration and Marking of Gear.

Form Number(s): None.

OMB Approval Number: 0648–0460.

Type of Request: Regular submission.

Burden Hours: 1,739.

Number of Respondents: 13,350.

Average Hours Per Response: 10 minutes for a registration and 15 minutes to mark buoys.

Needs and Uses: This program for the Pacific halibut subsistence fishery includes requirements for registration to participate in the fishery, and the marking of certain types of gear used in this fishery. The registration requirement is intended to allow qualified persons to practice the long-term customary and traditional harvest of Pacific halibut for food in a non-commercial manner. The gear-marking requirement aids in enforcement and in actions related to gear damage or loss. The registration information may be submitted by an individual or as a list of multiple individuals from an Alaska Native tribe. Submissions may be made by mail, FAX, e-mail, or on-line.

Affected Public: Individuals or households; business or other for-profit organizations; State, Local, or Tribal Government.

Frequency: On occasion, every 2 or 4 years.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number 202-395-7285, or *David__Rostker@omb.eop.gov*.

Dated: October 14, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–26399 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030905221–3249–02]

National Weather Service Modernization and Associated Restructuring; Final Certification of No Degradation of Service for the Closure of One Weather Service Office (WSO)

AGENCY: National Weather Service (NWS), National Oceanic and Atmospheric Administration, Department of Commerce, Commerce.

ACTION: Notice.

SUMMARY: On September 26, 2003, the Under Secretary of Commerce for Oceans and Atmosphere certified that closure of the Meridian, Mississippi, Weather Service Office (WSO) will not cause a degradation in service to the affected service area. On September 26, 2003, the Under Secretary of Commerce for Oceans and Atmosphere transmitted to Congress notice of approval of the closure certification for WSO Meridian, Mississippi. Public Law 102–567 requires final certifications be published in the **Federal Register**. This notice satisfies that requirement.

ADDRESSES: Requests for copies of the final certification packages should be sent to John Sokich, Room 11426, 1325 East-West Highway, Silver Spring, MD 20910–3283.

FOR FURTHER INFORMATION CONTACT: John Sokich, 301–713–0258.

Dated: October 14, 2003.

John E. Jones,

Deputy Assistant Administrator for Weather Services.

[FR Doc. 03–26372 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–KE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100703A]

Endangered Species; Permit No. 1123

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

ACTION: Scientific research permit modification.

SUMMARY: Notice is hereby given that requests for modifications of scientific research permits No. 1123 submitted by U.S. Fish and Wildlife Service (Edgard O. Espinoza, Primary Investigator), Office of Law Enforcement, National Fish and Wildlife Forensics Laboratory, 1490 East Main Street, Ashland, Oregon 97520, have been granted.

ADDRESSES: The modifications and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (phone 301/713–2289, fax 301/713–0376); and,

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested modifications have been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the provisions of § 222.306 of the regulations governing the taking, importing, and exporting of endangered and threatened fish and wildlife (50 CFR 222–226).

NFWFL is authorized to possess samples of ESA-listed non-marine mammal and non-reptilian species under NMFS jurisdiction associated with genetic research studies and support of law enforcement actions. Law enforcement personnel have an ongoing need for scientific assistance in cases concerning endangered, protected, and managed marine species. The Fish and Wildlife Forensics Center provides technical/scientific assistance to a variety of law enforcement agencies including NMFS Enforcement, US Customs, US Fish and Wildlife Service as well as state wildlife enforcement agencies. Forensics analyses generally involve a biochemical or genetic test when a comparison is made between evidence and voucher samples. Voucher samples which are used in a forensics analysis are collected and maintained under strict criteria that includes documentation (species identification form) from the expert who has authenticated the samples; a chain of custody which originates with the sample collection; and storage under secure conditions. The issuance of this modification will extend the authorized activities through December 31, 2004.

Issuance of these modifications, as required by the ESA was based on a finding that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of these permits; and (3) are consistent

with the purposes and policies set forth in section 2 of the ESA.

Dated: October 10, 2003.

Carrie W. Hubard,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–26396 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection

ACTION: Request for information.

SUMMARY: In furtherance of its implementation of the new U.S. Commercial Remote Sensing Policy authorized by the President on April 25, 2003, the National Oceanic and Atmospheric Administration (NOAA) is seeking public comment with regard to NOAA's licensing of commercial remote sensing satellite systems, including existing Federal regulations, current licensing conditions, and possible alternative approaches. This Request for Information extends the comment period of a previous NOAA request which was published on July 15, 2003.

DATES: Submit comments on or before November 19, 2003.

ADDRESSES: Submit written comments to: NOAA/NESDIS International and Interagency Affairs Office, 1335 East-West Highway SSMC1, Room 7311, Silver Spring, MD 20910, attn: Timothy Stryker, Chief, Satellite Activities Branch.

SUPPLEMENTARY INFORMATION: The new U.S. National Space Policy, as authorized by the President on April 25, 2003, establishes guidance and implementation actions for commercial remote sensing space capabilities. A fact sheet regarding the new policy directive may be found in the ''What's New'' section on the NOAA Commercial Remote Sensing Licensing Web site at *http://www.licensing.noaa.gov.* The policy's goal is ''to advance and protect U.S. national security and foreign policy interests by maintaining the nation's leadership in remote sensing space activities, and by sustaining and enhancing the U.S. remote sensing industry.''

As part of the implementation of the new policy, NOAA is seeking public comment on all aspects of its licensing program for commercial remote sensing satellite systems. NOAA is seeking comments on topics such as:

- The current NOAA regulations on commercial remote sensing satellite systems (15 CFR 960);
- The current thresholds for commercial operations of U.S. systems;
- The U.S. Government's manner of conditioning operations of U.S. system operators;
- Issues of foreign availability and competition; and,
- Possible alternative approaches to address U.S. national security, foreign policy, and commercial interests.

For public reference, the Land Remote Sensing Policy Act of 1992, NOAA regulations, and other relevant materials may be found in the ''Reference Materials'' section on the NOAA Commercial Remote Sensing Licensing Web site at *http://www.licensing.noaa.gov.* Comments should be received by NOAA no later than November 19, 2003 by postal service to the address listed above.

FOR FURTHER INFORMATION CONTACT: Timothy Stryker, NOAA/NESDIS International and Interagency Affairs, 1335 East-West Highway, Room 7311, Silver Spring, Maryland 20910; telephone (301) 713–2024 x205, fax (301) 713–2032, e-mail *Timothy.Stryker@noaa.gov,* or Bernard Crawford at telephone (301) 713–2024 x204, e-mail *Bernard.Crawford@noaa.gov.*

Gregory W. Withee,

Assistant Administrator for Satellite and Information Services.

[FR Doc. 03–26371 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–HR–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bahrain

October 14, 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 Bahrain 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 limits for the 2004 period.

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 availability of 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

October 14, 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, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or

manufactured in Bahrain 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
Group I	
237, 239pt. [1], 331pt. [2], 332–336, 338, 339, 340–342, 345, 347, 348, 351, 352, 359pt. [3], 433–436, 438, 440, 442–448, 459pt. [4], 631pt. [5], 633–636, 638, 639, 640–647, 648, 651, 652, 659pt. [6], 845, 846 and 852, as a group.	80,069,154 square meters equivalent.
Sublevels in Group I	
338/339	1,112,625 dozen.
340/640	533,818 dozen of which not more than 400,363 dozen shall be in Categories 340–Y/640–Y [7].

[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 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[5] 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.

[6] 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.

[7] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

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.

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 to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–26419 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

October 14, 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: Ross Arnold, 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 Bangladesh and exported during the period January 1, 2004 through December 31, 2004 are based on the 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 limits for the 2004 period. Carryforward applied to the 2003 limits is being deducted from 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 availability of 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

October 14, 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 and man-made fiber textile products in the following categories, produced or manufactured in Bangladesh 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
237	883,619 dozen.
331pt. [1]	207,754 dozen pairs.
334	269,572 dozen.
335	484,017 dozen.
336/636	866,160 dozen.
338/339	2,509,175 dozen.
340/640	5,672,148 dozen.
341	4,698,862 dozen.
342/642	812,976 dozen.
347/348	4,228,973 dozen.
351/651	1,291,175 dozen.
352/652	19,262,987 dozen.
363	48,127,473 numbers.
369–S [2]	3,226,019 kilograms.
634	943,109 dozen.
635	611,024 dozen.
638/639	3,182,095 dozen.
641	1,967,544 dozen.
645/646	747,279 dozen.

Category	Twelve-month restraint limit
647/648	2,659,732 dozen.

[1] 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.

[2] Category 369–S: only HTS number 6307.10.2005.

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 October 18, 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 Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–26420 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–DR–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 Arab Republic of Egypt

October 14, 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 Egypt 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

October 14, 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 Egypt 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
Fabric Group	
218–220, 224–227, 313–O [1], 314–O [2], 315–O [3], 317–O [4] and 326–O [5], as a group	205,916,302 square meters.
Sublevels within Fabric Group	
218	2,508,000 square meters.
219	48,447,510 square meters.
220	48,447,510 square meters.
224	48,447,510 square meters.
225	48,447,510 square meters.
226	48,447,510 square meters.
227	48,447,510 square meters.
313–O	88,963,510 square meters.
314–O	48,447,510 square meters.
315–O	56,892,347 square meters.
317–O	48,447,510 square meters.
326–O	2,508,000 square meters.
Levels not in a group	
300/301	19,274,099 kilograms of which not more than 6,045,035 kilograms shall be in Category 301.
338/339	5,287,822 dozen.
340/640	2,190,671 dozen.
369–S [6]	2,774,069 kilograms.
448	21,315 dozen.

[1] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[2] Category 314–O: all HTS numbers except 5209.51.6015.

[3] Category 315–O: all HTS numbers except 5208.52.4055.

[4] Category 317–O: all HTS numbers except 5208.59.2085.

[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[6] Category 369–S: only HTS number 6307.10.2005.

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 October 8, 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.

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. 03–26421 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

October 14, 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: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Hong Kong 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 have been adjusted, variously, pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. These limits are subject to further adjustment pursuant to these provisions. 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) has been made nor will such an adjustment be available in the future.

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**.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 14, 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, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Hong Kong 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
Group I	
200–220, 224–227, 300–326, 360–363, 369(1)[1], 369pt.[2], 400–414, 469pt.[3], 603, 604, 611–620, 624–629 and 666pt.[4], as a group.	181,028,517 square meters equivalent.
Sublevels in Group I	
218/225/317/326	84,752,686 square meters of which not more than 4,667,846 square meters shall be in Category 218(1)[5] (yarn dyed fabric other than denim and jacquard).
219	53,307,547 square meters.
611	8,404,654 square meters.
617	5,302,747 square meters.
Group I subgroup	
200, 226/313, 314, 315, 369(1) and 604, as a group	142,861,341 square meters equivalent.
Within Group I subgroup	
200	459,597 kilograms.
226/313	95,622,293 square meters.
314	25,788,184 square meters.
315	12,749,766 square meters.
369(1) (shoptowels)	1,047,772 kilograms.
604	315,482 kilograms.
Group II	
237, 239pt.[6], 331pt.[7] 332–348, 351, 352, 359(1)[8], 359(2)[9], 359pt.[10], 433–438, 440–448, 459pt.[11], 631pt.[12] 633–648, 651, 652, 659(1)[13], 659(2)[14], 659pt.[15], and 443/444/643/644(1), as a group.	936,285,136 square meters equivalent.
Sublevels in Group II	
237	1,541,510 dozen.
331pt.	1,640,761 dozen pairs.
333/334	350,628 dozen.
335	358,766 dozen.
338/339[16] (shirts and blouses other than tank tops and tops, knit)	3,049,398 dozen.
338/339(1)[17] (tank tops and knit tops)	2,291,027 dozen.

Category	Twelve-month restraint limit
340	2,920,118 dozen.
345	533,362 dozen.
347/348	7,069,946 dozen of which not more than 6,979,946 dozen shall be in Categories 347–W/348–W [18]; and not more than 5,289,668 dozen shall be in Category 348–W.
352	9,066,956 dozen.
359(1) (coveralls, overalls and jumpsuits)	759,420 kilograms.
359(2) (vests)	1,582,787 kilograms.
433	11,484 dozen.
434	12,328 dozen.
435	80,278 dozen.
436	104,558 dozen.
438	858,711 dozen.
442	101,869 dozen.
443	65,969 numbers.
444	46,127 numbers.
445/446	1,419,334 dozen.
447/448	71,378 dozen.
631pt.	157,772 dozen pairs.
633/634/635	1,572,748 dozen of which not more than 588,244 dozen shall be in Categories 633/634; and not more than 1,207,693 dozen shall be in Category 635.
638/639	5,119,306 dozen.
641	884,594 dozen.
644	58,029 numbers.
645/646	1,402,458 dozen.
647	711,711 dozen.
648	1,225,512 dozen of which not more than 1,210,722 dozen shall be in Category 648–W [19].
652	6,111,333 dozen.
659(1) (coveralls, overalls and jumpsuits)	839,358 kilograms.
659(2) (swimsuits)	361,847 kilograms.
443/444/643/644(1) (made-to-measure suits)	63,816 numbers.
Group II subgroup	
336, 341, 342, 351, 636, 640, 642 and 651, as a group	170,125,863 square meters equivalent.
Within Group II subgroup	
336	297,728 dozen.
341	2,955,832 dozen.
342	651,966 dozen.
351	1,248,409 dozen.
636	400,690 dozen.
640	1,182,637 dozen.
642	318,643 dozen.
651	433,937 dozen.
Group III–only 852	11,125,041 square meters equivalent.
Limits not in a group	
845(1) [20] (sweaters made in Hong Kong)	1,129,483 dozen.
845(2) [21] (sweaters assembled in Hong Kong from knit-to-shape components, knit elsewhere).	2,703,551 dozen.
846(1) [22] (sweaters made in Hong Kong)	182,647 dozen.
846(2) [23] (sweaters assembled in Hong Kong from knit-to-shape components, knit elsewhere).	440,113 dozen.

[1] Category 369(1): only HTS number 6307.10.2005.

[2] 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, 9404.90.9505 and HTS number in 369(1).

[3] 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.

[4] 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.

[5] Category 218(1): all HTS numbers except 5209.42.0060, 5209.42.0080, 5211.42.0060, 5211.42.0080, 5514.32.0015 and 5516.43.0015.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] 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.

[8] Category 359(1): only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[9] Category 359(2): only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[10] 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, 6505.90.2545 and HTS numbers in 359(1) and 359(2).

[11] 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.

[12] 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.

[13] Category 659(1): only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[14] Category 659(2): only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[15] 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, 6406.99.1540 and HTS numbers in 659(1) and 659(2).

[16] Categories 338/339: all HTS numbers except 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[17] Category 338/339(1): only HTS numbers 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[18] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[19] Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

[20] Category 845(1): only HTS numbers 6103.29.2074, 6104.29.2079, 6110.90.9024, 6110.90.9042 and 6117.90.9015.

[21] Category 845(2): only HTS numbers 6103.29.2070, 6104.29.2077, 6110.90.9022 and 6110.90.9040.

[22] Category 846(1): only HTS numbers 6103.29.2068, 6104.29.2075, 6110.90.9020 and 6110.90.9038.

[23] Category 846(2): only HTS numbers 6103.29.2066, 6104.29.2073, 6110.90.9018 and 6110.90.9036.

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 November 1, 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 factors for merged Categories 333/334, 633/634/635 and 638/639 are 33, 33.90 and 13, respectively. The conversion factor for Category 239pt. is 8.79.

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. 03–26422 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India; Correction

October 14, 2003.

In the letter to the Commissioner, Bureau of Customs and Border Protection published on July 29, 2003 (68 FR 44528), on page 44528, 2nd column, in the table listing import restrain limits, the limit of 4,017,873 dozen for Category 341-Y is in error. Please replace with the correct amount of 3,844,689 dozen.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–26423 Filed 10–17–03 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea

October 14, 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: Ross Arnold, 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 Korea 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. Carryforward applied to the 2003 limits is being deducted from 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

October 14, 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, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in the Republic of Korea 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
Group I	
200–220, 224–V [1], 224–O [2], 225–227, 300–326, 360–363, 369pt., [3], 400–414, 469pt., [4], 603, 604, 611–620, 625-629, 666pt. [5], as a group	251,715,942 square meters equivalent.
Sublevels within Group I	
200	576,047 kilograms.
201	3,839,661 kilograms.
218	11,904,271 square meters.
219	10,839,662 square meters.
224–V	13,665,051 square meters.
300/301	3,993,265 kilograms.
313	65,076,679 square meters.
314	36,283,903 square meters.
315	21,151,383 square meters.
317/326	24,184,185 square meters.
363	1,393,671 numbers.
410	3,917,219 square meters.
604	519,053 kilograms.
611	4,670,666 square meters.
613/614	7,936,180 square meters.
617	6,581,224 square meters.
619/620	102,210,837 square meters.
624	11,613,923 square meters.
625/626/627/628/629	19,928,173 square meters.
Group II	
237, 239pt. [6], 331pt. [7], 332–348, 351, 352, 359pt. [8], 433–438, 440–448, 459–W [9], 459pt. [10], 631pt. [11], 633–648, 651, 652, 659–H [12], 659–S [13] and 659pt. [14], as a group	582,607,892 square meters equivalent.
Sublevels within Group II	
237	78,973 dozen.
239pt.	319,325 kilograms.
333/334/335	350,301 dozen of which not more than 179,044 dozen shall be in Category 335.
336	74,751 dozen.
338/339	1,556,888 dozen.
340	809,582 dozen of which not more than 420,361 dozen shall be in Category 340–D [15].
341	207,399 dozen.
342/642	281,556 dozen.
345	152,723 dozen.
347/348	576,047 dozen.
351/651	298,663 dozen.
352	232,413 dozen.
433	14,493 dozen.
434	7,433 dozen.
435	38,474 dozen.
436	16,287 dozen.
438	65,298 dozen.
440	208,662 dozen.
442	55,038 dozen.
443	318,836 numbers.
444	59,975 numbers.
445/446	54,368 dozen.
447	92,757 dozen.
448	38,720 dozen.
459–W	104,740 kilograms.
631pt.	79,754 dozen pairs.
633/634/635	1,385,451 dozen of which not more than 157,107 dozen shall be in Category 633 and not more than 585,489 dozen shall be in Category 635.
636	311,222 dozen.
638/639	5,339,862 dozen.
640–D [16]	3,294,663 dozen.

Category	Twelve-month restraint limit
640–O [17]	2,718,346 dozen.
641	1,106,570 dozen of which not more than 41,797 dozen shall be in Category 641–Y [18].
643	819,801 numbers.
644	1,233,354 numbers.
645/646	3,699,208 dozen.
647/648	1,450,258 dozen.
659–H	1,536,487 kilograms.
659–S	233,967 kilograms.
Group III–only 852	13,340,356 square meters equivalent.
Levels not in a group	
845	2,315,056 dozen.
846	826,905 dozen.

[1] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36,0020.

[2] Category 224–O: all remaining HTS numbers in Category 224.

[3] 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.

[4] 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.

[5] 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.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] 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.

[8] 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.

[9] Category 459–W: only HTS number 6505.90.4090.

[10] Category 459pt.: all HTS numbers except 6505.90.4090 (Category 459–W); 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.

[11] 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.

[12] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[13] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[14] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[15] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.

[16] Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[17] 640–O: only HTS numbers 6203.23.0080, 6203.29.2050, 6205.30.1000, 6205.30.2050, 6205.30.2060, 6205.30.2070, 6205.30.2080 and 6211.33.0040.

[18] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

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 October 8, 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 factors for the following merged categories are listed below:

Category	Conversion factor (Square meters equivalent/category unit)
333/334/335	33.75
633/634/635	34.1
638/639	12.96

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. 03–26424 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Malaysia

October 14, 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: Ross Arnold, 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 Malaysia 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. Carryforward applied to the 2003 limits is being deducted from 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

October 14, 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 textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in Malaysia and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following limits:

Category	Twelve-month restraint limit
Fabric Group	
218–220, 225–227, 313–326, 611–O [1], 613/614/615/617, 619 and 620, as a group	217,632,182 square meters equivalent.
Sublevels within the group	
218	12,486,665 square meters.
219	60,490,956 square meters.
220	60,490,956 square meters.
225	60,490,956 square meters.
226	60,490,956 square meters.
227	60,490,956 square meters.
313	72,145,175 square meters.
314	86,796,101 square meters.
315	60,490,956 square meters.
317	60,490,956 square meters.
326	11,697,587 square meters.
611–O	7,018,553 square meters.
613/614/615/617	69,436,883 square meters.
619	9,358,070 square meters.
620	11,697,587 square meters.
Other specific limits	
200	526,555 kilograms.
237	708,479 dozen.
300/301	5,282,976 kilograms.
331pt./631pt. [2]	982,465 dozen pairs.
333/334/335	439,597 dozen of which not more than 263,836 dozen shall be in Category 333.
336/636	853,731 dozen.
338/339	2,002,242 dozen.
340/640	2,465,429 dozen.
341/641	3,195,288 dozen of which not more than 1,139,921 dozen shall be in Category 341.
342/642	762,971 dozen.
345	293,484 dozen.
347/348	848,553 dozen.
351/651	449,238 dozen.
363	7,439,664 numbers.
435	17,028 dozen.
438–W [3]	13,935 dozen.
442	20,751 dozen.
445/446	32,939 dozen.
604	2,448,774 kilograms.
634/635	1,491,336 dozen.
638/639	878,508 dozen.

Category	Twelve-month restraint limit
645/646	671,934 dozen.
647/648	3,162,056 dozen of which not more than 2,213,435 dozen shall be in Category 647–K [4] and not more than 2,213,435 dozen shall be in Category 648–K [5].
Group II	
201, 224, 239pt [6], 332, 352, 359pt. [7], 360–362, 369pt. [8], 400–414, 433, 434, 436, 438–O [9], 440, 443, 444, 447, 448, 459pt. [10], 469pt. [11], 603, 618, 624–629, 633, 643, 644, 652, 659pt. [12], 666pt. [13], 845, 846 and 852, as a group	32,342,281 square meters equivalent.

[1] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

[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.; 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.

[3] Category 438–W: only HTS numbers 6104.21.0060, 6104.23.0020, 6104.29.2051, 6106.20.1010, 6106.20.1020, 6106.90.1010, 6106.90.1020, 6106.90.2520, 6106.90.3020, 6109.90.1540, 6109.90.8020, 6110.11.0080, 6110.12.2080, 6110.19.0080, 6110.30.1560, 6110.90.9074 and 6114.10.0040.

[4] Category 647–K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.8014, 6112.12.0050, 6112.19.1050, 6112.20,.1060 and 6113.00.9044.

[5] Category 648–K: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2006, 6104.63.2011, 6104.63.2026, 6104.63.2028, 6104.63.2030, 6104.63.2060, 6104.69.2030, 6104.69.2060, 6104.69.8026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.9052 and 6117.90.9070.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] 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.

[8] 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.

[9] Category 438–O: only HTS numbers 6103.21.0050, 6103.23.0025, 6105.20.1000, 6105.90.1000, 6105.90.8020, 6109.90.1520, 6110.11.0070, 6110.12.2070, 6110.19.0070, 6110.30.1550, 6110.90.9072, 6114.10.0020 and 6117.90.9025.

[10] 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.

[11] 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.

[12] 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.

[13] 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.

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* the October 9, 2002 directive) 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.

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. 03–26425 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

October 14, 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: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Philippines 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. Carryforward used in 2003 is being deducted from 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 availability of 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

October 14, 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 textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in the Philippines 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
Levels in Group I	
237	3,128,532 dozen.
331pt./631pt.[1]	2,785,156 dozen pairs.
333/334	490,090 dozen of which not more than 70,358 dozen shall be in Category 333.
335	301,763 dozen.
336	1,160,863 dozen.
338/339	3,052,027 dozen.
340/640	1,435,500 dozen.
341/641	1,222,968 dozen.
342/642	949,837 dozen.
345	282,859 dozen.
347/348	3,327,704 dozen.
351/651	1,035,985 dozen.
352/652	4,068,587 dozen.
359–C/659–C[2]	1,487,936 kilograms.
361	3,163,024 numbers.
369–S[3]	757,929 kilograms.
433	3,487 dozen.
443	42,155 numbers.
445/446	30,595 dozen.
447	8,506 dozen.
611	10,034,662 square meters.
633	64,698 dozen.
634	802,729 dozen.
635	421,723 dozen.
636	3,025,280 dozen.
638/639	3,135,262 dozen.
643	1,545,368 numbers.
645/646	1,212,560 dozen.
647/648	2,007,904 dozen.
659–H[4]	2,492,794 kilograms.
Group II	
200–220, 224–227, 300–326, 332, 359pt.[5], 360, 362, 363, 369pt.[6], 400–414, 434–438, 442, 444, 448, 459pt.[7], 469pt.[8], 603, 604, 613–620, 624–629, 644, 659–O[9], 666pt.[10], 845, 846 and 852, as a group	260,167,321 square meters equivalent.
Sublevel in Group II	
604	3,544,939 kilograms.

[1] 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; 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.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[5] 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.

[6] 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.

[7] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505, 6406.99.1560.

[8] 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.

[9] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 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 (Category 659pt.).

[10] 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.

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 October 8, 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.

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. 03–26426 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–DR–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 Singapore

October 14, 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: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Singapore 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 availability of 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

October 14, 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 Singapore 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
237	410,730 dozen.
239pt. [1]	290,977 kilograms.
331pt. [2]	95,940 dozen pairs.
334	100,029 dozen.
335	300,886 dozen.
338/339	2,227,426 dozen of which not more than 1,301,728 dozen shall be in Category 338 and not more than 1,447,360 dozen shall be in Category 339.
340	1,558,867 dozen.
341	391,978 dozen.
342	241,216 dozen.
347/348	1,408,087 dozen of which not more than 880,052 dozen shall be in Category 347 and not more than 684,488 dozen shall be in Category 348.

Category	Twelve-month restraint limit
435	7,623 dozen.
604	1,259,653 kilograms.
631pt.[3]	600,997 dozen pairs.
634	381,889 dozen.
635	390,802 dozen.
638	1,402,620 dozen.
639	4,316,399 dozen.
640	332,337 dozen.
641	542,077 dozen.
642	582,654 dozen.
645/646	215,126 dozen.
647	921,763 dozen.
648	1,711,652 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 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.

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.

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. 03–26427 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

October 14, 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 Sri Lanka 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. Caryforward used thus far in 2003 has been deducted from 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 availability of 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

October 14, 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, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Sri Lanka 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
237	564,171 dozen.
314	8,422,263 square meters.
331pt./631pt.[1]	1,242,174 dozen pairs.
333/633	106,198 dozen.
334/634	1,177,254 dozen.
335	542,678 dozen.
336/636	688,547 dozen.
338/339	2,354,510 dozen.
340/640	2,050,352 dozen.
341/641	3,375,000 dozen of which not more than 2,250,000 dozen shall be in Category 341 and not more than 2,250,000 dozen shall be in Category 641.
342/642	1,207,438 dozen.
345/845	317,079 dozen.
347/348	1,599,566 dozen.
351/651	608,667 dozen.
352/652	2,511,474 dozen.
359–C/659–C[2]	2,556,197 kilograms.
360	2,807,422 numbers.
363	24,060,215 numbers.
369–S[3]	1,505,310 kilograms.
434	8,108 dozen.
435	17,373 dozen.
440	11,582 dozen.
611	10,995,734 square meters.
635	730,106 dozen.

Category	Twelve-month restraint limit
638/639	1,773,325 dozen.
644	995,594 numbers.
645/646	398,237 dozen.
647/648	2,019,842 dozen.

[1] 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; 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.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 369–S: only HTS number 6307.10.2005.

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 November 1, 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.

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. 03–26428 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

October 14, 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 Taiwan 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 World Trade Organization (WTO) 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

October 14, 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, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Taiwan and exported during the twelve-month period which begins on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

Category	Twelve-month limit
Group I	
200–220, 224, 225/317/326, 226, 227, 300/301, 313–315, 360–363, 369–S [1], 369–O [2], 400–414, 469pt [3], 603, 604, 611, 613/614/615/617, 618, 619/620, 624, 625/626/627/628/629 and 666pt [4], as a group.	211,431,409 square meters equivalent.
Sublevels in Group I	
218	24,994,474 square meters.
225/317/326	44,365,123 square meters.
226	8,050,854 square meters.
300/301	1,856,936 kilograms of which not more than 1,558,200 kilograms shall be in Category 300; not more than 1,558,200 kilograms shall be in Category 301.
363	12,503,087 numbers.

Category	Twelve-month limit
611	3,602,683 square meters.
613/614/615/617	22,343,481 square meters.
619/620	16,422,804 square meters.
625/626/627/628/629	21,369,949 square meters.
Group I subgroup	
200, 219, 313, 314, 315, 361, 369–S and 604, as a group	161,759,428 square meters equivalent.
Within Group I subgroup	
200	807,619 kilograms.
219	18,380,605 square meters.
313	70,614,729 square meters.
314	32,740,729 square meters.
315	25,087,743 square meters.
361	1,622,330 numbers.
369–S	499,431 kilograms.
604	249,522 kilograms.
Group II	
237, 239pt[5], 331pt.[6], 332, 333/334/335, 336, 338/339, 340–345, 347/348, 351, 352/652, 359–C/659–C[7], 659–H[8], 359pt.[9], 433-438, 440, 442, 443, 444, 445/446, 447/448, 459pt.[10], 631pt.[11], 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 651, 659–S[12], 659pt.[13], 846 and 852, as a group.	622,375,380 square meters equivalent.
Sublevels in Group II	
237	789,054 dozen.
239pt.	1,404,233 kilograms.
331pt.	146,013 dozen pairs.
336	134,433 dozen.
338/339	866,702 dozen.
340	1,126,552 dozen.
345	140,467 dozen.
347/348	1,064,931 dozen of which not more than 1,064,931 dozen shall be in Categories 347–W/348–W[14].
352/652	3,566,630 dozen.
359–C/659–C	1,447,633 kilograms.
433	16,145 dozen.
434	11,213 dozen.
435	26,623 dozen.
436	5,301 dozen.
438	29,918 dozen.
440	5,796 dozen.
442	43,995 dozen.
443	45,206 numbers.
444	64,382 numbers.
445/446	140,097 dozen.
633/634/635	1,634,440 dozen of which not more than 959,317 dozen shall be in Categories 633/634 and not more than 850,077 dozen shall be in Category 635.
638/639	6,565,058 dozen.
640	1,058,909 dozen of which not more than 281,710 dozen shall be in Category 640–Y[15].
642	777,133 dozen.
643	537,973 numbers.
644	856,003 numbers.
645/646	4,107,691 dozen.
647/648	5,248,544 dozen of which not more than 5,248,544 dozen shall be in Categories 647–W/648–W[16].
659–H	2,384,477 kilograms.
659–S	1,601,702 kilograms.
Group II Subgroup	
333/334/335, 341, 342, 351, 447/448, 636, 641 and 651, as a group	74,480,968 square meters equivalent.
Within Group II Subgroup	
333/334/335	345,855 dozen of which not more than 187,340 dozen shall be in Category 335.
341	349,910 dozen.
342	218,590 dozen.
351	363,662 dozen.
447/448	22,062 dozen.
636	406,321 dozen.
641	735,338 dozen of which not more than 257,368 dozen shall be in Category 641–Y[17].
651	456,057 dozen.
Group III	
Sublevel in Group III	
845	857,026 dozen.

[1] Category 369–S: only HTS number 6307.10.2005.

[2] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); and 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[3] 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.

[4] 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.

[5] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[6] 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.

[7] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[9] Category 359pt.: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[10] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[11] 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.

[12] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659pt.: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[14] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[15] Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[16] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

[17] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

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 November 1, 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 factors are as follows:

Category	Conversion factors (square meters equivalent/category unit)
333/334/335	33.75
352/652	11.3
359–C/659–C	10.1
633/634/635	34.1
638/639	12.5

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 to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–26430 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Thailand

October 14, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection.

EFFECTIVE DATE: October 20, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota

Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for the charging of additional carryforward used, swing, carryover, and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 63633, published on October 15, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 14, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 8, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on October 20, 2003, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
200	2,088,878 kilograms.
218	27,328,680 square meters.
219	11,843,261 square meters.
300	7,422,111 kilograms.
301–O [2]	1,696,915 kilograms.
314–O [3]	78,712,514 square meters.
315–O [4]	55,703,467 square meters.
317–O/326–O [5]	23,384,855 square meters.
363	36,207,254 numbers.
604	1,303,272 kilograms of which not more than 835,551 kilograms shall be in Category 604–A [6].
613/614/615	84,185,472 square meters of which not more than 49,019,053 square meters shall be in Categories 613/615 and not more than 49,019,053 square meters shall be in Category 614.
617	30,400,308 square meters.
619	12,903,804 square meters.
620	12,759,104 square meters.
625/626/627/628/629	23,078,445 square meters of which not more than 17,564,156 square meters shall be in Category 625.
Group II	
237, 331pt.[7], 332–348, 351, 352, 359pt.[8], 433–438, 440, 442–448, 459pt.[9], 631pt.[10], 633–648, 651, 652, 659–H [11], 659pt.[12], 845, 846 and 852, as a group	477,314,603 square meters equivalent.
Sublevels in Group II	
334/634	1,086,218 dozen.
335/635	895,186 dozen.
336/636	577,905 dozen.
338/339	2,801,379 dozen.
340	532,949 dozen.
341/641	1,258,348 dozen.
342/642	1,095,502 dozen.
345	538,719 dozen.
347/348	1,386,349 dozen.
351/651	425,302 dozen.
433	11,591 dozen.
434	14,953 dozen.
435	67,943 dozen.
438	22,428 dozen.
442	26,045 dozen.
638/639	3,339,939 dozen.
640	919,104 dozen.
645/646	557,035 dozen.
647/648	1,989,414 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 301–O: only HTS numbers 5205.21.0020, 5205.21.0090, 5205.22.0020, 5205.22.0090, 5205.23.0020, 5205.23.0090, 5205.24.0020, 5205.24.0090, 5205.26.0020, 5205.26.0090, 5205.27.0020, 5205.27.0090, 5205.28.0020, 5205.28.0090, 5205.41.0020, 5205.41.0090, 5205.42.0020, 5205.42.0090, 5205.43.0020, 5205.43.0090, 5205.44.0020, 5205.44.0090, 5205.46.0020, 5205.46.0090, 5205.47.0020, 5205.47.0090, 5205.48.0020 and 5205.48.0090.

[3] Category 314–O: all HTS numbers except 5209.51.6015.

[4] Category 315–O: all HTS numbers except 5208.52.4055.

[5] Category 317–O: all HTS numbers except 5208.59.2085; Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[6] Category 604–A: only HTS number 5509.32.0000.

[7] Categories 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.

[8] 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.

[9] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[10] 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.

[11] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[12] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 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.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–26429 Filed 10–17–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Requested

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. 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 burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 19, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Program Integration) Legal Policy, ATTN: Lt Col Patrick Lindemann, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (703) 697–3387.

Title, Associated form, and OMB Control Number: Involuntary Allotment Application; DD Form 2653, OMB Control Number 0704–0367.

Needs and Uses: This information collection requirement is necessary to initiate an involuntary allotment from the pay of a member of the Uniformed Services for indebtedness owed a third party under 5 U.S.C. 5520a. 5 U.S.C. 5520a authorizes involuntary allotments if there is a final court judgment acknowledging the debt and it is determined by competent military or executive authority to be in compliance with the procedural requirements of the Soldiers' and Sailors' Civil Relief Act. In order to satisfy these statutory requirements, the DD Form 2653, requires the respondent to provide identifying information on the member of the Uniformed Services; provide a certified copy of the judgment, and certify, if applicable, that the judgment complies with the Soldiers' and Sailors' Civil Relief Act.

Affected Public: Individuals or households; businesses or other for profit.

Annual Burden Hours: 4,650.

Number of Respondents: 9,300.

Responses Per Respondent: 1.

Average Burden Per Response: 30 minutes.

Frequency: On Occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This information is used by the Department of Defense to initiate an involuntary allotment from the pay of a member of the Uniformed Services for indebtedness owed a third party as determined by the final judgment of a court.

This requirement was created by ''The Hatch Act Reform amendments of 1993,'' Pub. L. 103–94. The DD Form 2653, ''Involuntary Allotment Application,'' requires the creditor to provide identifying information on the member of the Uniformed Services, provide a certified copy of the judgment, and certify that the members' rights under the Soldiers' and Sailors' Civil Relief Act were protected.

Dated: October 6, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–26334 Filed 10–17–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board Meeting

AGENCY: National Defense University, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of a forthcoming meeting of the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Secretary concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Pub. L. 102–183, as amended.

DATES: October 31, 2003.

ADDRESSES: The Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Deputy Director, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn, Virginia 22209–2248; (703) 696–1991. Electronic mail address: *colliere@ndu.edu.*

SUPPLEMENTARY INFORMATION: The Board meeting is open to the Public.

Dated: September 26, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–26335 Filed 10–17–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Brown v. Board of Education 50th Anniversary Commission; Meeting

AGENCY: Brown v. Board of Education 50th Anniversary Commission, U.S. Department of Education (ED).

ACTION: Notice of meeting.

SUMMARY: This notice provides the schedule of a forthcoming meeting of the Brown v. Board of Education 50th Anniversary Commission. This notice also describes the functions of the commission. This document is intended to notify the general public of their opportunity to attend.

DATE AND TIME: October 30, 2003, at 8:30 a.m.

ADDRESSES: Hotel du Pont, 11th & Market Streets, Wilmington, Delaware, (800) 441–9019.

FOR FURTHER INFORMATION CONTACT: Mary McPhail, Attorney, 330 C Street SW., Washington, DC 20202, (202) 205–9529.

SUPPLEMENTARY INFORMATION: The Brown v. Board of Education 50th Anniversary Commission is established under Pub. L. 107–41 to commemorate the 50th anniversary of the Brown decision. The Commission, in conjunction with the U.S. Department of Education, is responsible for planning and coordinating public education activities and initiatives. Also, the Commission, in cooperation with the Brown Foundation for Educational Equity, Excellence, and Research in Topeka, Kansas, and such other public or private entities as the Commission deems appropriate, is responsible for encouraging, planning, developing, and coordinating observances of the anniversary of the Brown decision. The meeting of the Commission is open to the public. Individuals who will need accommodations for a disability in order to attend the meeting (i.e. interpreting services, assistive listening devices, materials in alternative format) should notify Mary McPhail at (202) 205–9529 by no later than October 24, 2003. We will attempt to meet requests after that date, but cannot guarantee availability.

Dated: October 15, 2003.

Gerald A. Reynolds,

Assistant Secretary for Civil Rights.

[FR Doc. 03–26260 Filed 10–17–03; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Senior Executive Service; Performance Review Board

AGENCY: Department of Energy.

ACTION: Designation of Performance Review Board Chair.

SUMMARY: This notice provides the Performance Review Board Chair designee for the Department of Energy.

EFFECTIVE DATE: This appointment is effective as of September 30, 2003.

James T. Campbell.

Issued in Washington, DC, on October 10, 2003.

Claudia A. Cross,

Chief Human Capital Officer/Director, Office of Human Resources Management.

[FR Doc. 03–26401 Filed 10–17–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Senior Executive Service; Performance Review Board

AGENCY: Department of Energy.

ACTION: SES Performance Review Board Standing Register.

SUMMARY: This notice provides the Performance Review Board Standing Register for the Department of Energy. This listing supersedes all previously published lists of PRB members.

EFFECTIVE DATE: These appointments are effective as of September 30, 2003.

ACKERLY, LAWRENCE R
ALLISON, JEFFREY M
ANDERSON, CHARLES E
ANDERSON, MARGOT H
ANGULO, VERONICA A
AOKI, STEVEN NMN
ARKIN, RICHARD W
ARTHUR III, WILLIAM JOHN
ASCANIO, XAVIER NMN
BACA, FRANK A
BACA, MARK C
BAILEY JR, LAWRENCE O
BAJURA, RITA A
BAKER, KENNETH E
BALLARD, WILLIAM W
BARKER JR, WILLIAM L
BASHISTA, JOHN R
BAUER, CARL O
BECK, DAVID E
BECKETT, THOMAS H
BEECY, DAVID J
BESERRA, FRANK J
BIELAN, DOUGLAS J
BIENIAWSKI, ANDREW J
BILSON, HELEN E
BLACK, RICHARD L
BLACK, STEVEN K
BLACKWOOD, EDWARD B
BLADOW, JOEL K
BOARDMAN, KAREN L
BORCHARDT, CHARLES A
BORGSTROM, CAROL M
BORGSTROM, HOWARD G
BOWMAN, GERALD C
BOYD, GERALD G
BRADEN JR, ROBERT C
BRADLEY, SAMUEL M
BRENDLINGER, TERRY L
BREWER, ROBERT H
BREZNAY, GEORGE B
BROCOUM, STEPHAN J
BRODMAN, JOHN R
BROMBERG, KENNETH M
BRONSTEIN, ELI B
BROWN III, ROBERT J
BROWN, RICHARD D
BRUMLEY, WILLIAM J
BUBAR, PATRICE M
BURNS, ALLEN L
BURROWS, CHARLES W
BUTLER, JEROME M
BUTLER, ROGER A
CAMPBELL, ELIZABETH E
CAMPBELL, JAMES THOMAS
CARABETTA, RALPH A
CARAVELLI, JOHN M
CARDINALI, HENRY A
CAREY JR, ROBERT H
CARLSON, JOHN T
CARLSON, KATHLEEN ANN
CARY, STEVEN V
CAVANAGH, JAMES J
CHACEY, KENNETH A
CHALK, STEVEN G
CHANEY, KIMBERLY A HAYES
CHUN, SUN W
CLARK, JOHN R
COBURN, LEONARD L
COMBS, MARSHALL O
CONOVER, DAVID W
CONTI, JOHN J
COOK, JOHN S
COREY, RAY J
COSTLOW, BRIAN D
COWAN, GWENDOLYN S
CRAIG JR, JACK R
CRANDALL, DAVID H
CRAWFORD, DAVID W
CROSS, CLAUDIA A
CROWE, RICHARD C
CUMESTY, EDWARD G
CURTIS, JAMES H
CYGELMAN, ANDRE I
D'AGOSTINO, THOMAS PAUL
DAVIES, NELIA A
DE LORENZO, RALPH H
DECKER, JAMES F
DEDIK, PATRICIA NMN
DEGRASSE JR, ROBERT W
DEHMER, PATRICIA M
DEHORATIIS JR, GUIDO NMN
DEIHL, MICHAEL A
DELWICHE, GREGORY K
DEMKO, JOSEPH C
DENNISON, WILLIAM J
DER, VICTOR K
DEVER, GERTRUDE L
DIFIGLIO, CARMEN NMN
DIXON, ROBERT K
DOBRIANSKY, LARISA E
DOGGETT, FREDERICK D
DOOLEY III, GEORGE J
DURNAN, DENIS D
DYER, J RUSSELL
EDMONDSON, JOHN J
EGGER, MARY H
ELWOOD, JERRY W
ERICKSON, LEIF NMN
ERICKSON, RALPH E
ERRINGTON, GORDON V
ESVELT, TERENCE G
EVANS, KAREN S
FAULKNER, DOUGLAS L
FIORE, JAMES J
FITZGERALD, CHERYL P
FOLEY, KATHLEEN Y
FOWLER, JENNIFER JOHNSON
FRANKLIN, CHARLES ANSON
FRAZIER, MARVIN E
FREI, MARK W
FRESCO, MARYANN E
FRYBERGER, TERESA A
FYGI, ERIC J
GALE, BARRY G
GARCIA, MARVIN L
GARLAND, ROBERT W
GARRISH, THEODORE J
GARSON, HENRY K
GEBUS, GEORGE R
GERRARD, JOHN E
GIBSON JR, WILLIAM C
GILBERTSON, MARK A
GINSBERG, MARK B
GLENN, DANIEL E
GLOTFELTY, JAMES W
GOLAN, PAUL M
GOLDSMITH, ROBERT NMN
GOLLOMP, LAWRENCE A
GOODRUM, WILLIAM S
GORDON-HAGERTY, LISA E
GOTTLIEB, PAUL A
GREENBERG, RAYMOND F
GREENWOOD, JOHNNIE D
GRESHAM, LARRY M
GROSE, AMY E
GROSS, THOMAS J
GRUENSPECHT, HOWARD K
GUEVARA, ARNOLD E
GUNN JR, MARVIN E
HACSKAYLO, MICHAEL S
HAFNER, STEVEN C
HANSEN, CHARLES A
HARDIN, MICHAEL G
HARDWICK JR, RAYMOND J
HARRIS, ROBERT J
HARTMAN, JAMES K
HARTMAN, JOHN R
HARVEY, JOHN R
HARVEY, TOBIN K
HASS, RICKEY R
HAWTHORNE, JOAN GATES
HEADLEY, LARRY C
HENDERSON, SHANNON D
HIBBITTS JR, HOWARD D
HICKOK, STEVEN G
HILL, DAVID R
HIRAHARA, JAMES S
HODSON, PATRICIA J
HOLLAND, MICHAEL D
HOLLANDER, MARC S
HOLLOWELL, BETTY L N
HOOD, ROBERT R
HOPF, RICHARD H
HUIZENGA, DAVID G
HUNEMULLER, MAUREEN A
HUTZLER, MARY JEAN

IZELL, KATHY D
JAFFE, HAROLD NMN
JENKINS, ROBERT G
JOHNSON, FREDERICK M
JOHNSON, MILTON D
JOHNSON, OWEN B
JOHNSON, ROBERT SHANE
JOHNSON, SANDRA L
JOHNSTON, MARC NMN
JONES, C RICK
JONES, HERBERT M
JORDAN, ROBERT R
JORDAN, ROSALIE M
JOSEPH, ANTIONETTE GRAYSO
JUAREZ, LIOVA D
JUCKETT, DONALD A
KAEMPF, DOUGLAS E
KANE, MICHAEL C
KELLIHER, JOSEPH T
KENNEDY, JOHN P
KERSTEN, JOHN H
KESELBURG, JAMES D
KESSLER, ELIZABETH A
KIGHT, GENE H
KILGORE, WEBSTER C
KILPATRICK, MICHAEL A
KIRKENDALL, NANCY J
KIRKMAN, LARRY D
KLEIN, KEITH A
KNIPP, ROBERT M
KNOX, ERIC K
KOLB, INGRID A C
KOLEVAR, KEVIN M
KONOPNICKI, THAD T
KOTEK, JOHN F
KOUTS, CHRISTOPHER A
KOVAR, DENNIS G
KRUGER, PAUL W
LAMBERT, JAMES B
LANGE, ROBERT G
LANTHRUM, J GARY
LAWRENCE, ANDREW C
LAZOR, JOHN D
LEE, STEVEN NMN
LEHMAN, DANIEL R
LERSTEN, CYNTHIA A
LEVIN JR, WILLIAM B
LEWIS III, CHARLES B
LEWIS JR, WILLIAM A
LEWIS, ROGER A
LOPATTO, JEANNE T
LOWE, OWEN W
LUCZAK, JOANN H
MADDOX, MARK R
MAGWOOD IV, WILLIAM D
MAHALEY, JOSEPH S
MAHARAY, WILLIAM S
MAHER, MARK W
MALE, BARBARA D
MALOSH, GEORGE J
MANGENO, JAMES J
MANN, THOMAS O
MARCUS, GAIL H
MARKEL JR, KENNETH E
MARKS JR, DAVID L
MARLAY, ROBERT C
MARMOLEJOS, POLI A
MASTERSON, MARY A
MC CABE, MICHAEL J
MCCLOUD, FLOYD R
MCCORMICK, MATTHEW S
MCCRACKEN, STEPHEN H
MCKEE, BARBARA N
MCKENZIE, JOHN M
MCMONIGLE, JOSEPH P
MCMULLAN, ROBERT L
MCRAE, JAMES BENNETT
MEEKS, TIMOTHY J
MELLINGTON, SUZANNE P
MEYER, CHARLES E
MICHELSEN, STEPHEN J
MILLER, CLARENCE L
MILLER, DEBORAH C
MILLHONE, JOHN P
MILNER, RONALD A
MIOTLA, DENNIS M
MONETTE, DEBORAH D
MONHART, JANE L
MOORER, RICHARD F
MORRELL, PAUL CHARLES
MOSQUERA, JAMES P
MOURNIGHAN, STEPHEN D
MUELLER, TROY J
MURPHIE, WILLIAM E
MURPHY, ALICE Q
NAPLES, ELMER M
NEALY, CARSON L
NEWELL, JOHN D
NOLAN, ELIZABETH A
NORMAN, PAUL E
NULTON, JOHN D
O BRIEN, BETSY K
O'DONOVAN, KEVIN M
O'FALLON, JOHN R
OLINGER, SHIRLEY J
OLIVER, LAWRENCE R
OLIVER, STEPHEN R
OLSON, DEAN G
OOSTERMAN, CARL H
OSHEIM, ELIZABETH L
OTT, MERRIE CHRISTINE
OWEN, MICHAEL W
OWENDOFF, JAMES M
OWENS, KAREN A
PARKS JR, WILLIAM P
PARNES, SANFORD J
PATRINOS, ARISTIDES A
PEARSON, ORIN F
PEASE, HARRISON G
PENRY, JUDITH M
PERIN, STEPHEN G
PETERSON, BRADLEY A
PETTENGILL, HARRY J
PIPER II, LLOYD L
PODONSKY, GLENN S
POE, ROBERT W
POWERS, JAMES G
POWERS, KENNETH W
PRICE JR, ROBERT S
PROVENCHER, RICHARD B
PRZYBYLEK, CHARLES S
PRZYSUCHA, JOHN L
PUMPHREY, DAVID L
RAPUANO, KENNETH P
REED, CRAIG R
RHODERICK, JAY E
RICHARDS, STEPHEN R
RICHARDSON, HERBERT NMN
RISPOLI, JAMES A
ROACH, RANDY A
ROBERTS, MICHAEL NMN
ROBISON, SALLY A
RODEHEAVER, THOMAS N
RODEKOHR, MARK E
RODGERS, STEPHEN J
RODIN, LAURA M
ROLLOW, THOMAS A
ROSEN, SIMON PETER
RUDINS, GEORGE NMN
RUSSO, FRANK B
RYDER, THOMAS S
SALM, PHILIP E
SALMON, JEFFREY T
SATO, WALTER N
SCHEPENS, ROY J
SCHLARMAN, GLENN R
SCHMITT, EUGENE C
SCHMITT, WILLIAM A
SCHNAPP, ROBERT M
SCHOENBAUER, MARTIN J
SCHWEITZER, ERIC A
SCHWIER, JEAN F
SCOTT, BRUCE B
SCOTT, RANDAL S
SELLERS, ELIZABETH D
SHAGES, JOHN D
SHARPLEY, CHRISTOPHER R
SHAW, JOHN S
SHEARER, ELIZABETH L
SHEPPARD, CATHERINE M
SHERMAN, HELEN O
SIGAL, JILL L
SILBERGLEID, STEVEN A
SIMPSON, CHRISTOPHER NMN
SIMPSON, EDWARD R
SINGER, MARVIN I
SISKIN, EDWARD J
SITZER, SCOTT B
SKUBEL, STEPHEN C
SLUTZ, JAMES A
SMITH, ALAN C
SMITH, ALEXANDRA B
SMITH, DENISE H
SMITH, STEPHEN M
SNIDER, LINDA J
SOHINKI, STEPHEN M
SOLICH, DONALD J
STAFFIN, ROBIN NMN
STALLMAN, ROBERT M
STARK, RICHARD M
STEVENS, WALTER J
STONE, BARBARA R
STRAKEY JR, JOSEPH P
STRAUSS, NEAL J
SULLIVAN, DANIEL J
SULLIVAN, JOHN R
SWAILES, JOHN H
SWIFT, JUSTIN R
SWINK, DENISE F
SYLVESTER, WILLIAM G
TABOAS, ANIBAL L
TAVARES, ANTONIO F
TAYLOR, WILLIAM J
TEDROW, RICHARD T
TORKOS, THOMAS M
TRAUTMAN, STEPHEN J
TRIAY, INES R
TURI, JAMES A
TURNER, CLARKE D
TURNER, JAMES M
UNDERWOOD, WILLIAM R
VAGTS, KENNETH A
VALDEZ, WILLIAM J
VANZANDT, VICKIE A
VIETH, JILL SCHROEDER
WAGNER, M PATRICE
WAHLQUIST, EARL J
WAISLEY, SANDRA L
WALLACE, TERRY L
WALSH, ROBERT J
WARNICK, WALTER L
WARTHER, ROBERT F
WEEDALL, MICHAEL J
WEIS, MICHAEL J
WHITAKER JR, MARK B
WIEKER, THOMAS L
WILCHER, LARRY D
WILKEN, DANIEL H

WILLIAMS, ALICE C
WILLIAMS, MARK H
WILLIAMS, RICHARD N
WILLINGHAM JR, FRANK M
WILLIS, JOHN W
WILMOT, EDWIN L
WORTHINGTON, PATRICIA R
WRIGHT, STEPHEN J
WUNDERLICH, ROBERT C
YUAN-SOO HOO, CAMILLE C
ZAMORSKI, MICHAEL J
ZIEGLER, JOSEPH D
ZIESING, ROLF F

Issued in Washington, DC on October 14, 2003.

Claudia A. Cross,

Chief Human Capital Officer/Director, Office of Human Resources Management.

[FR Doc. 03–26402 Filed 10–17–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0171, FRL–7576–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; Recordkeeping and Reporting Requirements Regarding the Sulfur Content of Motor Vehicle Gasoline Under the Tier 2 Rule, EPA ICR Number 1907.02, OMB Control Number 20 2060–0437

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 continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for renewal of an existing approved collection. This ICR is scheduled to expire on 1/31/04. 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 19, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2003–0171, to EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Air and Radiation Docket, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Marilyn Bennett, Office of Transportation and Air Quality, Mail Code 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8989; fax number: (202) 565–2085; e-mail address: *bennett.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2003–0171, which is available for public viewing at the Office of Air and Radiation 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 Air and Radiation Docket is (202) 566–1742. 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 those who manufacture, import, distribute and sell gasoline.

Title: Recordkeeping and Reporting Requirements Regarding the Sulfur Content of Motor Vehicle Gasoline Under the Tier 2 Rule.

Abstract: The requirements covered under this ICR are included in the final Tier 2 rule, published on the February 10, 2000 (65 FR 6698). A minor additional ICR requirement was added to the Tier 2 rule on June 12, 2002 (67 FR 40169).

The scope of the recordkeeping and reporting requirements for each type of party (*e.g.*, refiners, importers, distributors, or retailers of gasoline), and therefore the cost to that party, reflects the party's opportunity to create, control or alter the sulfur content of gasoline. As a result, refiners and importers have significant requirements, which are necessary both for their own tracking and that of downstream parties, and for EPA enforcement, while parties downstream from the gasoline production or import point, such as retailers, have minimal burdens under the rule. Many of the reporting and recordkeeping requirements for refiners and importers regarding the sulfur content of gasoline on which the Tier 2 sulfur program relies currently exist under EPA's reformulated gasoline (RFG) and conventional gasoline (CG) anti-dumping programs. The ICR for the RFG/CG programs covered the majority of the start-up costs associated with the reporting of gasoline sulfur content. Consequently, much of the cost associated with the sulfur-control requirements under the sulfur program has already been accounted for under the ICR for the RFG/CG programs.

The information under this ICR will be collected by EPA's Transportation and Regional Programs Division, Office of Transportation and Air Quality, Office of Air and Radiation (OAR), and by EPA's Air Enforcement Division, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance (OECA). The information collected will be used by EPA to evaluate compliance with the gasoline sulfur control requirements under the Tier 2 rule. This oversight by EPA is necessary to ensure attainment of the air quality goals of the Tier 2 program. Proprietary information will be submitted by refiners and importers for demonstrating compliance with the sulfur standards, and for establishing baseline sulfur levels under the credit trading and hardship programs associated with the rule. Confidentiality is handled in accordance with the Freedom of Information Act and EPA regulations at 40 CFR part 2. 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 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: For the early years of the Tier 2 gasoline sulfur program (to December 31, 2003), EPA estimated a total of 192,063 responses, a total annual burden of 12,532 hours, and a total annual cost of $325,702 to industry. This estimate includes the initial burden associated with learning and adapting to the new requirements. Most of the burdens associated with the early years of the program relate to applications for various hardship provisions and the generation of early credits, which will not be applicable after 2004.

The standards for gasoline sulfur become effective beginning January 1, 2004. Compliance with these standards requires some additional testing and reporting beyond that required under the RFG/CG programs. The most significant increase in the testing and reporting burden is due to the requirement that refiners and importers test and report every batch of gasoline for compliance with the sulfur standards. Currently, all refiners and importers of RFG are required to test and report every batch of RFG; however, refiners and importers of conventional gasoline currently are allowed to composite samples for purposes of demonstrating compliance with the CG anti-dumping regulations. EPA estimates that the annual burden on refiners associated with this every batch testing/reporting requirement will be about one hour per response per refiner, and 400 responses per year per refiner. There are about 75 refiners that will be affected by this requirement. For importers, the burden will be one hour per response per importer, and 27 responses per year per importer. About 30 importers will be affected by this requirement. The cost associated with this burden for refiners will depend on whether the refiner uses its own testing equipment or uses an independent laboratory. Most importers will use an independent laboratory. The estimated annual cost is $24,800 for refiners that use their own equipment and $29,600 for refiners that use an independent laboratory. The estimated annual cost for importers is $1,998. There are some additional modest burdens and costs for refiners and importers associated with this rule. Some of these burdens are related to additional information regarding sulfur content required on annual reports currently being submitted to EPA under the RFG/CG programs. Several of the additional burdens are related to various hardship or other flexibility provisions provided in the rule. There are also some modest burdens on terminals and pipelines associated with this rule due to additional Q/A testing requirements. Beginning in 2004, EPA estimates there will be a total of about 2,536 annual responses, a total annual average burden of 38,742 hours, and a total annual cost of $2,405,355 to industry. There are no capital and start-up costs or operation and maintenance costs associated with this rule. 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: October 14, 2003.

David J. Kortum,

Acting Director, Transportation and Regional Programs Division.

[FR Doc. 03–26410 Filed 10–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2003–0023; FRL–7576–1]

Hazardous Waste Management System: Petroleum Refining Process Wastes; Identification of Characteristically Hazardous Self-Heating Solids; Land Disposal Restrictions: Treatment Standards for Spent Hydrorefining Catalyst (K172) Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: This notice of data availability (NODA) makes available to the public certain analytical data pertaining to the polyaromatic hydrocarbon (PAH) content of spent hydrorefining catalyst from petroleum refining operations (K172). These analytical data are contained in a petition for rulemaking (petition) submitted to EPA by the Vanadium Producers and Reclaimers Association (VPRA), formerly known as the Ferroalloys Association (TFA). The data were submitted by the petitioner to support its request that EPA amend the land disposal restriction (LDR) treatment standards for the K172 listed waste. The VPRA petition also asserted that K171 and K172 wastes are often being landfilled without being decharacterized for their ignitability/reactivity potential. Therefore, this notice provides information supporting the petitioner's assertions and requests comment and submittal of any additional relevant documentation. At this time, EPA is requesting comment only on the analytical data for K172 and information supporting VPRA's concerns about characteristically hazardous solids. The Agency is not proposing any rule changes in today's notice, and any future action the Agency takes in response to the VPRA petition will be noticed in a subsequent **Federal Register**.

DATES: Submit comments on or before December 4, 2003. Comments postmarked after this date will be marked ''late'' and may not be considered.

ADDRESSES: You may view the supporting materials for this NODA in the EPA Docket Center (EPA/DC), Room B102, EPA West, 1301 Constitution Avenue, NW., Washington, DC. The docket number is RCRA–2003–0023. The EPA/DC is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. Copies cost $0.15 per page. For information on

accessing an electronic copy of the treatability study and peer review documents, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial (703) 412–9810 or TDD (703) 412–3323 (hearing impaired). The RCRA Call Center is open Monday–Friday, 9 a.m. to 5 p.m., Eastern Standard Time. For more information on specific aspects of this NODA, contact Ross Elliott at (703) 308–8748, *elliott.ross@epa.gov,* or write him at the Office of Solid Waste, Mail Code 5304W, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

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I. General Information

A. 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 Number: RCRA–2003–0023. 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 for which disclosure is restricted by statute. The official public docket is the collection of materials that are available for public viewing at the OSWER Docket in the EPA Docket Center, Room B102, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270. Copies cost $0.15/page.

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/*, and you can make comments on this proposed rule at the federal e-rulemaking portal, *http://www.regulations.gov.*

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 or 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 EPA Docket Center facility identified above. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Docket. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. 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.A.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. 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 EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. How and to Whom Do I Submit Comments?

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

1. Electronically

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any

identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

EPA Dockets—Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <*http://www.epa.gov/edocket,*> and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID Number RCRA–2003–0023. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

E-mail—Comments may be sent by electronic mail (e-mail) to ''rcra-docket@epamail.epa.gov'', Attention Docket ID Number RCRA–2003–0023. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. By Mail

Send your comments to: OSWER Docket, EPA Docket Center, Mailcode: 5305T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID Number RCRA–2003–0023.

3. By Hand Delivery or Courier

Deliver your comments to: Environmental Protection Agency, EPA Docket Center, Room B102, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID Number RCRA–2003–0023. Such deliveries are only accepted during the Docket's normal hours of operation as identified above.

4. By Facsimile

Fax your comments to: (202) 566–0272, Attention Docket ID Number RCRA–2003–0023.

C. How Should I Submit Confidential Business Information (CBI) to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. RCRA–2003–0023. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. What Did VPRA Petition the EPA To Change?

Pursuant to 40 CFR 260.20, VPRA submitted a rulemaking petition to the EPA (a copy of which is included in the Docket to today's notice) which requests that the Agency amend the hazardous waste regulations as follows:

1. Amend the LDR treatment standards for K171 and K172 spent catalysts by requiring prescriptive technology-based treatment standards, such as (1) recycling and metals recovery, or (2) oxidation and stabilization to address landfilling of catalyst with untreated PAHs and self-heating characteristics; and, if the process for requiring prescriptive LDRs is expected to take a considerable amount of time, amend the LDR treatment standards for K172 to add numerical (concentration-based) standards for PAHs to be consistent with the K171 standards in the interim period; and

2. Clarify that the hazardous oil-bearing secondary material exclusion (40 CFR 261.4(a)(12)(i)) does not apply to K171 and K172 catalysts; or amend the F037 LDR treatment standards by adding vanadium, arsenic and antimony to be consistent with the K171 and K172 standards.

III. What Is the Purpose of This NODA?

Today's notice presents analytical data contained in VPRA's petition pertaining to six samples of spent hydrorefining catalyst (K172) collected and analyzed by VPRA from various refineries located in the U.S. The data represents the concentration of PAHs contained in the VPRA samples to show that PAHs do exist in K172. The original data collected and analyzed by EPA presented in the supporting documents to the *1998 Final Rule for Petroleum Refining Process Wastes* (''Petroleum Refinery Rule'') (63 FR 42110, August 6, 1998) indicated that detectable levels of PAHs did not exist in K172.

This notice also presents information provided by the petitioner regarding the decharacterization of K171 and K172 for ignitability/reactivity potential prior to

landfill disposal, and solicits comments on this data as well as submission of other data relevant to this topic.

IV. What Is the VPRA Petition?

A. Who Is VPRA?

The Vanadium Producers and Reclaimers Association (VPRA, formerly known as The Ferroalloys Association or TFA) represents the following five member companies: Bear Metallurgical Company, C.S. Metals of Louisiana, Gulf Chemical & Metallurgical Corporation, Shieldalloy Metallurgical Corporation and Strategic Minerals Corporation. VPRA initially submitted the rulemaking petition on August 1, 2001, but provided supplementary information on April 3, 2002, May 28, 2003, July 10, 2003, and July 14, 2003.

B. What Is VPRA Petitioning EPA To Do?

VPRA is petitioning EPA to amend several alleged deficiencies in the LDR treatment standards for K172 and F037 as established in the Petroleum Refinery Rule. The petition states that the correction of these deficiencies will prevent the mismanagement of spent catalyst and will result in increased recycling to recover metal resources. The petition maintains that the combination of the lack of LDR treatment standards for PAHs in K172 and the lack of effective guidance for identifying and treating waste that exhibits the ignitability or reactivity characteristics has caused increased landfilling of spent catalyst since the Petroleum Refinery Rule was promulgated in August 1998.

C. What Is the Basis for the Petitioner's Amendment of the LDR Treatment Standards for K172?

The basis for the petitioner's request for amending the LDR treatment standards for K172 is that PAHs are not included in list of constituents requiring treatment prior to disposal. In addition to several organic and inorganic constituents included in the K172 LDR treatment standards (*see* 63 FR 42187), a prescriptive standard of deactivation was established for reactive sulfides. The petitioner asserts that PAHs were not included in the K172 LDR treatment standards because the original samples collected by EPA were not properly characterized as spent hydrorefining catalyst (which is now listed as K172). The data presented in VPRA's petition for K172 spent catalysts are new data collected and analyzed after the K172 wastes were listed. The petitioner argues that these data demonstrate that PAHs are present in the majority of the K172 samples above the LDR treatment standards. The samples were classified by the petitioner based on the guidance provided by EPA in the original rule and in the *Dual Purpose Reactor Notice.* (*See* May 8, 2002 **Federal Register**; 67 FR 30811.) The petitioner also relied on interviews with industry personnel familiar with the processes from which the samples originated and on general refining industry knowledge.

The petitioner also raised concern with the adequate treatment of the reactivity and self-heating properties of both K171 and K172 spent catalysts. This issue is discussed in more detail below.

D. What Are the Analytical Data Results for K172 Presented in the Petition?

The analytical data for K172 submitted by the petitioner are located in Table 1 below and in Exhibit B of the original petition, entitled *Determination of Treatment Methods used by the Hazardous Waste Industry for Spent Hydroprocessing Catalyst K171/K172,* Scherger Associates, May 2001 (hereinafter the ''Scherger Report'') and in the *Supplement to Petition for Rulemaking,* April 3, 2002. The original and supplemental petitions are included in the docket for today's notice.

TABLE 1.—VPRA ANALYTICAL DATA RESULTS FOR K172 (PAH RESULTS IN MG/KG)

	Sample ID													
	C[1,2]	D[1,2]	E[3]	M[4]	N[5]	W1[6]	W2[6]	W3[6]	W4[6]	W5[6]	W6[6]	W7[6]	W8[6]	Ex.A[7]
Benz(a)anthracene	<33	<32.8	<0.33	<50.0	<1.3	<3.27	<3.25	<3.28	<3.26	<3.30	<3.31	<3.29	<3.32	<26
Chrysene	<33	<32.8	<0.33	<50.0	3.0	<3.27	<3.25	<3.28	<3.26	<3.30	<3.31	<3.29	<3.32	**13 J**
Napthalene	<33	<32.8	0.485	**50 J**	**7.4**	<3.27	<3.25	<3.28	<3.26	<3.30	<3.31	<3.29	<3.32	<26
Phenanthrene	<33	<32.8	<0.33	**50 J**	**41.0**	<3.27	<3.25	**6.56**	<3.26	**5.58**	**5.62**	<3.29	<3.32	**150**
Pyrene	<33	<32.8	<0.33	**50 J**	**17.0**	<3.27	<3.25	<3.28	<3.26	<3.30	<3.31	<3.29	<3.32	**38**

Bold indicates that the maximum concentration in any one sample meets or exceeds Universal Treatment Standards (UTS—see 40 CFR 268.48). Notes below reproduced from petition.
[1] The sample extract could not be concentrated to the normal final volume. This results in elevated practical reporting limit.
[2] Sample was diluted due to high concentrations of non-target compounds.
[3] Internal standard and surrogate failure attributed to matrix interference based on review of chromatogram.
[4] Sample diluted 150 to 1 due to matrix and presence of many compounds; J means detected between the MDL (Method Detection Limit) (0.33 mg/kg) and the PQL (Practical Quantitation Limit) (50.0 mg/kg).
[5] Sample diluted 4:1 and 20:1 due to the presence of numerous target compounds including acenaphthene, fluoranthene, fluorene in addition to LDR PAH compounds.
[6] These sample extracts could not be concentrated to the normal final volume. This results in elevated practical reporting limit.
[7] Sample from ''Exhibit A'' of Supplemental Petition dated April 3, 2002. (J = estimated value between the MDL and the PQL.)

V. Reactivity and Ignitability Concerns With K171 and K172

A. What Are the Petitioner's Concerns With K171 and K172 Ignitability/ Reactivity?

VPRA asserts that K171 and K172 are not being adequately decharacterized with regard to the ignitability and reactivity hazardous characteristics (40 CFR 261.21(a)(2) and 261.23(a)(5), respectively), but are nonetheless being landfilled. In the Petroleum Refinery Rule, EPA identified the self-heating properties of this catalyst, and the potential formation of hydrogen sulfide gas from metal sulfides formed in the catalyst during use, as posing ignitability concerns (D001) and reactivity concerns (D003). The petitioner asserts that the existing regulations for identifying and treating (*i.e.*, permanently decharacterizing) characteristic hazardous wastes have proved ineffective in ensuring adequate treatment before disposal, because there is currently no EPA sanctioned test method and regulatory value for identifying ignitable solids or reactive wastes.[1]

Although the Petroleum Refinery Rule established prescriptive LDR treatment standards for K171 and K172 (deactivation for reactive sulfides), the petitioner argues that the lack of test methods or guidance is making waste classification determinations by spent catalyst generators difficult, and is resulting in the land placement of K171 and K172 spent catalysts without proper treatment.

EPA cited ignitability as part of the basis for listing K171 and K172 (40 CFR 261.32), but did not specifically identify the need to treat K171/172 for this

[1] 40 CFR 261.21(a)(2) and 261.23(a)(5) define ignitable waste solids, and reactive cyanide or sulfide wastes, using narrative standards—that is, there are no established tests, with corresponding regulatory trigger values, for identifying these wastes. Identification of these wastes is done by applying the narrative criteria to the waste.

hazardous characteristic. This is because the Agency believed that high temperature thermal treatment would be used to treat for the organic chemicals found in this waste, and that this treatment would also appropriately treat for the ignitability characteristic of the waste (by oxidizing the metal sulfides in the waste; November 20, 1995 **Federal Register**, 60 FR at 57785). However, the petitioner asserts that lower temperature thermal desorption, which does not oxidize the metal sulfides, is the primary mode of organics treatment for K171, and that K172 receives no thermal treatment before landfilling (only solidification/stabilization for metals), because the LDR does not include a requirement to treat for PAHs. Thus, VPRA argues that this results in significant volumes of spent catalyst being land disposed without adequate treatment for ignitability.

VPRA also asserts that changes in industry waste coding practices for these wastes contribute to inadequate identification and decharacterization before disposal. These spent catalysts are currently identified (by the generator) only by their K waste codes, according to the petitioner, and are no longer identified as D001 or D003, as was the previous practice (9 percent of these spent catalysts were being classified as D001 before rule promulgation).[2] VPRA believes that by using only the K codes for waste identification, waste generators are facilitating disposal of spent catalyst without adequate treatment for reactive sulfides (D003) that may be present (as required by the LDR treatment standards for these wastes), or ignitability (D001). (The Agency notes, however, that a review of EPA's 1999 Biennial Reporting System database indicates eighteen refineries reported generating a total of 6,800 tons (20 percent of the total) of hazardous waste coded as D001/D003 in 1999, in addition to the codes reported in the table as K171 or K172.)

The petitioner also asserts via the Scherger Report (p. 7) that spent catalyst receives special handling at petroleum refineries. Specifically, petroleum refineries are reported to routinely have special safety programs for handling spent catalyst and for addressing potential fires or hydrogen sulfide generation, ship spent catalyst in special bins to reduce air contact, and frequently designate spent catalyst under DOT (Department of Transportation) pyrophoric or self-heating designations for hazardous materials. The Scherger Report asserts that landfills treat spent catalyst (by solidification/stabilization treatment) and landfill it soon after its arrival, and if it must be stored before treatment, store it in bins to reduce its air exposure or wet it with water (p. 14). The petitioner asserts that this special handling of the spent catalyst, and DOT designation as pyrophoric, support a conclusion that the spent catalyst is an ignitable hazardous waste being landfilled without proper deactivation treatment.

B. How Can Waste Generators and Treaters Determine Whether Their K171/172 Is Ignitable or Reactive Hazardous Waste?

As discussed in both the proposed and final Petroleum Refinery Rules, a significant finding of the Agency in listing K171/172 was the self-heating potential of these spent catalysts, which would make them ignitable hazardous waste, and their potential to react and emit hydrogen sulfide, which would make them reactive hazardous wastes. 60 FR at 57767; 63 FR at 42154 and 42157. The petitioner has asserted that generators and treaters are having difficulty properly characterizing spent catalyst because EPA has not established a test(s) with numerical criteria for determining whether a waste is ignitable and/or reactive hazardous waste.

The Agency believes that the K171/172 Petroleum Refinery Rule, as well as the original 1980 **Federal Register** discussion promulgating the hazardous characteristics regulations, provide considerable guidance to generators and others for applying the narrative regulatory criteria to this waste in the absence of specific tests. Testing was also an issue in 1980, and the Agency provided generators with the following guidance for identifying reactive hazardous waste:

''The unavailability of suitable test methods for measuring reactivity should not cause problems. Most generators of reactive wastes are aware that their wastes possess this property and require special handling. This is because such wastes are dangerous to the generators' own operations, and are rarely generated from unreactive feedstocks.'' (May 19, 1980 **Federal Register**; 45 FR at 33110).''

While this passage specifically refers to the reactivity characteristic, the Agency believes its logic is equally applicable to classifying non-liquid wastes which may be ignitable under 40 CFR 261.21(a)(2), as discussed in the *Background Document for the Characteristic of Ignitability* (May 2, 1980, p. 42).

In the preamble to the Petroleum Refinery Rule, the Agency documented and described the potential hazards of spent catalyst, as well as several types of special handling precautions for managing spent catalyst. EPA staff studying these wastes observed that some spent catalyst is removed from process units and is immediately placed in air-tight containers (sometimes under an inert gas atmosphere) to prevent self-heating. In collecting catalyst samples to support waste characterization for the listing determination, EPA samplers were twice denied access to inert gas catalyst storage bins, in favor of specially trained refinery sampling personnel, who collected samples under EPA observation. 60 FR at 57767. Spent catalyst being staged for recycling has also been found to be smoking, and occasional fires have been reported. 63 FR at 42154.

The Agency also clarified the role of testing and other information in applying the narrative hazardous characteristic criteria to waste in the absence of a specific test, in a 1997 letter from David Bussard, Director, Hazardous Waste Identification Division to Paul Wallach, Hale and Dorr, LLP, dated August 14, 1997. The letter said, in part:

With regard to the hazardous waste determination, it is the generator's obligation to make a determination. For the hazardous characteristics, this determination is made by evaluating the waste using a required test or by comparing the properties of the waste with the narrative standards. The narrative standard is what is enforced if there is no applicable test that is required by the regulations. For the characteristics of ignitability of solids and reactivity, there is no test method specified as to the operational definition of the characteristic, and we have therefore given reasonable deference to the operational experience of the waste generator or facility. However, we agree with the Region that this is not a blanket shield from consideration of information or test data in the case where there is reason to question the generator's RCRA determination. In fact, in this case, we believe the Region has a reasonable position in that the manufacturers of the catalyst routinely inform users of the

[2] In the *1995 Notice of Proposed Rulemaking for Petroleum Refining Process Wastes*, EPA documented the petroleum refining industry's responses to the RCRA 3007 survey indicating that hydrotreating and hydrorefining spent catalyst wastes exhibit D001 (ignitability), D003 (reactivity), and other hazardous constituent characteristics (primarily D004-arsenic and D018-benzene). See 60 FR at 57785. The survey data showed approximately 9 percent of hydrotreating and hydrorefining residuals as ignitable [513 metric tons (mt) of 5,640 mt total hydrotreating residuals; 1,671 mt of 18,634 mt total hydrorefining residuals]. *See Listing Background Document for the 1992–1996 Petroleum Refining Listing Determination*, October 31, 1995, pages 75 and 88. EPA found that: ''These wastes are routinely managed in thermal processes that destroy organics and thus, leave behind residues free of the ignitable characteristic and other corrosive causing constituents.'' 60 FR at 57785.

potential hazards of the catalyst, that they often advise users to treat the spent catalyst to remove the potential hazard, and that Pfizer's own material safety data sheet (MSDS) indicated that Pfizer considered the material to pose a potential hazard. Given these circumstances, I believe it is totally appropriate for the Region to obtain and consider test information that illustrates the properties of the waste along with other information in determining whether or not this material meets one or more of the narrative standards of the hazardous characteristics.

Much of the information discussed in the preamble to the Petroleum Refinery Rule can be used by waste generators and others to classify spent catalyst appropriately. The Agency also believes that some of the types of information suggested as useful by the Scherger Report are in fact relevant and appropriate to use in this regard. Specifically, the following types of information are relevant and appropriate to use in understanding the properties of spent catalyst for applying the narrative hazardous characteristics definitions at 40 CFR 261.21 and 261.23 to this waste:

—Landfill or other fires attributable to spent catalyst disposal
—Observation of spent catalyst emitting smoke during any phase of waste management
—Transport of spent catalyst with a DOT designation as a pyrophoric or self-heating material, or packaged as required by DOT for materials with this designation
—Failing the DOT test for self-heating material (49 CFR 173.125)
—Information from catalyst new-product MSDS (Material Safety Data Sheet)
—Storage of spent catalyst in special containers or under inert gas such as nitrogen
—Any other management practice intended to, or with no reasonable purpose other than to, limit exposure of waste spent catalyst to the air, such as coating with oil or wetting with water.

Only the first of these waste properties listed above, *landfill or other fires attributable to spent catalyst disposal,* would be sufficient by itself for definitive classification of spent catalyst as an ignitable hazardous waste under 40 CFR 261.21(a)(2). Prevention of landfill fires was one of the underlying reasons for developing an ignitability hazardous characteristic for waste (*see Background Document for the Characteristic of Ignitability,* May 2, 1980, p. 3). Waste generators and others should use the other types of information collectively to make an appropriate determination regarding the ignitable/reactive properties of spent catalysts. Testing data alone are not sufficient to determine waste status (because the Agency has established no such tests to date [3]), but the DOT test may be useful in understanding the properties of the waste. The special handling described in this list is relevant because the Agency assumes that waste generators and transporters would not incur the extra cost of special shipping containers or handling and shipping under inert gas absent the need for these measures to ensure the safety of those workers handling the materials. Given what the Agency knows about the potential hazardous properties of spent catalysts, the Agency presumes that any particular spent catalyst managed under these special conditions would very likely pose significant hazards were it managed as non-ignitable waste. RCRA requires the Agency to regulate as hazardous those wastes which may pose a substantial hazard to human health or the environment when improperly managed. The special management of spent catalyst clearly leads to the conclusion that ''normal'' management of the waste, *e.g.*, in contact with ambient air, poses hazards that RCRA was intended to control by designation of the waste as hazardous.

Disposal of waste spent catalyst that is D001 or D003 hazardous (as determined using the types of information described in the previous paragraphs), which is not decharacterized before disposal, would violate RCRA and its regulations. This may be of particular concern for spent catalyst being sent to a landfill not permitted to manage D001 or D003 wastes.

The Agency solicits from the public any comment on the supporting documentation provided by the petitioner regarding ongoing mismanagement of spent catalyst waste. The Agency also solicits any additional documentary information (as described above) relevant to the potential mismanagement of ignitable spent catalyst that has occurred subsequent to the effective date of the listing determination (February 8, 1999).

What Can You Do To Respond to This NODA?

EPA is seeking comment on the data presented in the VPRA petition regarding PAH concentrations contained in the K172 samples. In particular, we are interested in whether there are other data available on typical concentrations of PAHs in K172 (spent hydrorefining catalysts). In order for any data you submit to be considered by us in making a determination, the data should be collected, transported, and analyzed under the proper quality assurance and quality control protocols as described at *http://www.epa.gov/quality/*. In addition, process information such as a simplified process diagram and the type of feed for the hydroprocessing reactor from which the sample was collected should be provided to verify the sample represents a K172 spent catalyst. We are also seeking comment on the guidance provided in this notice to aid in the identification of D001 ignitable solids.

What Are the Potential Outcomes of This NODA?

The potential outcomes based on the comments and/or data received under this NODA include a proposed rulemaking to revise the numerical LDR treatment standards for K172, and/or to revise technology-based standards for the self-heating properties of K171 and K172. Also, a potential outcome of this NODA is additional clarification for identifying D001 ignitable solids.

Dated: September 30, 2003.

Matt Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 03–26411 Filed 10–17–03; 8:45 am]

BILLING CODE 6560–50–P

[3] The Agency is currently in the process of deleting from SW–846 the 1985 guidance for evaluating waste for sulfide/cyanide reactivity, which was withdrawn from use in 1998.

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 November 13, 2003.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Freedom Bancshares of Southern Missouri, Inc., Cassville, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Freedom Bank of Southern Missouri, Cassville, Missouri.

Board of Governors of the Federal Reserve System, October 14, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–26405 Filed 10–17–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Wednesday, October 22, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Streets, NW., Washington, DC 20551.

STATUS: Open.

We ask that you notify us in advance if you plan to attend the open meeting and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling (202) 452–2474 or you may *register on-line.* You may pre-register until close of business October 21, 2003. You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras; please call (202) 452–2955 for further information.

Privacy Act Notice: Providing the information requested is voluntary; however, failure to provide your name, date of birth, and social security number or passport number may result in denial of entry to the Federal Reserve Board. This information is solicited pursuant to Sections 10 and 11 of the Federal Reserve Act and will be used to facilitate a search of law enforcement databases to confirm that no threat is posed to Board employees or property. It may be disclosed to other persons to evaluate a potential threat. The information also may be provided to law enforcement agencies, courts and others, but only to the extent necessary to investigate or prosecute a violation of law.

MATTERS TO BE CONSIDERED:

Summary Agenda: Because of its routine nature, no discussion of the following item is anticipated. The matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed 2004 Private Sector Adjustment Factor.

Discussion Agenda

2. Proposed revisions to the method for imputing earnings on clearing balance investments.

3. Proposed 2004 fee schedules for priced services and electronic connections.

4. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: October 15, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–26553 Filed 10–16–03; 2:34 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center on Birth Defects and Developmental Disabilities; Meeting

NAME: Newborn Screening for Cystic Fibrosis (CF).

TIMES AND DATES: 8 a.m.–5:30 p.m., November 20, 2003. 7:50 a.m.–4 p.m., November 21, 2003.

PLACE: Renaissance Atlanta Hotel Downtown, 590 West Peachtree Street NW., Atlanta, Georgia 30308–3586, Telephone (404) 881–6000.

STATUS: Open to the public, limited only by the space available.

PURPOSE: The meeting will review the recommendations from the 1997 Newborn Screening for Cystic Fibrosis: A Paradigm for Public Health Genetics Policy Workshop, and will evaluate the current evidence examining the benefits and risks of screening newborns for CF. In addition, the meeting will review the role of screening, diagnostics, and follow-up issues in CF newborn screening decision-making.

MATTERS TO BE DISCUSSED: The agenda will include an overview of newborn screening; the role of evidence based decision-making; the epidemiology and natural history of the disease; a review of the published and unpublished literature assessing the risks and benefits of screening newborns for CF; discussion about grading the evidence; weighting risks and benefits; planning challenges; screening issues; informed consent; diagnostics and sweat testing referrals, linking screening programs with CF centers for care of diagnosed infants; implications for state programs considering screening; communication; costs; and the evidence to support a public health response to CF newborn screening.

Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Scott Grosse, Ph.D., National Center on Birth Defects and Developmental Disabilities, CDC, 1600 Clifton Road, NE, m/s E–87, Atlanta, Georgia 30333, telephone 404/498–3074.

The Director, Management Analysis and Services office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 9, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–26270 Filed 10–17–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0102]

Robert Ray Courtney; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Robert Ray Courtney from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Mr. Courtney was convicted of a felony under Federal law for conduct otherwise relating to the regulation of any drug product under the act. Mr. Courtney failed to request a hearing and, therefore, has waived his opportunity for a hearing concerning this action.

DATES: This order is effective October 20, 2003.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Nicole K. Mueller, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

On February 26, 2002, Mr. Robert Ray Courtney entered into an agreement pleading guilty to eight counts of tampering with consumer products in violation of 18 U.S.C. 1365(a) and (a)(3), and six counts each of misbranding and adulterating drugs in violation of sections 301(k) and 303(a)(2) of the act (21 U.S.C. 331(k) and 333(a)(2)). On December 5, 2002, the U.S. District Court for the Western District of Missouri sentenced Mr. Courtney to the maximum 30 years in prison and required Mr. Courtney to pay a fine of $25,000 and $10.4 million in restitution for diluting drugs he dispensed to his pharmacy customers. Such drugs included the chemotherapy medications Gemzar (gemcitabine) and Taxol (paclitaxel).

At the time of Mr. Courtney's criminal actions, he was a pharmacist and owner of Courtney Pharmacy, Inc., d/b/a Research Medical Tower Pharmacy, a company that operated two pharmacies: Research Medical Tower Pharmacy in Kansas City, MO, and Courtney Pharmacy in Overland Park, KS. Among other things, Mr. Courtney was responsible for mixing, preparing, labeling, and distributing intravenous drug mixtures.

In 2001, the Federal Bureau of Investigations (FBI) and FDA set up an investigation that revealed that certain medications Mr. Courtney dispensed were far less potent than the medications ordered by prescribing physicians. One drug sample contained less than 1 percent of the prescribed amount. The investigation resulted in the filing of a complaint on August 14, 2001, charging Mr. Courtney with adulteration and misbranding. It was eventually determined that more than 4,000 patients may have had their prescriptions diluted by Mr. Courtney over a 10-year period. The investigation and admissions by Mr. Courtney culminated in his guilty plea to all 20 counts of the indictment.

As a result of this conviction, FDA served Mr. Courtney by certified mail on May 16, 2003, a notice proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application. The proposal also offered Mr. Courtney an opportunity for a hearing on the proposal. The proposal was based on a finding, under section 306(a)(2)(B) of the act (21 U.S.C. 335a(a)(2)(B)), that Mr. Courtney was convicted of a felony under Federal law for conduct otherwise relating to the regulation of any drug product under the act. Mr. Courtney was provided 30 days to file objections and request a hearing. Mr. Courtney did not request a hearing. His failure to request a hearing constitutes a waiver of his opportunity for a hearing and a waiver of any contentions concerning his debarment.

II. Findings and Order

Therefore, the Director, Center for Drug Evaluation and Research, under section 306(a)(2)(B) of the act, and under authority delegated to her (21 CFR 5.34), finds that Mr. Robert Ray Courtney has been convicted of a felony under Federal law for conduct otherwise relating to the regulation of any drug product under the act.

As a result of the foregoing finding, Mr. Robert Ray Courtney is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective October 20, 2003 (see sections 306(c)(1)(B) and (c)(2)(A)(ii) and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Mr. Courtney, in any capacity, during his period of debarment, will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Mr. Courtney, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Mr. Courtney during his period of debarment.

Any application by Mr. Courtney for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 03N–0102 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 1, 2003.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 03–26385 Filed 10–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Factor VIII Inhibitors; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Factor VIII Inhibitors.'' The purpose of the public workshop is to provide a forum for addressing

regulatory and scientific concerns about inhibitors to Factor VIII, one of the components of blood necessary for clotting, with regard to inhibitor antibodies in Factor VIII products.

Date and Time: The workshop will be held on November 21, 2003, from 8 a.m. to 5 p.m.

Location: The workshop will be held at Lister Hill Auditorium, Bldg. 38A, National Institutes of Health, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Joseph Wilczek, Center for Biologics Evaluation and Research (HFM–302), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6129, FAX: 301–827–2843, e-mail: *wilczek@cber.fda.gov.*

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) to the contact person by November 7, 2003. Early registration is recommended because seating is limited to 176 participants. Registration will be done on a space available basis on the day of the workshop, beginning at 7:15 a.m. There is no registration fee.

If you need special accommodations due to a disability, please contact Joseph Wilczek (see *Contact Person*) at least 7 days in advance.

Transcripts: Transcripts of the workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. In addition, the transcript will be placed on the FDA Web site at *http://www.fda.gov/cber/minutes/workshop-min.htm.*

SUPPLEMENTARY INFORMATION: FDA and the International Association for Biologicals (IABs) are co-sponsoring a public workshop on regulatory and scientific concerns pertaining to the potential immunogenicity of Factor VIII products. The purpose of the workshop is to provide a forum for discussion of the inhibitor phenomenon with respect to currently available products and products that are under development by various sponsors. National and international regulatory authorities, manufacturers, clinicians, and academics will discuss their experiences with this issue regarding preclinical testing requirements, the results of clinical trials, and post-marketing surveillance. Other issues to be discussed at the workshop include properties of Factor VIII inhibitor assays, epidemiological aspects of inhibitor formation, and the design of prospective clinical studies. The public workshop agenda is posted on the FDA Internet at *http://www.fda.gov/cber/meetings/fctrviii112103.htm.*

Dated: October 10, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–26386 Filed 10–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[HRSA–04–030]

Amendment to a Notice of Availability of Funds Announced in the HRSA Preview—Primary Health Care Programs: Community and Migrant Health Centers

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Amendment to a Notice of Availability of Funds announced in the HRSA Preview—Primary Health Care Programs: Community and Migrant Health Centers HRSA–04–030.

SUMMARY: A Notice of Availability of Funds announced in the HRSA Preview, Primary Health Care Programs: Community and Migrant Health Centers HRSA–04–030, was published in the **Federal Register** on September 4, 2003, (Volume 68, Number 171), FR Doc. 03–22427. On page 52650, under eligibility, the following service areas are added to the list of areas HRSA intends to continue to support health services, given the unmet need inherent in their provisions of services to medically underserved populations. There are no other changes.

COMMUNITY/MIGRANT HEALTH CENTERS

City	State	Expiration date
Contact: Jack Egan 301–594–4339		
Hartford	CT	1/31/2004
Great Barrington	MA	1/31/2004
Salem	MA	3/31/2004
Littleton	NH	6/30/2004
Middletown	CT	6/30/2004
White Plains	NY	11/30/2003
Penn Yan	NY	12/31/2003
Hatillo	PR	1/31/2004
Bronx	NY	1/31/2004
Morovis	PR	1/31/2004
New York	NY	6/30/2004
Baltimore	MD	11/30/2003
Contact: Jerri Regan 301–594–4283		
Tylertown	MS (2)	11/30/2003
Miami	FL	1/31/2004
Pompano Beach	FL	1/31/2004
Columbia	SC	1/31/2004
Manning	SC	1/31/2004
Foley	AL	2/29/2004
Greensboro	GA	2/29/2004
Bowling Green	KY	2/29/2004
Russellville	AL	6/30/2004
Wilmington	NC	6/30/2004
Tallahassee	FL	6/30/2004
Contact: Barbara Bailey 301–594–4317		
Houghton Lake	MI	12/31/2003
Milwaukee	WI	1/31/2004
Muncie	IN	2/29/2004
Oak Park	IL	5/31/2004
Indianapolis	IN	6/30/2004
Contact: Theresa Watkins-Bryant 301–594–4423		
Natchitoches	LA	1/31/2004
River Ridge	LA	2/29/2004
Baton Rouge	LA	5/31/2004
Opelousas	LA	6/30/2004
Contact: Jerri Regan 301–594–4283		
St. Louis	MO	1/31/2004
Columbia	MO	6/30/2004
Contact: Theresa Watkins-Bryant 301–594–4423		
Green Valley	AZ	1/31/2004
Los Angeles	CA	1/31/2004
Larkspur	CA	2/29/2004
Contact: Barbara Bailey 301–594–4317		
Klamath Falls	OR	12/31/2003

HEALTH CARE FOR THE HOMELESS

City	State	Expiration date
Contact: Jack Egan 301–594–4339		
White Plains	NY	11/30/2003
Contact: Jerri Regan 301–594–4283		
Pompano Beach	FL	1/31/2004
Contact: Theresa Watkins-Bryant 301–594–4423		
Honolulu	HI	10/31/2003
Ventura	CA	10/31/2003

SCHOOL-BASED HEALTH CENTERS

City	State	Expiration date
Contact: Jack Egan 301–594–4339		
Middletown	CT	6/30/2004
Boston	MA	8/31/2004
New York	NY	6/30/2004

SCHOOL-BASED HEALTH CENTERS—Continued

City	State	Expiration date
Contact: Jerri Regan 301–594–4283		
Wilmington	NC	6/30/2004
St. Louis	MO	1/31/2004

Dated: October 8, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–26337 Filed 10–17–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

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.

Method and Device for Catheter-Based Repair of Cardiac Valves

Robert J. Lederman (NHLBI), U.S. Provisional Application No. 60/426,984 filed 15 Nov 2002 (DHHS Reference No. E–010–2003/0–US–01).

Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov.*

The invention provides a system and method for catheter-based repair of cardiac valves. The technique may permit non-surgical repair of regurgitant valves using percutaneous catheters in awake patients. The intervention is intended to discontinue/lessen regurgitation of the mitral valve and should provide a viable alternative to the conventional treatment with vasodilator medications and open heart surgery. The technology involves re-apposing of mitral valve leaflets by percutaneous annuloplasty delivering circumferential tensioning devices. Under appropriate imaging guidance (such as fluoroscopic MRI) a circumferential device trajectory is navigated through anatomic (coronary sinus) and non-anatomic spaces to deliver a circumferential tensioning device. As an adjunct, redundant or otherwise disrupted valvar tissue may be oversewn by catheter-based capture, alignment, and suture of valve leaflets. Provided are also designs of various catheters, systems that would be necessary to perform the repair of cardiac valves. Imaging methods, like fluoroscopic (real time MRI), could be used to assist the operator for placement and orientation purposes.

Variable Curve Catheter

Robert J. Lederman, Parag Karmarkar (NHLBI), U.S. Provisional Application No. 60/426,542 filed 15 Nov 2002 (DHHS Reference No. E–035–2003/0–US–01).

Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov.*

The invention provides a deflectable tip guiding device, such as a catheter, that enables the operator to vary the radius of curvature of the tip of the catheter. This is a novel variation on the classic ''fixed fulcrum'' tip deflectors used in minimally invasive procedures in open surgical treatments. The described device would permit more comprehensive ability to navigate complex geometric pathways in patient's body and would enable better access to the target structures (*e.g.*, to all endomyocardial walls from a transaortic approach). The guiding device can be made compatible with imaging methods like MRI. The described technology can be used as a platform for a wide variety of interventional devices for delivery of drugs, cells, energy, or sutures through complex trajectories of the body.

Recombinant Plasmids for Soluble Immunoreceptors

Peter Sun (NIAID), DHHS Reference No. E–305–2003/0.

Licensing Contact: Cristina Thalhammer-Reyero; 301/435–4507; *thalhamc@mail.nih.gov.*

Immunoreceptors initiate signals leading to the activation of immune system against invasion pathogens. A number of soluble receptors, representing the extracellular ligand binding domains of the immunoreceptors, have been expressed using a recombinant bacteria expression and reconstitution system. This set of 21 plasmids, which can be used as immunological research reagents or to develop diagnostic tools, comprise the following:

Plasmid	Description
CD16–28b	Soluble CD16.
CD94 (S34)–30a	Soluble CD94 truncated at S34.
CD94 (E51)–30a	Soluble CD94 truncated at E51.
NKG2A (109R)–30a	Soluble NKG2A 109R construct.
NKG2A (117G)–30a	Soluble NKG2A 117G construct.
TBRII–30a	Soluble type II TGF–beta receptor.
C143–30a	Soluble KIR2DL2 receptor.
NKG2D–22b	Soluble NKG2D receptor.
ULBP–1–22–b	Soluble ULBP–1.
ULBP–2–22–b	Soluble ULBP–2.
ULBP–3–22b	Soluble ULBP–3.
HLA–E–30a	Soluble HLA–E heavy chain.
HLA–Cw3	Soluble HLA–Cw3 heavy chain.
TREM–1–22b	Soluble TREM–1 receptor.
TREM–2–22b	Soluble TREM–2 receptor.
NKp30–22b	Soluble NKp30.
NKp46–22b	Soluble NKp46.
NKp44–22b	Soluble NKp44.

Plasmid	Description
Siglec–3–30a	Soluble Siglec–3.
Siglec–5–30a	Soluble Siglec–5.
Siglec–7–30a	Soluble Siglec–7.

Methods and Materials for Controlling Stem Cell and Cancer Cell Proliferation and Differentiation. ea /01)./

Robert Tsai and Ronald McKay (NCI), U.S. Provisional Application No. 60/442,005 filed 22 Jan 2003 (DHHS Reference No. E–019–2003/0–US–01); U.S. Provisional Application No. 60/415,867 filed 02 Oct 2002 (DHHS Reference No. E–001–2003/0–US–01)

Licensing Contact: Norbert Pontzer; 301/435–5502; *np59n@nih.gov.*

This work describes a novel nucleolar mechanism that controls the cell-cycle progression in CNS stem cells and cancer cells. The inventors identified a novel peptide, nucleostemin, found in the nucleoli of CNS stem cells, embryonic stem cells, and several cancer cell lines and preferentially expressed by other stem cell-enriched populations. When stem cells differentiate, nucleostemin expression decreases rapidly prior to cell-cycle exit both in vitro and in vivo. Depletion or overexpression of nucleostemin reduces cell proliferation in CNS stem cells and transformed cells.

Nucleic acids encoding the polypeptide, vectors incorporating the nucleic acids, and host cells transfected with these nucleic acids are disclosed and claimed. The claimed invention includes methods for regulating cell differentiation, cell proliferation, or both using nucleostemin. Methods for inducing differentiation, inhibiting proliferation, and inducing senescence of a cell by altering the level of a nucleostemin polypeptide and related amino acid sequences are disclosed and claimed. Methods for screening for agents that affect proliferation, differentiation, or senescence of cells are also disclosed and claimed. Further information can be found in Genes Dev. 2002 Dec 1;16 (23):2991–3003.

Dated: October 7, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–26357 Filed 10–17–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Clinical Trials Review Committee, June 23, 2003, 8 a.m. to June 24, 2003, 5 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on March 26, 2003, 68 FR 14671–14672.

The meeting will be held June 23, 2003 for one day only. The meeting is closed to the public.

Dated: October 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26361 Filed 10–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, November 5, 2003, 8 a.m. to November 5, 2003, 5 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814, which was published in the **Federal Register** on September 29, 2003, 68 FR 55973.

The meeting will be held on November 17, 2003 at the Hyatt Regency Bethesda. The meeting is closed to the public.

Dated: October 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26356 Filed 10–17–03; 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, Clinical Research.

Date: November 13, 2003.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard By Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Michael W. Edwards, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Regulatory Mechanisms in Intestinal Motility.

Date: November 16, 2003.

Time: 4:30 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard By Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Michael W. Edwards, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Silvio O. Conte Digestive Diseases Research Core Centers.

Date: November 20–21, 2003.

Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites, 1300 Concourse Drive, Linthicum, MD 21090.
Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Studies of Pediatric Liver Transplantation.
Date: December 5, 2003.
Time: 2 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).
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.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Gastrointestinal Endocrinology Program Project.
Date: December 16, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Four Points Sheraton, 8400 Wisconsin Avenue, 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.*

(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: October 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26360 Filed 10–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Board of Governors of the Warren Magnuson Clinical Center.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Board of Governors of the Warren Grant Magnuson Clinical Center, Executive Committee.
Date: November 21, 2003.
Time: 9 a.m. to 12 p.m.
Agenda: Updates on organizational planning and budget issues.
Place: National Institutes of Health, Building 10, 10 Center Drive, Medical Board Room 2C116, Bethesda, MD 20892.
Contact Person: Maureen E Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, Md 20892, (301) 496–2897.
Information is also available on the Institute's/Center's home page: *www.cc.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

Dated: October 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26359 Filed 10–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Recordation of Trade Name: ''YOUPAL''

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name ''YOUPAL''. The trade name is owned by Youpal International, Inc., an Arkansas corporation organized and created in the State of Arkansas, 6900 Cantrell Road, E6, Little Rock, Arkansas 72207.

The application states that the applicant is the importer, exporter and manufacturer of Titanium Folding Bicycles and Carbon Folding Bicycles. The applicant also states that the trade name ''YOUPAL'' is solely and exclusively owned and operated by Youpal International, Inc., and supervises the manufacturing process for three model (SFM585F; SFM820F; SEF468BBS), bicycles, including the design, the standards used, and the product's parts. The merchandise is manufactured in China.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

DATES: Comments must be received on or before December 19, 2003.

ADDRESSES: Written comments should be addressed to the Department of Homeland Security, Bureau of Customs and Border Protection, Attention: Office of Regulations & Rulings, Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Gwendolyn D. Savoy, Intellectual Property Rights Branch, at (202) 572–8710.

Dated: October 10, 2003.

George Frederick McCray,

Chief, Intellectual Property Rights Branch.

[FR Doc. 03–26333 Filed 10–17–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Assistance to Firefighters Fire Prevention and Safety Program

AGENCY: U.S. Fire Administration (USFA), Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security (DHS).

ACTION: Notice of availability of funds.

SUMMARY: FEMA gives notice of the availability of funds for Fiscal Year 2003 under the Assistance to Firefighters Fire Prevention and Safety Program (the Program) as authorized by the Federal Fire Prevention and Control Act of 1974. The Program will make up to $27,500,000 of the total appropriated amount of $745,125,000 available for fire prevention activities.

FEMA will fund fire prevention activities based on proposals that address the Program's priorities and maximize the benefits to be derived from the funds. FEMA is statutorily mandated to provide these funds to national, State and/or community organizations (including fire

departments) that are recognized for their experience and expertise with respect to fire prevention or fire safety programs and activities. In selecting recipients, FEMA will give priority where practical to organizations that focus on prevention of fire or fire-related injuries to children.

Authority: 15 U.S.C. 2229; 44 CFR Part 152, 68 FR 12544 (Final Rule published March 14, 2003.)

DATES: Completed applications must be received online or postmarked by 5 p.m. EST November 14, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Cowan, Chief, Grants Program Branch, USFA, FEMA, 500 C Street, SW., Room 330, Washington, DC 20472, 1–866–274–0960, or *usfagrants@fema.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The purpose of this notice is to advise of the availability of funds for carrying out fire prevention activities pursuant to the Federal Fire Prevention and Control Act of 1974, 15 U.S.C. 2229. Up to $27,500,000 will be available for this purpose. Under 15 U.S.C. 1229(b)(4), FEMA must use not less than 5 percent of funding to (1) make grants to fire departments to fund fire prevention programs and (2) make grants to or enter contracts or cooperative agreements with national, State, local, and community organizations for the purpose of carrying out fire prevention programming. This notice only addresses the latter use of funding; the former comprises the balance of the 5 percent and is being awarded through the Assistance to Firefighters competitive grant to fire departments, as explained in FEMA's March 14, 2003 notice of funds availability (68 FR 12553).

B. Eligibility

National, State, local and community organizations (which may include fire departments as defined at 44 CFR 152.2) that are recognized for their experience and expertise with respect to fire prevention or fire safety programs and activities are eligible to apply. For the purposes of these Fire Prevention and Safety awards, we are acknowledging that fire departments are generally recognized as local organizations with experience and expertise in carrying out fire prevention activities and are therefore eligible to apply.

C. Program Requirements

1. Recipients must agree that in the fiscal year for which assistance will be received, aggregate expenditures for fire prevention activities, exclusive of the amount of assistance received through this program, will be maintained at or above the average level of such expenditures in the two fiscal years preceding the fiscal year for which the assistance is received.

2. Recipients must agree to a matching cost share of non-Federal funds. Generally, recipients must agree to match with an amount of non-Federal funds equal to 30 percent of the total project cost. However, the match for recipients that may be characterized as community organizations whose mission serves populations of 50,000 or less shall be 10 percent of the total project cost. FEMA, in its discretion, will make this determination based upon the organization's primary target population as reflected in its bylaws and mission statement. For fire departments, FEMA will look at the population of the department's primary response area. The non-Federal match must be cash; ''in-kind'' contributions are not permitted.

3. Fire departments receiving assistance through the Program must provide information to the National Fire Incident Reporting System (NFIRS) for one year.

4. Grantees must submit semi-annual and final reports describing (i) how the assistance was used and (ii) the benefits derived from the funded activities.

5. Projects funded under this grant will generally have a one-year period of performance.

D. Application Process

FEMA encourages all applicants to apply online using FEMA's electronic (e-grant) application process, although paper applications will also be accepted. The e-grant application incorporates data from all of FEMA's grant forms. The application will include questions requesting general information about the applicant as well as activity-specific questions for each activity that the applicant plans to implement with grant funds. Applicants will be asked to provide details concerning the various budget items necessary to accomplish their proposed projects. The application will include a program narrative in which the applicant must provide a detailed description of each planned project, experience in conducting prevention activities, and the benefits to be derived from the costs of the project. The narrative should not exceed 10 pages (double-spaced with one-inch margins and 12-point font). The narrative should also address the eligible activities, program priorities, identified risk analysis, program goals, and evaluation methodology. Completed narratives should address each of the following items:

1. General information such as the history and description of the applicant organization, the organization's capability to achieve proposed objectives and past successes achieving project goals, the organization's experience with fire and injury prevention issues, and the qualifications of the project manager and the primary team members.

2. A project overview which includes at least: a problem statement describing the issues to be addressed, project goals, and objectives, as well as the necessary tasks to achieve those goals and objectives; a description of what will be accomplished during the grant performance period; an explanation of how the project will address the stated problem; and a project description addressing the following questions as applicable:

a. Will this establish a new project, expand an existing project into new areas, or augment an existing fire prevention project?

b. What is the target audience? A USFA-identified target population(s) (children under the age of 14, seniors over the age of 65, and firefighters) or another high-risk population? Why are they the target audience?

c. Will this project establish a multi-organization partnership with other groups in the community? If so, describe how.

3. A list of project benchmarks, phases, or milestones.

4. A description of the method or procedure for project implementation.

5. A detailed explanation of the project budget (*i.e.*, all budget line items such as contracting personnel or equipment, etc.), including a cost-benefit assessment comparing the benefits to be realized with the costs of achieving those benefits.

6. An explanation of the means with which the project will be sustained, if it will continue beyond the grant period (typically one year).

7. A description of the methodology that will be used to assess, evaluate and identify results of the project.

Effective October 1, 2003, all grant applicants must obtain a DUNS number, (a unique nine-character identification number provided by the commercial company Dun & Bradstreet). There is no charge to obtain a DUNS number, and it is the applicant's responsibility to obtain one. Applicants are encouraged to apply for a DUNS number well in advance of the application period because it may take 14 business days to obtain the number online. Applicants

can also call 1–800–333–0505 to apply. Applications that do not include a DUNS number are incomplete and cannot be considered for award. If applying using the online system, this field will be a mandatory entry and your application cannot be completed without it. If applying on paper, use the box entitled ''Federal Identifier'' on the SF 424, Application for Federal Assistance, to enter the DUNS number.

Completed applications must be received online or postmarked by 5 p.m. EST November 14, 2003. Paper applications are required to include a narrative addressing items D.1—8 above, and all of the following FEMA forms: 20–16 Assurances and Certifications, 20–20 Budget Information-Nonconstruction Programs, and SF 424 Request for Federal Assistance. These forms are available online at *www.fema.gov/ofm/grants2.shtm* or can be requested by calling 1–866–274–0960. Failure to submit all of the required forms will result in a disqualification of the paper application. The paper application should be mailed to AFG Program Office, 500 C Street, SW., Room 330, Washington, DC 20472. If an online application is submitted, applicants should not submit a supplemental paper application.

E. Eligible Activities

Fire prevention and safety projects are the only eligible activities under the Program. Installation of sprinkler systems and fire alarm systems into existing structures shall be eligible for funding. Renovations to an existing facility are allowable only if the costs are not construction costs as defined in 44 CFR 152.2. This section was amended by the publication of a final rule on March 14, 2003 at 68 FR 12544. In order to be eligible, renovations must be essential to the successful completion of the grant scope of work. Construction projects are not eligible under the program. Changes or renovations to an existing structure that do not change the footprint or profile of the structure but exceed either $10,000 or 50 percent of the value of the structure, are also considered construction for the purposes of this grant program.

The following list includes examples of eligible initiatives under this program:

1. Projects that focus on distributing and installing smoke alarms and checking to ensure smoke alarms are operational.

2. Projects that focus on planning and practicing escape routes, or conducting home fire safety walkthroughs;

3. Fire prevention projects targeting high-risk audiences, including those:

a. Enhancing national, State, or local efforts to reduce fires and burn injuries affecting children under 14 or seniors over 65;

b. Targeting geographical areas with a higher incidence of fire-related deaths and injuries;

c. Implementing projects that mitigate risk in urban cities or high-risk groups to include addressing culturally-sensitive materials or socio-economic challenges;

4. Projects that affect the entire community such as educating the public about residential sprinklers, promoting residential sprinklers, and demonstrating working models of residential sprinklers;

5. Projects that promote the adoption or awareness of building codes and enforcement, improve engineering or enact fire-related ordinances for new construction;

6. Projects that develop and implement national prevention initiatives;

7. Local or regional projects that address training personnel in the area of public education, code enforcement, and arson prevention.

Projects that address additional fire prevention and safety initiatives will be considered.

F. Evaluation Criteria

FEMA will give priority to projects that focus on the prevention of injury to children from fire. Additionally, successful projects will have a high potential for achieving the overall goals of USFA, listed below. It is unlikely that projects that do not address these goals will be funded.

USFA Goals:

- To reduce the overall loss of life from fire by three percent per year.
- To establish comprehensive multi-hazard risk reduction plans led by or including the local fire service in 2,500 communities.
- To create the ability for communities to respond appropriately to emergent issues in a timely manner.

FEMA will use the below criteria in making funding decisions. Applications that closely meet all of the listed evaluation criteria will be more likely to receive favorable consideration. Federal and non-Federal experts will assist with the preliminary review of proposals and analysis as part of the funding decisions. Regardless of the proposed project, all applications will be evaluated on the degree to which they meet the criteria below. This list is not in order of priority.

- Use of an innovative project to address an identified risk or enhance traditional methodologies;
- Incorporation of partnerships that are established with public or private groups/agencies whose mission serves the population identified by the project;
- Targeting of geographical areas with a higher incidence of fire-related deaths and injuries;
- Presentation of a high benefit for the cost incurred and maximizing the level of funding that goes directly into the delivery of the project; *i.e.*, projects that include little or no overhead and administrative costs;
- Inclusion of sound reasoning regarding the determination of the target audience, measurable goals and project evaluation;
- Proposing a project that will be sustained beyond the grant performance period and has a greater potential for long-term benefits; and
- Illustration that the applicant has a successful record for timely project completion and performance in similar projects.

G. Funding Limitations

Grant recipients or parties entering into cooperative agreements through the program may receive no more that $750,000 in any Federal fiscal year. Fire Departments that receive funding under the Assistance to Firefighters—competitive grant must consider this limitation, because the combined total for the grants is capped at $750,000.

H. Contracts

FEMA may, in its discretion, enter into contracts for fire prevention activities in order to achieve overall program goals. These contracts may not be subject to the limitations and requirements set forth in this notice.

Dated: October 14, 2003.

R. David Paulison,

Director of the Preparedness Division, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–26408 Filed 10–17–03; 8:45 am]

BILLING CODE 6718–08–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Loan Guaranty, Insurance and Interest Subsidy, 25 CFR Part 103

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission of information collection to the Office of Management and Budget.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is submitting the information collection titled 25 CFR part 103, Loan Guaranty, Insurance, and Interest Subsidy, OMB Control Number 1076–0020, for renewal. We are renewing the collection for Loan Guaranty, Insurance, and Interest Subsidy whose clearance expires October 31, 2003. Otherwise, the collection of this information would be prohibited.

DATES: Submit comments on or before November 19, 2003.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for Department of the Interior at OMB, either by facsimile at (202) 395–6566, or you may send an e-mail to: *OIRA_DOCKET@ omb.eop.gov.*

Please send a copy of your comments to Ray Brown, Chief, Division of Financial Assistance, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, 1849 C St., NW., Mail Stop 2412–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the information collection request submission from David Johnson, Solicitor, 1849 C Street, NW., Washington, DC 20240 or by telefacsimile at (202) 208–7419.

SUPPLEMENTARY INFORMATION: The purpose of the Loan Guaranty, Insurance, and Interest Subsidy Program, 25 U.S.C. 1481 *et seq.* and 25 U.S.C. 1511 *et seq.*, is to encourage private lending to individual Indians and organizations of Indians, by providing lenders with loan guaranties or loan insurance to reduce their potential risk. Lenders, borrowers, and the loan purpose all must qualify under Program terms. In addition, the Secretary of the Interior must be satisfied that there is a reasonable prospect that the loan will be repaid. BIA collects information under the proposed regulations to assure compliance with Program requirements. A request for comments on this information collection request appeared in the **Federal Register** on June 10, 2003 (68 FR 34640). No comments were received.

Request for Comments: The Bureau of Indian Affairs requests you to send your comments on this collection to the locations listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of this information collection 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 (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the Bureau of Indian Affairs location listed in the **ADDRESSES** section, room 2412, during the hours of 9 a.m. to 5 p.m. EST, Monday through Friday except for legal holidays. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request according to the requirements of the law. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

OMB Approval Number: 1076–0020.

Title: 25 CFR 103, Loan Guaranty, Insurance, and Interest Subsidy.

Brief Description of collection: The Loan Guaranty, Insurance, and Interest Subsidy Program (Program) was established by the Act of April 12, 1974, as amended, 88 Stat. 79, 25 U.S.C. 1481 *et seq.* and 25 U.S.C. 1511 *et seq.* The Program has existed since 1974 and the regulations implementing it have existed since 1975, with significant revision in 2001. It is necessary to collect information from users of this program in order to determine eligibility and credit worthiness of Indian applicants for loans. Submission of this information is mandatory for respondent to receive or maintain a benefit.

Type of review: Renewal.

Respondents: Commercial banks.

Number of Respondents: 84.

Estimated Time per Response: ¼ hour to 2 hours.

Frequency of Response: As needed.

Total Annual Responses: 852.

Total Annual Burden to Respondents: 519 hours.

Dated: September 29, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 03–26407 Filed 10–17–03; 8:45 am]

BILLING CODE 4310–XN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Public Meeting: Resource Advisory Council to the Lower Snake River District, Bureau of Land Management, U.S. Department of the Interior

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Lower Snake River District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held November 18, 2003, beginning 9 a.m. at the Bureau of Land Management, Lower Snake River District Office Sage Brush Conference Room, located at 3948 Development Ave, Boise, Idaho 83705. Public comment periods will be held after topics on the agenda. The meeting will adjourn at 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: MJ Byrne, Public Affairs Officer and RAC Coordinator, Lower Snake River District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3393.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in southwestern Idaho. At this meeting, the following topics will be discussed:

- Overview of American Indian statutes, regulations, and treaties, trust relationship, tribal resource rights, tribal sovereignty and governmental authority, Native American consultation and coordination—Douglas McConnaughey, Facilitator, Mediator, and Arbitrator;
- Subcommittee Reports
- Grouse Habitat Management, Off-Highway Vehicles (OHV) and Transportation Management, River Recreation and Resource Management Plans, and Fire and Fuels Management;
- Two Resource Management Plans under development in the District—update on progress during workshops for Alternatives development;
- OHV Update—
- Status of BLM Idaho's Strategic Plan—Terry Heslin
- Progress in OHV trails mapping and public outreach—Lower Snake

River District, Owyhee Field Office, Jim Schmid, Trails Specialist, LSRD–OFO;

- Idaho Department of Parks and Recreation (IDPR)—Trail Ranger Partnership Program—Rick Collignon, Director, IDPR;
- Idaho's Noxious Weed Program—Weed Awareness Campaign—Spring Workshops and Field trips—Brenda Waters, Noxious Weed Program Coordinator, Idaho State Department of Agriculture;
- Three Field Office Managers and District Fire Manager provide updates on current issues and planned activities in their field office and the District; and
- RAC review of Charter, work plan, priorities, and identify dates for 2004 meetings.

Agenda items may change due to changing circumstances. All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below. Expedited publication is requested to give the public adequate notice.

Dated: October 14, 2003.

Howard Hedrick,

Associate District Manager.

[FR Doc. 03–26363 Filed 10–17–03; 8:45 am]

BILLING CODE 4310–AG–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–391–394, 396–397, 399 (Review) (Remand)]

Ball Bearings From France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom; Notice and Scheduling of Remand Proceedings

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The U.S. International Trade Commission (the Commission) hereby gives notice of the court-ordered remand of its five-year review in Investigation Nos. 731–TA–391–394, 396–397, and 399 (Review).

EFFECTIVE DATE: October 10, 2003.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (Office 615–D) (205–3185) *(lreavis@usitc.gov)* or Robert Carpenter (Office 615–AA) (205–3160) *(rcarpenter@usitc.gov).* Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Reopening Record

In order to assist it in making its determination on remand, the Commission is reopening the record in this five-year review for the limited purpose of gathering evidence relevant to the subject of the importation and production of commodity-grade ball bearings 26 mm or less in outer diameter, and competition between such bearings from either imported or domestic sources during the period of review and the likelihood of such importation, production, or competition upon revocation. Any party wishing to submit information on this matter must do so by close of business on October 24, 2003. The Commission will provide interested parties with an opportunity to file comments on any new information received pertaining to that subject.

Participation in the Proceedings

Only those persons who were interested parties to the five-year review (*i.e.*, persons listed on the Commission Secretary's service list) may participate in these remand proceedings.

Written Submissions

Each party who is an interested party in this remand proceeding may submit one set of written comments to the Commission. These comments must be concise and must be limited specifically to commenting on the issue of the importation and domestic production of commodity-grade ball bearings 26 mm in outer diameter or less and competition between such bearings from various sources, and to any related new information obtained by the Commission during the remand proceedings. Any material in the interested parties' comments that does not address these limited issues will be stricken from the record. No new factual information may be included in such comments. Comments shall be submitted in a font of no smaller than 11-point (Times new roman) and shall be limited to no more than 5 double-spaced pages (inclusive of footnotes, tables, graphs, exhibits, appendices, etc.). These comments must be filed no later than the close of business on October 31, 2003.

All comments must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the five-year review must be served on all other parties to the five-year review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Limited Disclosure of BPI Under an Administrative Protective Order (APO) and BPI Service List

Information obtained during the remand proceedings will be released to parties under the APO in effect in the five-year review. Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the five-year review and in these remand proceedings available to additional authorized applicants, that are not covered under the original APO, provided that the application is made not later than seven (7) days after publication of this notice in the **Federal Register**. Applications must be filed for persons on the Judicial Protective Order in the related CIT case, but not covered under the original APO. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO in these remand proceedings.

Authority: This action is taken under the authority of the Tariff Act of 1930, title VII.

By order of the Commission.

Issued: October 14, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–26380 Filed 10–17–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Community Policing Development Application Packet.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the

following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until December 19, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mary Hyland, (202) 616–9418, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Community Policing Development Application Packet.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Office of Community Oriented Policing Services Form Number: 1103–0085.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, local, and Tribal law enforcement agencies, institutions of higher education, and/or non-profit organizations. Other: None Abstract: The information collected will be used by the COPS Office to determine grantee's eligibility for funding under Community Policing Development initiatives, which address current law enforcement/community needs and emerging law enforcement issues.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 200 responses. The estimated amount of time required for the average respondent to respond is: 8 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,800 hours annually.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, 601 D Street, NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: October 14, 2003.

Brenda Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–26369 Filed 10–17–03; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day emergency notice of information collection under review: Reinstatement, with change, of a previously approved collection for which approval has expired; application for public safety officers' educational assistance.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by October 28, 2003. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulation Affairs, Attention: Department of Justice Desk Officer, (202) 395–5806, Washington, DC 20503. Comments are encouraged and will be accepted for 60 days until December 19, 2003.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Sharon Williams, via e-mail, *SharonW@ojp.usdoj.gov,* or via facsimile, (202) 307–0036.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Reinstatement, with Change, of a Previously Approved Collection for which Approval has Expired.

(2) *The title of the form/collection:* Application for Public Safety Officers' Educational Assistance.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: OJP Form Number 1240/20. Bureau of Justice Assistance, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: None. The agency requires the information requested on this application to determine if individuals are eligible to receive educational assistance through the

Public Safety Officers' Educational Assistance (PSOEA) Program, as established by the PSOEA Act of 1998 (Pub. L. 104–238). Respondents who complete the application may be spouses or eligible children of a public safety officer who was killed or permanently injured in the line of duty.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 150 respondents will complete the application in approximately 20 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this application is 50 hours.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Planning and Policy Staff, Justice Management Division, United States Department of Justice, 601 D Street, NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: October 14, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–26370 Filed 10–17–03; 8:45 am]

BILLING CODE 4410–18–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Senior Executive Service Combined Performance Review Board

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Notice of members of the Federal Mine Safety and Health Review Commission Combined Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the combined PRB for the Federal Mine Safety and Health Review Commission. The Board reviews the performance appraisals of career and non-career senior executives. The Board makes recommendations regarding proposed performance appraisals, ratings, bonuses and other appropriate personnel actions.

Composition of PRB: The Board shall consist of at least three voting members. In the case of an appraisal of a career appointee, more than half of the members shall consist of career appointees. The names and titles of the PRB members are as follows:

Primary Members

Frederick Phillips, Deputy Executive Director, Administrative Resource Center, Bureau of the Public DebtDebra L. Hines, Assistant Commissioner, Office of Public Debt Accounting, Bureau of the Public DebtCynthia Z. Springer, Assistant Commissioner, Office of Information Technology, Bureau of the Public Debt.

Alternate Members

None.

DATES: Membership is effective on October 20, 2003.

FOR FURTHER INFORMATION CONTACT: Richard L. Baker, Executive Director, Federal Mine Safety and Health Review Commission, Suite 9500, 601 New Jersey Avenue, NW., Washington, DC 20001, (202) 434–9911.

This notice does not meet the Federal Mine Safety and Health Review Commission's criteria for significant regulations.

Dated: October 10, 2003.

Richard L. Baker,

Executive Director, Federal Mine Safety and Health Review Commission.

[FR Doc. 03–26340 Filed 10–17–03; 8:45 am]

BILLING CODE 2005–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Meeting

TIME AND DATE: 10 a.m., Thursday, October 23, 2003.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Quarterly Insurance Fund Report.
2. Proposed Rule: Part 748 of NCUA Rules and Regulations, Guidance on Response Programs for Unauthorized Access to Member Information and Member Notice.
3. Interpretive Ruling and Policy Statement (IRPS) 03–3, Qualified Financial Contracts.
4. Direct Final Rule: Part 792, Subpart A of NCUA Rules and Regulations, Freedom of Information Act.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, October 23, 2003.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under part 708 of NCUA's Rules and Regulations. Closed pursuant to Exemption (8).
2. Administrative Action under section 206 of the Federal Credit Union Act. Closed pursuant to Exemptions (8), 9(A)(ii), and 9(B).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone: (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 03–26565 Filed 10–16–03; 2:51 pm]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On August 13, 2003, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued on October 8, 2003 to Patrick Shore (2004–008).

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 03–26383 Filed 10–17–03; 8:45 am]

BILLING CODE 7555–01–M

POSTAL RATE COMMISSION

Briefings on Accounting Changes and Carrier Costs

AGENCY: Postal Rate Commission.

ACTION: Notice of public briefing.

SUMMARY: The Postal Rate Commission will host two briefings by the United States Postal Service in November and December. The first will cover certain accounting and reporting changes; the second will address a new carrier cost study. The briefings are open to the public. They will be held in the Postal Rate Commission's hearing room.

DATES: 1. November 20, 2003 (9:30 a.m.–11:30 a.m.)—accounting and reporting changes.

2. December 3, 2003 (10 a.m.–12)—carrier cost study.

ADDRESSES: Postal Rate Commission (hearing room), 1333 H Street, NW., Washington, DC 20268–0001, Suite 300.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6818.

SUPPLEMENTARY INFORMATION: The United States Postal Service will present a public briefing on its new general ledger accounting system on November 20, 2003 at 9:30 a.m. in the Postal Rate Commission's hearing room. The Service began using this new system on October 1, 2003, and its introduction coincides with adoption of a postal fiscal year that is identical to the U.S. government's fiscal year. Accounting period reports will be replaced with calendar month financial reporting. The data from the general ledger system is the primary input into many of the Postal Service's annual reports, such as the Cost and Revenue Analysis report and the annual financial statements found in the Postmaster General's annual report. This system is also one of the primary sources for the development of the revenue requirement during rate filings.

The Service will present a second public briefing on December 3, 2003 at 10 a.m., also in the Commission's hearing room, on the new methodology the Service used to develop the segment 7 city carrier street time costs that were filed with the Commission on May 20, 2003 as part of the FY 2002 Cost Segments and Components report. The new methodology replaces the cost treatment that has been used by the Service since the 1980s. It is based on data collected in May and June 2002 and involves new cost components.

Steven W. Williams,

Secretary.

[FR Doc. 03–26406 Filed 10–17–03; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application and Claim for Sickness Insurance Benefits; OMB 3220–0039.

Under section 2 of the Railroad Unemployment Insurance Act (RUIA), sickness benefits are payable to qualified railroad employees who are unable to work because of illness or injury. In addition, sickness benefits are payable to qualified female employees if they are unable to work, or if working would be injurious, because of pregnancy, miscarriage or childbirth. Under Section 1(k) of the RUIA, a statement of sickness with respect to days of sickness of an employee is to be filed with the RRB within a 10-day period from the first day claimed as a day of sickness. The RRB's authority for requesting supplemental medical information is section 12(i) and 12(n) of the RUIA. The procedures for claiming sickness benefits and for the RRB to obtain supplemental medical information needed to determine a claimant's eligibility for such benefits are prescribed in 20 CFR part 335.

The forms used by the RRB to obtain information needed to determine eligibility for and the amount of sickness benefits due a claimant follows: Form SI–1a, Application for Sickness Benefits; Form SI–1b, Statement of Sickness; Form SI–3, Claim for Sickness Benefits; Form SI–7, Supplemental Doctor's Statement; Form SI–8, Verification of Medical Information; Form ID–7h, Non-Entitlement to Sickness Benefits and Information on Unemployment Benefits; Form ID–11a, Requesting Reason for Late Filing of Sickness Benefit and ID–11b, Notice of Insufficient Medical and Late Filing. Completion is required to obtain or retain benefits. One response is requested of each respondent.

The RRB proposes no changes to Forms(s) SI–1a, SI–1b, SI–8, ID–7h, ID–11a and ID–11b. Non burden impacting editorial and formatting changes are proposed to Form(s) SI–3 and SI–7.

Estimated of Annual Respondent Burden: The estimated annual respondent burden is as follows:

Form #(s)	Annual responses	Time (min)	Burden (hrs)
SI–1a	22,200	10	3,700
SI–1b(Doctor)	22,200	8	2,960
SI–3	181,000	5	15,083
SI–7	33,600	8	4,480
SI–8	50	5	4
ID–7H	50	5	4
ID–11A	800	3	40
ID–11B	1000	3	50
Total	260,900	.....	26,321

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–26341 Filed 10–17–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release. No. IC–26207; 812–12971]

Hennion & Walsh, Inc., et al.; Notice of Application

October 14, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under: (i) Section 6(c) of the Investment Company Act of 1940 (''Act'') for exemptions from sections 14(a) and 19(a) of the Act and from rule 19b–1 thereunder; (ii) sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act; and (iii) section 12(d)(1)(J) of the Act for an exemption from section 12(d)(1)(F)(ii) of the Act.

SUMMARY OF APPLICATION: Applicants Hennion & Walsh, Inc. (''Sponsor''), Smart Trust, Equity Securities Trust, Symphony Series, and EST Symphony Trust, as well as any other registered unit investment trust (''UIT'') for which the Sponsor serves as the sponsor in the future (collectively, ''Trusts'') and any presently outstanding or subsequently issued series of the Trusts (each, a ''Trust Series'') request an order: (a) Under section 12(d)(1)(J) of the Act to permit each Trust Series to offer and sell to the public units (''Units'') with a sales load that exceeds the 1.5 % limit in section 12(d)(1)(F)(ii) of the Act; (b) under sections 6(c) and 17(b) for an exemption from section 17(a) of the Act to permit the Trust Series to invest in affiliated registered investment companies within the limits of section 12(d)(1)(F) of the Act; and (c) under section 6(c) of the Act for exemptions from sections 14(a) and 19(b) of the Act and rule 19b–1 under the Act to permit Units to be publicly offered without requiring the Sponsor to take for its own account or place with others $100,000 worth of Units, and to permit the Trust Series to distribute capital gains resulting from the sale of portfolio securities within a reasonable time after receipt.

FILING DATES: The application was filed on May 1, 2003 and amended on October 2, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 7, 2003 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants: Peter J. DeMarco, c/o Hennion & Walsh, Inc., 2002 Route 46, Waterview Plaza, Parisppany, New Jersey 07054.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714 or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Sponsor, a broker-dealer registered under the Securities Exchange Act of 1934, will serve as the sponsor for the Trusts.[1] Each Trust Series is or will be a UIT registered under the Act and organized under a trust indenture that incorporates or will incorporate by reference a master trust agreement between the Sponsor and a qualified bank as trustee (''Trustee''). Pursuant to the trust indenture, the Sponsor will deposit into each Trust Series shares of existing registered investment companies (''Funds''), or contracts and monies for the purchase of shares of the Funds. The Funds will be closed-end or open-end investment companies or UITs. Certain of the Funds are open-end investment companies or UITs that have received exemptive relief under the Act to sell their shares at negotiated prices on an exchange (''Exchange Traded Funds'').

2. The purpose of each Trust Series is to provide retail investors (1) an investment with a professionally selected asset allocation model or investment theme based upon the Sponsor's assessment of the overall economic climate and financial markets, and (2) the opportunity for income and/or capital appreciation through a diversified fixed portfolio of Funds professionally selected by the Sponsor from the total population of available Funds within the various market sectors of the Sponsor's asset allocation model or consistent with the enunciated investment theme. Applicants anticipate that certain of the Funds selected may be advised and/or distributed by the Sponsor or one of its affiliates (''Affiliated Funds''). Applicants anticipate that most of the Funds selected will be unaffiliated with the Sponsor (''Unaffiliated Funds''). Applicants state that the Trust Series'' investments in Affiliated Funds and Unaffiliated Funds will comply with section 12(d)(1)(F) in all respects except for the sales load restriction of section 12(d)(1)(F)(ii).

3. The only Funds that will be eligible for inclusion in a Trust Series are either no load Funds or Funds which, although they offer shares with a front-end sales charge to the public, agree to waive any otherwise applicable front-end sales load with respect to all shares sold or deposited in any Trust Series. Shares of each of the Funds (except closed-end Funds and Exchange Traded Funds), therefore, will be sold for deposit into any Trust Series at net asset value. Shares of closed-end Funds and Exchange Traded Funds will be purchased by a Trust Series at market prices. Investors in the Trust Series (''Unitholders'') will pay a specified sales load to the Sponsor in connection with the purchase of their Units.

4. No evaluation fee will be charged with respect to determining the value of the Funds' shares that comprise the Trust Series' portfolio. The Trustee will receive service fees under a rule 12b–1 plan from certain Funds to compensate it for providing servicing and sub-accounting functions with respect to Fund shares held by a Trust Series. In such cases, the Trustee will reduce its regular fee to a Trust Series directly by the fees it receives from the Funds and rebate any excess fees it receives to the Trust Series. Any fees so rebated will be utilized by the Trust Series to absorb other bona fide Trust Series expenses. To the extent that these fees exceed the total Trust Series' expenses, the excess will be distributed along with other income earned by the Trust Series.

Applicants' Legal Analysis

A. Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if those securities represent more than 3% of the

[1] All existing Trusts that currently intend to rely on the requested order have been named as applicants. Any other existing or future Trust that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

acquired company's total outstanding voting stock, more than 5% of the acquiring company's total assets, or if the securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets.

2. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) does not apply to an acquiring company if the company and its affiliated persons own no more than 3% of an acquired company's total outstanding securities, provided that the acquiring company does not impose a sales load of more than 1.5%. In addition, the section provides that no acquired company may be obligated to honor any acquiring company's redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company.

3. A Trust Series will invest in Affiliated and Unaffiliated Funds in reliance on section 12(d)(1)(F) of the Act. If the requested relief is granted, the Trust Series will offer Units to the public with a sales load that exceeds the 1.5% limit in section 12(d)(1)(F)(ii).

4. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1), if and to the extent that such exemption is consistent with the public interest and the protection of investors.

5. Applicants have agreed, as a condition to the requested relief, that any sales charges and/or service fees with respect to Units of a Trust Series will not exceed the limits set forth in rule 2830 of the National Association of Securities Dealers, Inc. (''NASD'') Conduct Rules applicable to a fund of funds. Applicants believe that it is appropriate to apply the NASD's rule to the proposed arrangement instead of the sales load limitation in section 12(d)(1)(F)(ii) because the proposed limit would cap the aggregate sales charges that may be imposed by a fund of funds. Applicants assert that the NASD's rule more accurately reflects today's regulatory environment with respect to the methods by which investment companies finance sales expenses.

6. Applicants state that, with respect to shares of closed-end Funds or Exchange Traded Funds held by a Trust Series, no front-end sales load, contingent deferred sales charges, rule 12b–1 fees, or other distribution fees or redemption fees will be charged in connection with the sale or purchase of Fund shares by a Trust Series. Applicants state that although the Trust Series likely will incur brokerage commissions in connection with its market purchases of shares of closed-end Funds or Exchange Traded Funds, these commissions will not differ from commissions otherwise incurred in connection with the purchase or sale of comparable securities.

7. Applicants also agree, as a condition to the requested relief, that each Trust Series will not invest in any underlying Fund which owns securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

B. Section 17(a) of the Act

1. With regard to the Trust Series' investments in Affiliated Funds, applicants request relief from section 17(a) of the Act under sections 6(c) and 17(b). Section 17(a) of the Act generally prohibits an affiliated person, or an affiliated person of an affiliated person, of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person directly or indirectly controlling, controlled by, or under common control with the other person. Applicants submit that the Trust Series and Affiliated Funds may be deemed to be affiliated persons of one another by virtue of being under common control of the Sponsor. Applicants state that purchases and redemptions of shares of the Affiliated Funds by a Trust Series could be deemed to be principal transactions between affiliated persons under section 17(a).

2. Section 6(c) of the Act provides that the Commission may exempt persons or transactions from any provisions of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act provides that the Commission will exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Applicants state that shares of Affiliated Funds will be sold to the Trust Series at net asset value, or, in the case of closed-end Affiliated Funds, at market prices. As a result, applicants believe that the proposed terms and conditions of the Trust Series' transactions in Affiliated Fund shares, including the consideration to be paid or received, will be reasonable and fair and will not involve overreaching on the part of any person concerned. Furthermore, applicants state that the proposed transactions will be consistent with the policies of the Trust Series as recited in their registration statements.

C. Section 14(a) of the Act

1. Section 14(a) of the Act requires in substance that a registered investment company have $100,000 of net worth prior to making a public offering. Applicants believe that each Trust Series will comply with this requirement because the Sponsor will deposit substantially more than $100,000 of Fund shares in each Trust Series. Applicants assert, however, that the Commission has interpreted section 14(a) as requiring that the initial capital investment in an investment company be made without any intention to dispose of the investment. Applicants state that, under this interpretation, a Trust Series would not satisfy section 14(a) because of the Sponsor's intention to sell all of the Units of the Trust Series.

2. Rule 14a–3 under the Act exempts UITs from section 14(a) if certain conditions are met, one of which is that the UIT invest only in ''eligible trust securities,'' as defined in the rule. Applicants submit that the Trust Series cannot rely on the rule because Fund shares are not eligible trust securities. Consequently, applicants seek an exemption under section 6(c) from the net worth requirement of section 14(a) of the Act. Applicants state that the Trust Series and the Sponsor will comply in all respects with the requirements of rule 14a–3, except that the Trust Series will not restrict their portfolio investments to ''eligible trust securities.''

D. Section 19(b) of the Act

Section 19(b) of the Act and rule 19b–1 under the Act provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. Rule 19b–1(c), under certain circumstances, excepts a UIT investing in ''eligible trust securities'' (as defined in rule 14a–3) from the requirements of rule 19b–1. Because the Trust Series do not limit

their investments to ''eligible trust securities,'' the Trust Series do not qualify for the exemption in paragraph (c) of rule 19b–1. Therefore, applicants request an exemption under section 6(c) from section 19(b) and rule 19b-1 to the extent necessary to permit capital gains earned in connection with the redemption and sale of Fund shares to be distributed to Unitholders along with the Trust Series' regular distributions. Applicants state that, in all other respects, the Trust Series will comply with section 19(b) and rule 19b–1. Applicants assert that the abuses that section 19(b) and rule 19b–1 were designed to prevent do not exist with regard to the Trust Series. Applicants state that any gains from the redemption or sale of Fund shares would be triggered by the need to meet Trust Series' expenses or by requests to redeem Units, events over which the Sponsor and the Trust Series have no control.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each Trust Series will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

2. Any sales charges and/or service fees (as those terms are defined in NASD Conduct Rule 2830) charged with respect to Units of a Trust Series will not exceed the limits set forth in NASD Conduct Rule 2830 applicable to a fund of funds (as defined in NASD Conduct Rule 2830).

3. No Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

4. The Trust Series and the Sponsor will comply in all respects with the requirements of rule 14a–3, except that the Trust Series will not restrict their portfolio investments to ''eligible trust securities.''

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–26389 Filed 10–17–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of October 20, 2003: A Closed Meeting will be held on Tuesday, October 21, 2003 at 2 p.m., and an Open Meeting will be held on Wednesday, October 22, 2003 at 10 a.m., in Room 1C30, the William O. Douglas Room.

Commissioner Campos, 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)(5), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(5), (7), (8), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Campos, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Tuesday, October 21, 2003 will be: Institution and settlement of administrative proceedings of an enforcement nature; Institution and settlement of injunctive actions; Formal orders of investigation; Regulatory matters regarding a financial institution; and Opinion.

The subject matter of the Open Meeting scheduled for Wednesday, October 22, 2003 will be:

1. The Commission will consider whether to propose new Rule 15a–5 under the Investment Company Act of 1940 (''Investment Company Act''). Proposed Rule 15a–5 would permit an investment adviser to manage an open-end investment company's (''fund'') assets without approval by fund shareholders, under certain conditions. The Commission also will consider whether to amend Form N–1A under the Investment Company Act and the Securities Act of 1933. The recommended amendments would include a requirement that any fund operating under the exemption in proposed Rule 15a–5 disclose that investment advisers may be hired without shareholder approval.

For further information, please contact Adam B. Glazer at (202) 942–0690.

2. The Commission will consider whether to adopt amendments to Rule 10b–18 (the safe harbor rule regarding issuer repurchases) under the Securities Exchange Act of 1934 (''Exchange Act''), and amendments to Regulations S–K and S–B under the Exchange Act, and Exchange Act Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F (regarding foreign private issuers), and Form N–CSR under the Exchange Act and the Investment Company Act of 1940 that would require periodic disclosure of all issuer repurchases of equity securities, regardless of whether the repurchases are effected in accordance with Rule 10b–18.

For further information, please contact Joan Collopy or Elizabeth Sandoe at (202) 942–0772.

3. Proposed Regulation SHO.

The Commission will consider whether to propose for public comment new Regulation SHO regulating short sales under the Securities Exchange of 1934, which would replace current Rules 3b–3, 10a–1 and 10a–2. Among other things, Regulation SHO would institute a new uniform bid test, applicable to exchange-listed and Nasdaq National Market System securities, that would allow short sales to be effected at a price above the consolidated best bid. Regulation SHO would also suspend the operation of the proposed bid test for specified highly liquid securities on a two-year pilot basis. Regulation SHO would also require short sellers in all equity securities to locate securities to borrow before selling short, and add further requirements to address ''naked'' short selling.

The Commission will also consider simultaneously whether to propose for public comment amendments to Rule 105 of Regulation M, which addresses short sales prior to a public offering, to eliminate the shelf offering exception and to address transactions designed to evade the Rule.

Commission Guidance on Rule 3b–3 and Married Put Transactions

Finally, the Commission will also consider whether to publish simultaneously an interpretive release providing all market participants with guidance regarding the use of married put transactions when aggregating positions under Rule 3b–3 for determining compliance with Rule 10a–1 and Rule 105 of Regulation M.

For further information, please contact Kevin Campion or Greg Dumark at (202) 942–0772.

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: October 15, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–26585 Filed 10–16–03; 3:53 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48624; File No. SR–CSE–2003–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Cincinnati Stock Exchange To Amend Article IV of Its By-Laws Pertaining to Its Listing Standards

October 10, 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 12, 2003 the Cincinnati Stock Exchange (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article IV of its By-Laws pertaining to its listing standards, including the addition of requirements applicable to audit committees of listed companies. The text of the proposed rule change is set forth below. Text in brackets indicates material to be deleted, and text in italics indicates material to be added.[3]

* * * * *

By-Laws

Article IV

[Prohibitions or Limitations on Access to the Exchange or Member Services]

Securities Listed on the Exchange

Section 1. Listing of Securities

1.1. Applications

All applications for listing on the Exchange will be submitted to the Exchange's Secretary on a form prescribed by the Exchange.

1.2. Procedure

The Secretary of the Exchange shall refer such applications to the Exchange's [Listing]*Securities* Committee. In passing on applications, the [Listing]*Securities* Committee shall determine whether the applicant meets the requirements for listing and, in making such determination, the Committee shall adhere to the *following* procedures:[set forth in Section 6, paragraphs (c)-(e) of Article II of these By-Laws.]

(a) Applications received by the Exchange's Secretary shall be referred to the Securities Committee and, if a majority of the Committee is satisfied that the applicant is qualified for listing pursuant to the provisions of this Article, the Committee shall promptly notify the Secretary of the Exchange of such determination, and the Secretary shall promptly notify, in writing, the applicant of the Committee's determination, and the applicant will be approved for listing on the Exchange.

(b) If a majority of the Securities Committee is not satisfied that the applicant is qualified for listing pursuant to the provisions of this Article, the Committee shall promptly notify the Secretary of the Exchange of such determination, and the Secretary shall promptly notify, in writing, the Board and the applicant of the grounds for denying listing. Within 30 days of such notification, the Board may reverse the determination of the Securities Committee that the applicant is not qualified for listing; provided, however, that if at the end of the 30-day period a majority of the Board has not specifically reversed the Committee's determination, the Secretary of the Exchange shall promptly notify the applicant, in writing, of the grounds for denying listing. If during the 30-day period a majority of the Board specifically determines to reverse the Securities Committee's determination to deny listing, the Board shall promptly notify the Secretary of the Exchange who shall promptly notify the applicant that the Board has granted the applicant's application for listing.

(c) In considering applications for listing, the Securities Committee, the Board and the Exchange's Secretary shall adhere to the following procedures:

(1) The Securities Committee shall act upon the application within 90 days of receipt of such application.

(2) Where a listing application is granted by the Board, the Secretary shall promptly notify the applicant.

(3) The applicant shall be afforded an opportunity to be heard on the denial of listing pursuant to the provisions of Exchange Rules governing adverse action.

(4) The applicant must satisfy the requirements of subsection 1.4 of this Article IV, including any portion of paragraphs (b) or (c) of Rule 10A–3 of the Act pertaining to audit committees, which cannot be exempted or otherwise waived other than as provided within the rules.

1.3. Requirements

No security shall be listed on the Exchange unless the issuer thereof shall meet the following requirements:

[(1)](a) In the case of common stock have*:*

(1) net tangible assets of at least $2,000,000;

[(b) have]*(2)* at least 1000 recordholders of the issue for which trading privileges have been granted or are requested;

[(c) have]*(3)* outstanding at least 250,000 shares for which trading privileges have been granted or are requested exclusive of the holdings of officers and directors;

[(d) have]*(4)* demonstrated net earnings of $200,000 annually before taxes for two prior years excluding non-recurring income; *and*

[(e) have]*(5)* been actively engaged in business and have been so operating for at least three (3) consecutive years

[(2)(a)]*(b)* In the case of preferred stock[,]*:*

(1) [t]*T*he listing of issues is considered on a case by case basis, in light of the suitability of the issue for [continuous auction market]trading *on the Exchange*. The Exchange, as a general rule, will not consider listing the convertible preferred stock of a company unless its common stock is also listed on the Exchange[, NYSE or AMEX]*, another exchange that is registered pursuant to Sections 6 of the Act or a facility of a national securities association registered pursuant to Section 15A of the Act*.

([b]*2*) [Companies]*An issuer* applying for listing of a preferred stock [are]*is* expected to meet the following criteria:

(i) The [Company]*issuer* appears to be in a financial position sufficient to satisfactorily service the dividend requirements for the preferred stock and meets the requirements set forth in [P]*p*aragraph 1.3[.]([1]*a*) above.

(ii) In the case of an issuer whose common stock is [traded]*listed* on the CSE, [NYSE or AMEX,] *another exchange that is registered pursuant to Section 6 of the Act or a facility of a national securities association*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The rule text as set forth herein includes several minor technical revisions that the Exchange has committed to correct by filing an amendment. Telephone conversation between Jennifer M. Lamie, CSE, and Ira L. Brandriss, Division of Market Regulation, Commission, on October 3, 2003.

registered pursuant to Section 15A of the Act, the following guidelines apply:

Shares Publicly Held	100,000
Aggregate Market Value/ Price	$2,000,000/$10

For issuers of preferred stock not listed as noted above, the Exchange has established different guidelines to ensure adequate public interest as follows:

Preferred Shares Publicly Held	400,000
Public Round-Lot Holders	800
Aggregate Market Value/ Price	$4,000,000/$10

(iii) The [CSE]*Exchange* will not list convertible preferred issues containing a provision which gives the company the right, at its discretion, to reduce the conversion price for periods of time or from time to time unless the company establishes a minimum period of ten business days within which such price reduction will be in effect.

[(3)(a)]*(c)* In the case of warrants[,]*:*

(1) at least 250,000 outstanding, exclusive of the holdings of officers and directors; *and*

([b]2) have a class of common stock that would otherwise be eligible for listing on the Exchange or is already listed on the Exchange.

[(4)(a)]*(d)* In [a]*the* case of bonds[,]*:*

(1) a principal amount outstanding of at least $2,000,000;

([b]*2*) have at least an aggregate market value of at least $2,000,000;

([c]*3*) have at least 250 recordholders and, in the case of convertible debt, a larger distribution may be required; *and*

([d]*4*) have a class of common stock that would otherwise be eligible for listing on the Exchange or is already listed on the Exchange.

[(5)(a)]*(e)* In the case of the listing of any security not otherwise covered by the criteria of the foregoing subsections *or in the Exchange Rules*, provided the issue is otherwise suited for trading, such issues will be evaluated for listing against the following criteria;

([b]*1*) *the* issuer[s] ha[ve]*s* assets in excess of $100 million and stockholders' equity of at least $10 million. In the case of an issuer [which]*that* is unable to satisfy the earnings criteria set forth in [subsection]*paragraph* [(1)](a), the Exchange generally will require the issuer to have the following:

(i) assets in excess of $200 million and stockholders' equity of at least $10 million; or

(ii) assets in excess of $100 million and stockholders' equity of at least $20 million;

([c]*2*) the issue have a minimum public distribution of one million trading units including a minimum of 400 holders, or if traded in thousand dollar denominations, a minimum of 100 holders;

([d]*3*) the issue have a principal amount/aggregate market value of not less than $20 million;

([e]*4*) where the instrument contains cash settlement provisions, settlement must be made in U.S. dollars; *and*

([f]*5*) where the instrument contains redemption provisions, the redemption price may not be below $3 per unit.

Prior to commencement of trading of securities admitted to listing under this subsection [5]*e*, the Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the membership providing guidance regarding member [firm]compliance responsibilities when handling transactions in such securities.

([6]*f*) Limited Partnerships—No security issued in a limited partnership rollup transaction (as defined by Section 14(h) of the [Exchange]Act), shall be eligible for listing unless:

([I]*1*) the rollup transaction was conducted in accordance with procedures designed to protect the rights of limited partners as provided in Section 6(b)(9) of the [Exchange]Act, as it may from time to time be amended; and

([ii]*2*) a broker-dealer which is a member of a national securities association subject to Section 15A(b)(12) of the [Exchange]Act participates in the rollup transaction.

The applicant shall further provide the Exchange with an opinion of counsel that the rollup transaction was conducted in accordance with the procedures established by such association.

1.4 Listing Standards Relating to Audit Committees

(a) In addition to the requirements contained in subsection 1.3, each issuer must have an audit committee. The Exchange shall not initially list or continue listing any securities of an issuer that is not in compliance with the requirements of this subsection 1.4 or any portion of paragraphs (b) or (c) of Rule 10A–3 of the Act pertaining to audit committees. In addition to the requirements of Rule 10A–3 of the Act:

(1) Each audit committee shall consist of at least three directors, each of whom shall be financially literate, as such qualification is interpreted by the issuer's board of directors in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee. At least one member of the audit committee must have accounting or related financial management expertise, as the issuer's board of directors interprets such qualification in its business judgment.

(2) The board of directors of each issuer must adopt and approve a formal written charter for its audit committee. The audit committee must review and reassess the adequacy of the audit committee charter on an annual basis. The charter must specify:

(i) the scope of the audit committee's responsibilities and how it carries out those responsibilities, including structure, processes, and membership requirements; and

(ii) that the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating all relationships between the outside auditor and the issuer and that the audit committee is responsible for actively engaging in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the outside auditor and for recommending that the issuer's board of directors take appropriate action in response to the outside auditor's report to satisfy itself of the outside auditor's independence.

(b) As part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each issuer should provide the Exchange written confirmation regarding:

(1) any determination that the issuer has made regarding the independence of its audit committee members;

(2) the financial literacy of the audit committee members;

(3) the determination that at least one of the audit committee members has accounting or related financial management expertise; and

(4) the annual review and reassessment of the adequacy of the audit committee charter.

(c) If a member of an issuer's audit committee ceases to be independent in accordance with the requirements of Rule 10A–3 for reasons outside the committee member's reasonable control, that person, with notice by the issuer to the Exchange, may remain an audit committee member of the issuer until the earlier of the next annual shareholders meeting of the issuer or one year from the occurrence of the event that caused the committee member to be no longer independent.

(d) For securities listed on the Exchange prior to [insert approval date], an issuer shall have until the earlier of its first annual shareholders meeting

after January 15, 2004, or October 31, 2004, to cure any defects that would be the basis for a prohibition from continued listing.

(e) An issuer must notify the Exchange promptly after an executive officer or the issuer becomes aware of any material noncompliance by the issuer with the requirements of this subsection 1.4 or Rule 10A–3 of the Act.

(f) In connection with a review of standards designed to ensure independence and strengthen corporate governance practices, the Exchange intends in the near future to adopt additional listing policies and requirements pertaining to issuer corporate governance, including standards for independence of board directors, independence and responsibilities of nominating, compensation and other board committees, codes of conduct, and shareholder approval of equity compensation plans. These additional policies and requirements will be reflected within the Exchange Rules.

Section 2. Unlisted Trading Privileges

[No application shall be made to the Securities and Exchange Commission for the extension of unlisted trading privileges with respect to any security unless the issuer thereof shall meet the requirements for listing set forth in Section 1.3. of this Article IV. In the event that an issuer whose security has been the subject of a grant of unlisted trading privileges to the Exchange ceases to meet the requirements for listing set forth in Section 1.3. of this Article IV, the Exchange shall terminate such unlisted trading.] Notwithstanding the [foregoing]*requirements for listing set forth in Section 1.3 of this Article IV,* the Exchange may seek and continue unlisted trading privileges on any security *as to which unlisted trading privileges have been granted pursuant to Section 12(f) of the Act*[for which the primary trading market is the New York Stock Exchange or the American Stock Exchange].

Section 3 Delisting of Securities

3.1. Suspension and/or Delisting by Exchange

(a) The Board [of Trustees]may suspend dealings in any issue admitted to trading on the Exchange.

(b) Whenever the Board [of Trustees] determines that it no longer is appropriate for a security to continue to be traded on the Exchange, it may institute proceedings to delist such security. Any issuer or any other person aggrieved by such action may seek relief pursuant to the Exchange['s r]*R*ules governing adverse action.

(c) The securities of an issuer will be subject to suspension and/or withdrawal from listing and registration as a listed issue if any of the following conditions are found to exist:

(1) [F]*f*ailure to comply with the listing standards and agreements[.]*; or*

(2) [S]*s*ustained loss so that financial condition becomes so impaired that it is questionable to the Exchange whether the company can continue operations and/or meet its obligations as they mature.

Notwithstanding the foregoing, the Board [of Trustees]may determine that the suspension or delisting of an issue is necessary for the protection of investors and the public interest.

3.2. Delisting by Issuer

A security, which in the opinion of the Board [of Trustees of the Exchange]is eligible for continued listing, may be removed from [the]list*ing* upon the request or application of the issuer provided that the issuer submits a certified copy of a resolution adopted by the [B]*b*oard of [D]*d*irectors of the issuer authorizing withdrawal from listing and registration and a statement setting forth in detail the reasons for the proposed withdrawal and the facts in support thereof.

The issuer may be required to submit the proposed withdrawal to the security holders for their vote at a meeting for which proxies are solicited provided the stock is not also listed on another *national securities* [E]*e*xchange *registered under Section 6 of the Act having similar requirements or on a facility of a national securities association registered under Section 15A of the Act* having similar requirements.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission approved Rule 10A–3 under the Act,[4] with an effective date of April 25, 2003.[5] Rule 10A–3 under the Act[6] pertains to listing standards relating to audit committees and, among other things, requires each of the national securities exchanges and associations to adopt rules prohibiting the initial or continued listing of any security of an issuer that is not in compliance with the requirements of Rule 10A–3. Through this instant rule proposal, CSE seeks to incorporate the necessary rule language pertaining to Rule 10A–3 into its listing standards. In addition, CSE seeks to incorporate additional rule language pertaining to audit committee requirements for listed issuers in order to conform to recommendations made by the Blue Ribbon Committee on Improving Effectiveness of Corporate Audit Committees and rule changes adopted by other self-regulatory organizations. Finally, the Exchange is proposing to make certain other changes to Article IV of its By-Laws that are described below. CSE represents that these changes, in part, make the language of the various provisions uniform and consistent with the Exchange rules and practices.

In part, the proposed rule change specifies requirements for audit committees. First, proposed Subsection 1.4 of Article IV would require that, in order to qualify its securities for listing on the Exchange, an issuer must have an audit committee that complies with the requirements of Rule 10A–3 of the Act.[7] Proposed Subsection 1.4 goes on to specify that each audit committee must also consist of at least three members of the listed company's board of directors, each of whom must meet certain financial literacy requirements, and at least one of whom must possess certain accounting or related financial management expertise. CSE states that a board would be permitted to presume that a person who satisfies the definition of audit committee financial expert set out in Item 401(h) of Regulation S–K has accounting or related financial management expertise.

In addition to these committee member qualification requirements, the

[4] 17 CFR 240.10A–3.

[5] See Securities Act Release No. 8220, Securities Exchange Act Release No. 47654, and Investment Company Act Release No. 26001 (April 9, 2003), 68 FR 18788 (April 16, 2003).

[6] 17 CFR 240.10A–3.

[7] 17 CFR 240.10A–3.

issuer's board of directors would be required to adopt and approve a formal written charter for its audit committee. The charter would be required, at a minimum, to specify the scope of the audit committee's responsibilities and how the committee carries out those responsibilities. The charter would also be required to specify that the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating all relationships between the outside auditor and the issuer, that the audit committee is responsible for actively engaging in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the outside auditor, and for recommending that the issuer's board of directors take appropriate action in response to the outside auditor's report to satisfy itself of the outside auditor's independence.

As part of the initial listing process, when subsequent changes to the audit committee composition occur, and otherwise approximately once each year, each issuer would be required to provide the Exchange with written confirmation regarding any determinations made regarding the independence of its audit committee members, its compliance with the financial literacy and accounting or related financial management expertise requirements, and its annual review and reassessment of the adequacy of the audit committee charter. An issuer would also be required to notify the Exchange promptly after an executive officer or the issuer becomes aware of any material noncompliance by the issuer with the requirements of Subsection 1.4 of Article IV of CSE's By-Laws or Rule 10A–3 of the Act.[8]

Proposed Subsection 1.4 of Article IV of the By-Laws also contains provisions for opportunities to cure defects and compliance dates. If a member of an issuer's audit committee ceases to be independent in accordance with the requirements of Rule 10A–3 of the Act[9] for reasons outside the committee member's reasonable control, that person, with notice by the issuer to the Exchange, would be permitted to remain an audit committee member of the issuer until the earlier of the next annual shareholders meeting of the issuer or one year from the occurrence of the event that caused the committee member to be no longer independent. For securities listed on the Exchange prior to the approval of Subsection 1.4, an issuer would have until the earlier of its first annual shareholders meeting after January 15, 2004, or October 31, 2004, to cure any defects that would be the basis for a prohibition from continued listing.

In addition, the Exchange is conducting a review of its listing standards designed to strengthen the corporate governance practices of listed companies. In the course of that review, the Exchange intends in the near future to adopt additional listing policies and requirements pertaining to issuer corporate governance, including standards for independence of board directors, independence and responsibilities of nominating, compensation and other board committees, codes of conduct, and shareholder approval of equity-compensation plans. As indicated in paragraph (f) of proposed Subsection 1.4, these additional policies and requirements will be reflected within the Exchange Rules.

Finally, CSE is also proposing to make certain other changes to Article IV of its By-Laws. Specifically, the Exchange is seeking to:

1. Change the name of Article IV from ''Prohibitions or Limitations on Access to the Exchange or Member Services'' to ''Securities Listed on the Exchange'';

2. Change the name of the Exchange Committee that reviews listing applications from Listing Committee to Securities Committee in Section 1.2;

3. Include the application review procedures within the listing procedures set forth in Section 1.2 rather than cross-referencing the procedures contained in Article II;

4. Change the reference to suitability for ''continuous auction market trading'' in Subsection 1.3 to suitability for ''trading on the Exchange''. Replace references to ''company'' and ''companies'' with ''issuer'' and a reference to ''CSE'' with ''Exchange''. In addition, correct a reference to ''traded'' in paragraph (b)(2)(ii) to ''listed';

5. Make reference to securities that are subject to listing criteria that is contained in the Exchange Rules as not being subject to the general listing requirements contained in paragraph (e) of Subsection 1.3;

6. Make changes to Section 2 to provide that the Exchange may extend unlisted trading privileges to any security for which unlisted trading privileges have been granted pursuant to Section 12(f) of the Act, not just securities listed on the NYSE and Amex;

7. Make changes to Subsection 3.2 to clarify that an issuer seeking to delist its securities may be required to submit the proposed withdrawal to the security holders for their vote at a meeting for which proxies are solicited provided the stock is not also listed on another national securities exchange having similar requirements or on a facility of a national securities association having similar requirements. Previously the text simply referenced other exchanges; and

8. Make certain other miscellaneous grammatical, punctuation and numbering changes throughout Article IV. Cross-references will be updated accordingly.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[10] in general, and furthers the objectives of section 6(b)(5) of the Act[11] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received in connection with 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 Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[8] 17 CFR 240.10A–3.

[9] 17 CFR 240.10A–3.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 CSE. All submissions should refer to file number SR–CSE–2003–06 and should be submitted by November 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–26390 Filed 10–17–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48625; File No. SR–NASD–2003–152]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Reflecting the Delayed Implementation of Rule Changes Regarding Reporting of Transactions Conducted Through Electronic Communications Networks to the Automated Confirmation Transaction Service

October 10, 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 October 7, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Pursuant to Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] Nasdaq has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposed rule change effective immediately upon filing. 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 the Substance of the Proposed Rule Change

Nasdaq has delayed until October 27, 2003 the implementation of rule changes effected by SR–NASD–2003–98.[5] There is no proposed rule language.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule filing is to notify the Commission and other interested parties of the delay until October 27, 2003 of the implementation of the proposed rule change in SR–NASD–2003–98.[6] In that filing, Nasdaq amended the various NASD rules governing trade reporting to define with greater clarity the reporting obligations applicable to transactions executed through electronic communications networks (''ECNs'') that are reported to the Automated Confirmation Transaction Service. Under the filing, the rule change was to be implemented thirty days after approval by the Commission (*i.e.*, on October 6, 2003). However, several ECNs have informed Nasdaq that they did not receive adequate notice of the rule change in order to meet the October 6, 2003 implementation date. Accordingly, Nasdaq is delaying the implementation date of SR–NASD–2003–98 for three weeks, until October 27, 2003. Nasdaq will inform market participants of the delay through a Head Trader Alert posted on *www.nasdaqtrader.com.*

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[7] in general, and with Section 15A(b)(6) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[9] and Rule 19b–4(f)(1) thereunder because it constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule.[10] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* Securities Exchange Act Release No. 48442 (September 4, 2003), 68 FR 53766 (September 12, 2003) (SR–NASD–2003–98) (approval order); Securities Exchange Act Release No. 48239 (July 28, 2003), 68 FR 45870 (August 4, 2003) (SR–NASD–2003–98) (notice of filing).

[6] *Id.*

[7] 15 U.S.C. 78o–3.

[8] 15 U.S.C. 78o–3(b)(6).

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(1).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change in 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 number SR–NASD–2003–152 should be submitted by November 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–26352 Filed 10–17–03; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Program: Cooperative Agreements for Benefits Planning, Assistance, and Outreach Projects; Program Announcement No. SSA–OESP–03–1

AGENCY: Social Security Administration.

ACTION: Announcement of the availability of fiscal year 2004 cooperative agreement funds and request for applications.

SUMMARY: The Social Security Administration (SSA) announces its intention to award competitively a cooperative agreement to continue a community-based benefits planning, assistance, and outreach project in the State of Wyoming. The purpose of this project is to disseminate accurate information to beneficiaries with disabilities (including transition-to-work aged youth) about work incentives programs and issues related to such programs, to enable them to make informed choices about work.

[11] 17 CFR 200.30–3(a)(12).

DATES: The closing date for receipt of cooperative agreement applications under this announcement is December 4, 2003.

Prospective applicants are also asked to submit, preferably by November 4, 2003, an e-mail, a fax, post card, or letter of intent that includes (1) the program announcement number (SSA–OESP–03–1) and title (Benefits Planning, Assistance, and Outreach Program); (2) the name of the agency or organization that is applying; and (3) the name, mailing address, e-mail address, telephone number, and fax number for the organization's contact person. The notice of intent is not required, is not binding, and does not enter into the review process of a subsequent application. The purpose of the notice of intent is to allow SSA staff to estimate the number of independent reviewers needed and to avoid potential conflicts of interest in the review. The notice of intent should be faxed to (410) 966–1278; mailed to Social Security Administration, Office of Employment Support Programs, Division of Employment Policy, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401; or e-mailed to *jenny.deboy@ssa.gov.*

FOR FURTHER INFORMATION CONTACT: Send questions about this announcement to the following Internet e-mail address: *jenny.deboy@ssa.gov.* When sending in a question, reference program announcement number SSA–OESP–03–1 and the date of this announcement.

Although the Internet is the preferred method of communication, applicants who have questions about the program content of the application may also contact: Jennifer DeBoy, Program Analyst, or Natalie Funk, Team Leader, Social Security Administration, Office of Employment Support Programs, Division of Employment Policy, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. The telephone number for Jennifer DeBoy is (410) 965–8658; for Natalie Funk, (410) 965–0078. The fax number is (410) 966–1278.

To obtain an application kit, see the instructions under Part VI, Section A. Although the Internet is SSA's preferred method of communication, for information regarding the application package, you may also contact: Phyllis Y. Smith or Gary Stammer, Social Security Administration, Office of Acquisition and Grants, Grants Management Team, 1–E–4 Gwynn Oak Building, 1710 Gwynn Oak Avenue, Baltimore, Maryland 21207–5279. The telephone numbers are: Phyllis Y. Smith, (410) 965–9518, or Gary Stammer, (410) 965–9501. The fax number is (410) 966–9310.

SUPPLEMENTARY INFORMATION: Public Law 106–170 was enacted on December 17, 1999, to expand the availability of health care coverage for working individuals with disabilities, to establish a Ticket to Work and Self-Sufficiency Program in SSA to provide beneficiaries with disabilities meaningful opportunities to work, and to provide benefits planning and assistance services, and outreach to beneficiaries with disabilities, among other purposes. SSA must ensure that benefits planning, assistance, and outreach are available to all beneficiaries with disabilities nationally, on a statewide basis.

On May 31, 2000, and January 5, 2001, SSA made announcements of cooperative agreement funds and requested applications. SSA's intent was to establish benefits planning, assistance and outreach services in every State and U.S. Territory, and in the District of Columbia, and to ensure that services are available to all SSA beneficiaries with disabilities throughout each. The current awardee for the State of Wyoming has decided not to renew their cooperative agreement beyond December, 2003.

This announcement is to request applications for fiscal year (FY) 2004 funds to provide direct benefits planning, assistance and outreach services to all SSA disability beneficiaries in the State of Wyoming for the period January 1, 2004, to December 31, 2004. Funding after FY 2004 is contingent upon funding availability.

Note: SSA has awarded separate contracts to three organizations (Cornell University, Virginia Commonwealth University (VCU), and the University of Missouri-Columbia (UMO–C)) to provide technical assistance and training on SSA's programs and work incentives, Medicare and Medicaid, and on other Federal work incentives programs, to Benefits Planning, Assistance, and Outreach Program cooperative agreement awardees. The contractor for Wyoming is UMO–C: C. David Roberts, *RobertsC@missouri.edu,* (573) 882–3807.

SSA will conduct a pre-application seminar to provide interested applicants with guidance and technical assistance in preparing their applications. Information about where and when the seminar will be held will be on our Web site: *http://www.socialsecurity.gov/work/ServiceProviders/providers.html#Contract.*

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Part I. Program Description

A. Introduction

Section 1149 of the Social Security Act, as added by section 121 of the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA), requires the Commissioner of Social Security (the Commissioner) to establish a community-based work incentives planning and assistance program. Under this program, the Commissioner is required to establish a competitive program of grants, cooperative agreements, or contracts to provide benefits planning and assistance. We have established a cooperative agreement program known as the Benefits Planning, Assistance, and Outreach (BPAO) Program to disseminate accurate information to beneficiaries with disabilities about work incentives programs and issues related to such programs.

B. Background

Even though employment opportunities have increased due to technology, legislation, and changes in societal attitudes, only a small percentage of Social Security Disability Insurance (SSDI) and/or disabled or blind Supplemental Security Income (SSI) beneficiaries leave the rolls because of work activity. There are a number of reasons for this. First, beneficiaries of SSDI and SSI based on disability or blindness, by definition, have serious disabilities, which limit choices in employment. However, disability advocates report that many individuals with disabilities who receive public assistance want to work, or increase their work activity, and may be willing to attempt to work or increase work activity, with proper assistance and support. There is also evidence that many individuals with severe disabilities do work and do not rely on income supports.

Second, people with disabilities who want to work face significant barriers. Many advocates and people with disabilities contend that the fear of losing health care benefits is the largest impediment. Public health insurance and long-term care services are usually tied to income support programs such as SSDI, SSI, and Temporary Assistance for Needy Families (TANF). Employment-based health insurance is frequently not available to those with disabilities due to pre-existing condition clauses or exclusions of treatment for mental illness. Private insurance is often unaffordable for people with serious illnesses and chronic or long-term impairments, since they are charged much higher than average premiums.

Third, while the SSDI, SSI, Medicare and Medicaid programs all contain valuable work incentives provisions which can extend cash benefits and medical coverage, they are under-used and, often, poorly understood by beneficiaries and professionals alike. The complexity and nature of the work incentives, and the interrelationship of myriad Federal, State, and local programs on which beneficiaries rely, create uncertainty and fear. Beneficiaries are concerned that they may lose vital income supports and coverage for mental and physical health care if they attempt to work.

For example, many people with disabilities rely on a patchwork of financial supports that have different eligibility criteria and application procedures. The benefits derived from a number of these programs are means-tested. Increases in income can cause rent increases in Section 8 housing, loss of food stamps or public assistance payments. Many individuals who may be willing to risk the loss of cash benefits from TANF, SSDI or SSI cannot absorb the loss of housing subsidies and other supports.

Despite these barriers, many people with severe disabilities have managed to use existing services and work incentives to reach their goals of financial self-sufficiency, while retaining necessary supports. However, those who are successful in returning to work frequently report that the availability of a knowledgeable advocate made a difference in their ability to navigate complex program requirements and in their willingness to attempt to return to work. Further, the support of that advocate provided them a sense of security needed to maintain work activity. The projects funded under this cooperative agreement program are part of SSA's Employment Strategy for People with Disabilities to increase the number of beneficiaries who return to work and achieve self-sufficiency by delivering direct services to beneficiaries.

C. Purpose of the Benefits Planning, Assistance, and Outreach Program

The purpose of the Benefits Planning, Assistance, and Outreach Program is to provide Statewide benefits planning and assistance, including information on the availability of protection and advocacy services, to all SSDI and SSI beneficiaries with disabilities, and to conduct ongoing outreach to those beneficiaries with disabilities (and to their families) who are potentially eligible to participate in State or Federal work incentives programs.

The Benefits Planning, Assistance, and Outreach Program is required by TWWIIA and is part of SSA's employment strategy for people with disabilities. One of SSA's goals in implementing TWWIIA is to help achieve a substantial increase in the number of beneficiaries who return to work and achieve self-sufficiency. In support of this goal, SSA is seeking well-qualified applicants to provide SSDI and SSI beneficiaries with benefits planning, assistance, and outreach. While other parts of SSA's employment strategy for people with disabilities provide direct employment services to help beneficiaries become employed or increase their level of employment, this program aims to improve beneficiaries' understanding of work options so that they may make more informed choices regarding work.

D. Benefits Planning, Assistance, and Outreach Program Goals

The goal of the Benefits Planning, Assistance, and Outreach Program is to support SSA's overall employment strategy for persons with disabilities by providing benefits planning and assistance, and conducting outreach to beneficiaries with disabilities, about Federal, State, and local work incentives programs and related issues.

To assist SSA in assessing the scope and utility of outreach and information provided under this program, each project is required to:

1. Collect data pertaining to benefits planning and assistance, and outreach activities as described in Part IV, Section D, Management Information and Reporting; and

2. Cooperate with SSA in providing the information needed for a customer satisfaction survey on the quality of the benefits planning and assistance services being provided and for an assessment of the success of the Benefits Planning, Assistance, and Outreach Program.

SSA will evaluate the data in 1. above and the results of the customer satisfaction surveys to determine the extent to which the projects were effective in providing benefits planning and assistance services, and outreach. The effectiveness of the projects will be measured by the range of beneficiaries served and responses regarding the knowledge of SSA work incentives and utility of benefits planning and assistance services. Data to be collected will include information about:

- Beneficiaries who receive comprehensive, coordinated benefits planning and assistance services, and outreach;
- Beneficiaries' demographic characteristics;
- Beneficiaries' income support characteristics (including earnings and SSA and non-SSA benefits);
- Beneficiaries' non-income support characteristics (including access to public and private health care); and
- Beneficiaries' work and benefit related goals and strategies.

Part II. Authority and Type of Awards

A. Statutory Authority and Catalog of Federal Domestic Assistance Number

Legislative authority for this cooperative agreement program is in section 1149 of the Social Security Act (the Act), as established by section 121 of Public Law 106–170. The regulatory requirements that govern the administration of SSA awards are in the Code of Federal Regulations, title 20, parts 435 and 437 (as published in the May 27, 2003, **Federal Register** at 68 FR 28710 and 28727). Applicants are urged to review the requirements in the applicable regulations. This program is listed in the Catalog of Federal Domestic Assistance under Program No. 96.008, Social Security Administration—Benefits Planning, Assistance, and Outreach Program.

B. Type of Awards

All awards made under this program are in the form of cooperative agreements. A cooperative agreement anticipates substantial involvement between SSA and the awardee during the performance of the project. Involvement will include collaboration or participation by SSA in the management of the activity as determined at the time of the award. For example, SSA will be involved in decisions involving strategy, hiring of personnel, deployment of resources, release of public information materials, quality assurance, and coordination of activities with other offices.

C. Number, Size, and Duration of Projects

Section 1149(d) of the Act authorizes annual appropriations not to exceed $23 million for FYs 2000 through 2004. Actual funding availability during this period is subject to annual appropriation by Congress. SSA anticipates that the award under this announcement will be made by December 31, 2003.

SSA will award a cooperative agreement to a qualified entity in Wyoming based in part on the number of beneficiaries with disabilities in that State.

Subject to the availability of funds, SSA anticipates that $50,000 would be available to fund the Benefits Planning, Assistance and Outreach Program project in Wyoming in FY 2004. SSA may suspend or terminate any cooperative agreement in whole or in part at any time before the date of expiration, whenever it determines that the awardee has materially failed to comply with the terms and conditions of the cooperative agreement. SSA will promptly notify the awardee in writing of the determination and the reasons for suspension or termination together with the effective date.

D. Awardee Share of the Project Costs

Awardees of SSA cooperative agreements are required to contribute a non-Federal match of at least 5 percent toward the cost of each project. The cost of the project is the sum of the Federal share (up to 95 percent) and the non-Federal share (at least 5 percent). For Wyoming, an entity that is awarded a cooperative agreement of $50,000 would need a non-Federal share of at least $2,631. The non-Federal share may be cash or in-kind (property or services) contributions.

Part III. The Application Process

A. Eligible Applicants

A cooperative agreement may be awarded to any State or local government, public or private organization, or nonprofit or for-profit organization that the Commissioner determines is qualified to provide benefits planning, assistance, and outreach to all SSDI and SSI beneficiaries with disabilities, within the targeted geographic area. Awardees may include Centers for Independent Living established under title VII of the Rehabilitation Act of 1973, protection and advocacy organizations, Native American tribal entities, client assistance programs established in accordance with section 112 of the Rehabilitation Act of 1973, State Developmental Disabilities Councils established in accordance with section 124 of the Developmental Disabilities Assistance and Bill of Rights Act, and State agencies administering the State program funded under part A of title IV of the Act. The Commissioner may also award a cooperative agreement to a State or local Workforce Investment Board, a Department of Labor (DOL) One-Stop Career Center System established under the Workforce Investment Act of 1998, or a State vocational rehabilitation agency.

SSA encourages applications from public or private agencies or organizations, including from local or divisional offices of larger or statewide agencies or organizations. Applications from local or divisional offices of larger entities, however, must demonstrate that the local or divisional office has authority to enter into cooperative agreements and to be ultimately responsible for funds.

Note: For-profit organizations may apply with the understanding that no cooperative agreement funds may be profit to an awardee of a cooperative agreement. Profit is considered as any amount in excess of the allowable costs of the cooperative agreement awardee. A for-profit organization is a corporation or other legal entity that is organized or operated for the profit or benefit of its shareholders or other owners and must be distinguishable or legally separable from that of an individual acting on his/her own behalf. Applications will not be accepted from applicants who do not meet the above eligibility criteria at the time of submission of applications.

Cooperative agreements may not be awarded to:

- Any individual;
- Social Security Administration Field Offices;
- Any State agency administering the State Medicaid program under title XIX of the Act;
- Any entity that the Commissioner determines would have a conflict of interest if the entity were to receive a cooperative agreement under the Benefits Planning, Assistance, and Outreach Program; or
- Any organization described in section 501(c)(4) of the Internal Revenue

Code of 1968 that engages in lobbying (in accordance with section 18 of the Lobbying Disclosure Act of 1995, 2 U.S.C. 1611).

Note: Any protection and advocacy organization must fully explain how it will ensure there will be no conflict of interest between providing benefits planning and assistance services and outreach, and delivering protection and advocacy services to beneficiaries. In particular, they must show how they will ensure full protection and advocacy services will be provided when the complaint is against the Benefits Specialist or organization. Also, any organization that applies to be an employment network under SSA's Ticket to Work and Self-Sufficiency Program must fully explain how it will ensure there will be no conflict of interest if it also receives a cooperative agreement to provide benefits planning, assistance, and outreach. This is especially important in the area of assisting beneficiaries with PASS plans or other work incentives which will enable them to keep receiving benefits, thus delaying, or preventing entirely, payments to the employment network.

B. Targeted Geographic Area/ Population

While SSA recognizes that not every SSDI or SSI beneficiary with a disability will access benefits planning, assistance, and outreach, it must be available to each via the project targeting Wyoming. Therefore, the awarded project must make those services available to all SSDI and SSI beneficiaries with disabilities within that geographic area. Because youth with disabilities is such an important population to target for those services, each project must make benefits planning, assistance, and outreach available to SSI recipients as young as age 14. In providing benefits planning, assistance, and outreach, projects must make concerted and aggressive efforts to address the needs of underserved individuals with disabilities from diverse ethnic and racial communities (*e.g.*, Native Americans, Vietnamese). In particular, applicants should show how they intend to do outreach in ways that ensure interaction with diverse communities.

Entities are encouraged to collaborate with other public and/or private organizations (*e.g.*, DOL One-Stop Career Center), through interagency agreements or other mechanisms, if necessary, to integrate services to beneficiaries with disabilities. Entities should also consider collaboration with other organizations to prepare an application for a cooperative agreement to provide benefits planning, assistance, and outreach to all beneficiaries within Wyoming.

An application developed jointly by more than one agency or organization must identify only one organization as the lead organization and official applicant. The other participating agencies and organizations can be included as co-applicants, subgrantees or subcontractors.

C. Application Process

The cooperative agreement application process consists of a one-stage, full application. Independent reviewers will competitively review the application against the evaluation criteria specified in this announcement (*see* Part V).

D. Application Consideration

Applications will initially be screened for relevance to this announcement. If judged irrelevant, the application will be returned to the applicant. Also, applications that do not meet the applicant eligibility criteria in Section A above will not be accepted.

Applications that are complete and conform to the requirements of this announcement, the instructions in Form SSA–96–BK, and the separate instructions for completing Part III, Program Narrative (of the SSA–96–BK), will be reviewed competitively against the evaluation criteria specified in Part V of this announcement and evaluated by Federal and non-Federal personnel. See Part VI for instructions on obtaining Form SSA–96–BK. The results of this review and evaluation will assist the Commissioner in making the award decision. Although the results of this review are a primary factor considered in making the decisions, the review score is not the only factor used. In selecting eligible applicants to be funded, consideration will be given to achieving statewide accessibility to benefits planning, assistance, and outreach.

The application requirements in Part IV are the minimum amount of required project information. Projects are responsible for collecting management information (MI) according to the guidelines provided, producing regular reports according to the guidelines provided, and producing a final report which analyzes the successes and/or failures of the methodology used to provide benefits planning, assistance, and outreach to SSDI and SSI beneficiaries, and others.

All projects must adhere to SSA's Privacy and Confidentiality Regulations (20 CFR part 401) for maintaining records of individuals, as well as provide specific safeguards surrounding beneficiary information sharing, paper/ computer records/data, and other issues potentially arising from providing benefits planning, assistance, and outreach to SSDI and SSI beneficiaries with disabilities. Personal beneficiary data should be accessible to only project personnel by way of locked file cabinets, computer password protections, *etc.*

E. Application Approval

A cooperative agreement award will be issued within the constraints of available Federal funds and at the discretion of SSA. The official award document is the ''Notice of Cooperative Agreement Award.'' It will provide the amount of the award, the purpose of the award, the term of the agreement, the total project period for which support is contemplated, the amount of financial participation required, and any special terms and conditions of the cooperative agreement.

F. Costs

Federal cooperative agreement funds may be used for allowable costs incurred by awardees in conducting direct benefits planning, assistance, and outreach services to SSA's beneficiaries with disabilities. These costs could include administrative and overall project management costs, within the limitations discussed earlier.

Federal cooperative agreement funds are not intended to cover costs that are reimbursable under an existing public or private program, such as social services, rehabilitation services, or education. No SSDI or SSI beneficiary can be charged for any service delivered under a Benefits Planning, Assistance, and Outreach Program cooperative agreement, including preparing a PASS. Benefits planning and assistance services are intended to be free and must be made accessible to all SSA beneficiaries with disabilities in the project's target geographical area. Project funds should not be used to create new benefits or extensions of existing benefits.

Part IV. Program Requirements

A. General Requirements

The cooperative agreement awardees shall:

1. Work with SSA's technical assistance and training contractor in arranging training for Benefits Specialists;

2. Provide a brief project description to the contractor;

3. Employ Benefits Specialists and have them attend an initial 5-day face-to-face training session within 90 days of award. SSA's technical assistance and training contractor will provide

technical assistance and training to projects about SSA's programs and work incentives (*e.g.*, trial-work period (TWP), extended period of eligibility (EPE), impairment-related work expenses (IRWE), Plan for Achieving Self-Support (PASS), 1619(a) and (b), and Medicaid buy-in provisions/ Balanced Budget Act); Medicare and Medicaid; and on other Federal work incentives programs. The applicant is responsible for providing technical assistance and training to Benefits Specialists about State and local programs.

4. Have Benefits Specialists attend refresher/follow-up and new hire training sessions, as needed, and take part in the evaluation of training activities and the evaluation of ongoing training needs evaluation by the contractor.

5. Within 90 days after award, the applicant will ensure Benefits Specialists have completed training, have developed outreach plans and begun initial outreach, and are prepared to provide direct benefits planning and assistance services to all SSDI and SSI beneficiaries with disabilities within the targeted geographic area who are requesting these services;

6. Finalize the MI system data collection elements (as defined by SSA) and procedures with SSA and assure compatibility with the VCU data collection program within 60 days after award;

7. Develop and submit quarterly reports that contain MI to SSA, Office of Acquisition and Grants (OAG);

8. Develop and submit quarterly financial reports to SSA, OAG;

9. Provide a description of all planned changes to the project design for approval by SSA prior to implementation;

10. Cooperate with SSA in scheduling and conducting site visits;

11. Develop and maintain a collaborative working relationship with the local servicing Social Security office;

12. Implement an ongoing management and quality assurance process that uses MI data; and

13. Attend scheduled conferences, participate in panel and small group discussions, and make project presentations.

B. Description of Projects

The project awardee shall:

• Provide direct individualized benefits planning and assistance, including information on the availability of protection and advocacy services, to beneficiaries with disabilities, including individuals participating in the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Act, the program established under section 1619(a) of the Act, and other programs that are designed to encourage disabled beneficiaries to work;

• Conduct ongoing outreach efforts to beneficiaries with disabilities (and to the families of such beneficiaries) who are potentially eligible to participate in Federal or State work incentives programs that are designed to assist beneficiaries with disabilities to work, by preparing and disseminating information and explaining such programs. In conducting benefits planning, assistance, and outreach activities, project awardees will work in cooperation with other Federal, State, and private agencies and nonprofit organizations that serve beneficiaries with disabilities, and with agencies and organizations that focus on vocational rehabilitation and work-related training and counseling, including DOL One-Stop Career Centers.

In order to be considered for an award, applicants must describe:

• Their understanding of benefits planning and assistance, including the benefits programs with which they have worked in the past;

• How they will notify all SSDI and SSI beneficiaries with disabilities in Wyoming about benefits planning and assistance and provide those services to beneficiaries;

• Their understanding of outreach, and how they will conduct outreach to all SSDI and SSI beneficiaries with disabilities (and their families) in Wyoming who are potentially eligible to participate in Federal or State work incentives programs designed to assist beneficiaries with disabilities to work, and, particularly, how the outreach strategies, information, and materials will be modified to seek out different ethnic and racial groups;

• The scope of the project; and

• How that project achieves the Benefits Planning, Assistance, and Outreach Program goals in Part I, Section D.

The applicants must also describe how they will address any special cultural requirements of populations (*e.g.*, Native Americans) within the targeted geographic area, as well as non-English speaking populations (*e.g.*, Vietnamese) and SSI recipients as young as age 14.

In providing benefits planning and assistance services, and conducting outreach, projects must be sensitive to issues such as cultural differences and non-English speaking populations within the areas they serve (*e.g.*, Native Americans, Vietnamese). Specifically, projects must address the needs of underserved individuals with disabilities from diverse ethnic and racial communities and show how they intend to provide outreach in ways that ensure interaction with diverse communities. (SSA awarded a contract to the University of Montana to provide technical assistance on Native American cultural and tribal considerations to Benefits Specialists in the Benefits Planning, Assistance, and Outreach program.)

Applicants must also provide information on:

• Collaborative relationships with relevant agencies, including SSA's field offices, and organizations (*e.g.*, Centers for Independent Living, DOL One-Stop Career Centers);

• Specific services and supports that will be involved in the project and their roles;

• Case management and monitoring systems and techniques to be used (*see http://www.ssa.gov/work/BPAO/bpao.html* for further information regarding an available case management system for Benefits Planning, Assistance, and Outreach projects);

• Methods of evaluating benefits planning, assistance, and outreach provided; and

• The MI and quality assurance process that will be used.

Applicants must also describe how Benefits Specialists will be trained on numerous supports which are often used by people with disabilities, such as long-term care, subsidized housing, paratransit, and food stamps; variations in benefits and services in Wyoming; Wyoming's work incentives programs; workers' compensation and unemployment insurance programs; vocational rehabilitation services; work-related training and counseling programs; and other community-based support programs designed to enable people with disabilities to work.

Applicants must also describe how Benefits Specialists will be trained to conduct outreach by providing information, guidance, and planning to beneficiaries with disabilities on the:

• Availability and interrelation of any Federal or State work incentives programs designed to assist beneficiaries with disabilities for which the individual may be eligible to participate;

• Adequacy of any health benefits coverage that may be offered by an employer of the individual and the extent to which other health benefits coverage may be available to the individual; and

• Availability of protection and advocacy services for beneficiaries with disabilities and how to access such services.

Note: The technical assistance and training contractor may provide technical assistance materials to enable project Benefits Specialists to get information about the subjects in the preceding paragraphs. However, each awardee shall be responsible for ensuring that Benefits Specialists are well-versed in these areas.

Applicants must describe any plans they have to collaborate or coordinate with public and private organizations to achieve and/or improve their project goals and submit evidence to SSA of these organizations' capabilities, and willingness to participate (*e.g.*, letters of intent, memoranda of understanding). Applicants should not request letters of intent or commitment from SSA field offices. SSA will assure field office cooperation.

Each applicant must describe the number of beneficiaries with disabilities it expects to serve. SSA records indicate there are approximately 11,500 beneficiaries in Wyoming.

Note: All SSDI and SSI beneficiaries (including SSI recipients as young as age 14) within the geographic area served by the project, must be able to access benefits planning, assistance, and outreach via the project.

The project may be part of a larger State initiative; *e.g.*, a DOL One-Stop Career Center, that serves other individuals with disabilities, such as TANF recipients; however, funds provided by SSA under the cooperative agreements cannot be used to serve people with disabilities who are not beneficiaries of SSDI and/or SSI.

C. Benefits Specialist Responsibilities and Competencies

1. Responsibilities

The cooperative agreement awardee shall select individuals who will act as Benefits Specialists. Benefits Specialists will provide work incentives planning and assistance directly to beneficiaries with disabilities; conduct outreach efforts to beneficiaries with disabilities (and their families), who are potentially eligible to participate in Federal or State work incentives programs designed to assist disabled beneficiaries to work; and work in cooperation with Federal, State, and private agencies and nonprofit organizations that serve beneficiaries with disabilities. Benefits Specialists will also provide information on the adequacy of health benefits coverage that may be offered by an employer of a beneficiary with a disability; the extent to which other health benefits coverage may be available to that beneficiary; and the availability of protection and advocacy services for beneficiaries with disabilities, and how to access such services.

Benefits Planning. Benefits planning requires an in-depth understanding of the current status of a beneficiary being served. Initial benefits planning will support a beneficiary over a period of several weeks to several months, concluding when the beneficiary has received guidance to support informed choices. Benefits Specialists will establish plans for beneficiaries with disabilities, and develop long-term supports that may be needed to ensure success. Following the initial benefits planning process, they will provide periodic, follow-up planning services to ensure that the information, analysis, and guidance are updated as new conditions (with regard to the applicable programs or to the individual's situation) arise.

To provide benefits planning services, Benefits Specialists will:

• Obtain and evaluate comprehensive information about a beneficiary with a disability on the following:

—Beneficiary background information,
—Disability,
—Employment and earnings,
—Resources,
—Federal and State benefits,
—Health insurance,
—Work expenses,
—Work incentives, and
—Service(s) and supports;

• Assess the potential impacts of employment and/or other changes on a beneficiary's Federal and State benefits eligibility and overall financial well-being;

• Provide information and assist the beneficiary in understanding and assessing the potential impacts of employment and/or other actions or changes on his/her life situation, and provide specific guidance regarding the affects of various work incentives;

• Develop a comprehensive framework of possible options available to a beneficiary and projected results for each as part of the career development and employment process; and

• Ensure confidentiality of all information provided.

Benefits Assistance. Benefits assistance involves the delivery of information and direct supports for the purpose of assisting a beneficiary in dealing with benefit issues and effectively managing benefits. Benefits assistance also involves providing information and referral and problem-solving services as needed. Benefits management services will generally build on previous planning and assistance services and include periodic updates of an individual's specific information, reassessment of benefit(s) and overall impacts, education and advisement, and additional planning for monitoring and managing benefits and work incentives.

To provide benefits assistance services, Benefits Specialists will:

• Provide time-limited direct assistance to a beneficiary in the development of a comprehensive, long-term benefits management plan to guide the effective monitoring and management of Federal and State benefits and work incentives. Specific components of the plan must address:

—Desired benefit and work outcomes,
—Related steps or activities necessary to achieve outcomes,
—Associated dates or time frames,
—Building on initial benefits planning efforts including information gathering, analysis and advisement, and

• Benefits/financial analysis (pre- and post-employment);

• Provide time-limited, intensive assistance to beneficiaries, their key stakeholders, and their support teams in making informed choices and establishing both employment-related goals as well as needed benefits management supports. Needed benefits assistance could include:

—How SSDI and SSI work incentives programs may lead to self-supporting employment by developing a PASS,
—Developing a PASS which can be used to obtain training, education, and entrepreneurial opportunities,
—How a PASS can be used to address some of the barriers to employment, such as obtaining a car for transportation needs, and
—The 1619(b) provisions and requirements;

• Advocate on behalf of a beneficiary with other agencies and programs, which requires in-person, telephone and/or written communication with the individual and other involved parties generally over a period of several weeks to several months;

• Provide time-limited follow-up assistance as needed to beneficiaries who have previously received benefits planning and /or other types of benefits assistance services and:

—Assist them and other involved parties to update information,
—Reassess impact of employment and other changes on benefits and work incentives, and
—Provide additional guidance on benefit options, issues and management strategies;

• Assist beneficiaries as needed to update benefits management plan;
• Provide information, referral, and problem-solving support;
• Provide ongoing, comprehensive, benefits monitoring and management assistance to beneficiaries who are likely to experience employment, benefits, or other changes that may dramatically affect their benefit(s) status, health care, or overall financial well being; and
• Provide long-term benefits management on a scheduled, continuous basis, allowing for the planning and provision of supports at regular checkpoints, as well as critical transition points in an individual's benefits, employment and overall situation.

Outreach. Outreach activities are ongoing, systematic efforts to inform individuals of available work incentives, as well as the services and supports available to enable them to access and benefit from those work incentives. Outreach efforts should be targeted directly to SSDI and SSI beneficiaries with disabilities, their families, and to advocacy groups and service provider agencies that have regular contact with them. Outreach activities should be directed toward and sensitive to the needs of individuals from diverse ethnic backgrounds, persons with English as their second language, as well as non-English speaking persons, individuals residing in highly urban or rural areas, and other traditionally underserved groups.

To conduct ongoing outreach, Benefits Specialists will:
• Prepare and disseminate information explaining Federal or State work incentives programs and their interrelationships; and
• Work in cooperation with other Federal, State, and private agencies and nonprofit organizations that serve beneficiaries with disabilities, and with agencies and organizations that focus on vocational rehabilitation and work-related training and counseling.

The Benefits Specialists will conduct outreach to SSDI and SSI beneficiaries with disabilities (and their families), who are potentially eligible to participate in Federal or State work incentives programs that are designed to assist beneficiaries with disabilities to work.

2. Competencies

Applicants must ensure that Benefits Specialists have the skills required to competently provide benefits planning and assistance services, and outreach. We prefer that cooperative agreement awardees use Benefits Specialists who have attained a bachelor's degree in a relevant field, or that they use Benefit Specialists with relevant experience. Benefit Specialists may possess a combination of education and experience if the experience provides the knowledge, skills and abilities to perform successfully the duties of the position.

Benefits Specialists should bring the following knowledge, skills, and abilities to the position:
• Basic math skills, with an emphasis on problem solving;
• Deductive ability with analytical thinking and creative problem solving skills;
• Acceptable interviewing skills;
• Ability to interpret Federal laws, regulations, and administrative code about public benefits;
• Communication skills (written and/or verbal);
• Knowledge of medical terminology and awareness of cultural and political issues pertaining to various populations and to various disabilities; and
• Basic computer skills.

Benefits Specialists will need to become proficient in the following knowledge, skills, and abilities:
• SSDI and SSI disability programs;
• Knowledge of all public benefits programs, including operations and inter-relationships;
• Translating technical information for lay individuals;
• Accessing information in a variety of ways (including the ability to be able to recognize when additional information is needed);
• Interpersonal skills (*e.g.*, recognize and help people manage anger and conflict, enjoy working with individuals);
• Counseling skills (ability to listen, evaluate alternatives, advise on potential cause of action);
• Knowledge of SSA field office structure and how to work with various work incentives coordinators (*e.g.*, PASS specialists, employment support representatives);
• Knowledge of the structure and design of public and private benefits systems and local community services; and
• Knowledge of ethics (*e.g.*, confidentiality, conflict of interest).

The applicant must clearly explain how it will ensure all individuals hired as Benefits Specialists will possess or acquire the relevant knowledge, skills and abilities. SSA has contracted with separate entities to provide technical assistance and training to cooperative agreement awardees on an ongoing basis about SSA's programs and work incentives, Medicare and Medicaid, and other Federal work incentives programs. Those entities are: Cornell University for SSA Regions I, II and V; Virginia Commonwealth University for Regions III, IV, VI, and IX; and the University of Missouri, Columbia for Regions VII, VIII (including Wyoming), and X. The applicant is responsible for providing technical assistance and training to Benefits Specialists about State and local programs.

D. Management Information and Reporting

In addition to cooperating with the surveys outlined in Part I, Section D, entities must provide all collected data and report the results to SSA's Office of Acquisition and Grants, as described below.

Common data elements, as defined by SSA, will be collected through a data base designed and managed by VCU. The awardee and SSA will use the management information (MI) data to manage the project and to determine what additional resources or other approaches may be needed to improve the process. The data will also be valuable to SSA in its analysis of and future planning for the SSDI and SSI programs.

The Wyoming project must adhere to SSA's Privacy and Confidentiality Regulations (20 CFR part 401) for maintaining records of individuals, as well as provide specific safeguards surrounding beneficiary information sharing, paper/computer records/data, and other issues potentially arising from providing benefits planning, assistance, and outreach to SSDI and SSI beneficiaries with disabilities. Personal beneficiary data should be accessible only to project personnel by way of locked file cabinets, computer password protections, *etc.*

The Wyoming project shall collect specific data elements on their counselors and all SSA beneficiaries/recipients who receive BPAO services from the project. This data shall be entered by the project into the online BPAO National Data Entry System (see *http://www.vcu-barc.org/data.html* for additional information). For the purpose of providing MI to SSA in support of the implementation and management of the project, the project will collect, analyze, and summarize the data listed below:

Beneficiary Background Information

1. Beneficiary/recipient name (Last, First, Middle).
2. Date of birth.
3. Gender.
4. Special language or other considerations.
5. Mailing address.

6. Telephone number.
7. Social Security number.
8. Representative payee (RP) name (if applicable).
9. RP address
10. Current level of education
11. Whether pursuing education currently and at what level (*e.g.*, post secondary, continuing adult education, special education, vocational education)
12. Proposed educational goals
13. Primary diagnosis
14. Secondary diagnosis (if applicable)
15. Employer health care coverage at outset (if working)
16. Other health care coverage

Employment Information (Current and Proposed Goal—Where Applicable)

1. Self-employed or employee
2. Type of work
3. Beginning date
4. Hours per week
5. Monthly gross earned income
6. Monthly net earned income
7. Work-related expenses

Proposed Training Information

1. Work-related training/counseling program
2. Proposed other training

Benefits (Current and Expected Changes if Employment Goals Are Reached)

1. SSDI
2. SSI
3. Concurrent (SSDI and SSI)
4. Medicare
5. Medicaid
6. Private Health Insurance
7. Subsidized housing or other rental subsidies
8. Food Stamps
9. General Assistance
10. Workers Compensation benefits
11. Unemployment Insurance benefits
12. Other Federal, State, or local supports, including TANF (specify)

Incentives To Be Used

1. Trial-work period (TWP)
2. Extended period of eligibility (EPE)
3. Impairment-related work expenses (IRWE)
4. Plan for achieving self-support (PASS)
5. 1619(a)
6. 1619(b)
7. Medicaid buy-in provisions/ Balanced Budget Act
8. Blind Work Expense
9. Student Earned Income Exclusion
10. Subsidy Development
11. Extended Medicare

Provisions To Be Used

1. Property Essential to Self-Support
2. Expedited Reinstatement of Benefits
3. Ticket to Work Program
4. Continuing Disability Review Protections
5. Section 301
6. Unsuccessful Work Attempt

Services To Be Used

1. Vocational Rehabilitation services
2. Paratransit services
3. Protection and Advocacy services
4. Work-related training/counseling program
5. DOL One-Stop Career Center services
6. Transitioning youth services (from school to post-secondary education or to work)

Monthly Benefits Planning, Assistance, and Outreach Activities Performed by Benefits Planning Organization

1. Number of SSDI/SSI beneficiaries (over age 18) requesting assistance (initial and repeat requests).
2. Number of SSDI/SSI beneficiaries (ages 14 to 18) requesting assistance (initial and repeat requests).
3. Number of new benefits management plans prepared.
4. Number of updated benefits management plans prepared.
5. Number of presentations given at forums, conferences, meetings, *etc.*

Additional information such as the time spent per recipient, the reason for service request, the level of service provided, and any anticipated employment status change of the beneficiary will also be reported by awardee. All data elements are to be collected in accordance with precise definitions to be provided by SSA as part of the application package. Adherence to such precise definitions is crucial to the comparability of the data across project sites.

The entities awarded a cooperative agreement under this notice shall submit quarterly progress reports to SSA, OAG. SSA expects that the project will need a period of time to begin providing services and collecting management information. Therefore, the first quarterly report shall include a description of the project, a status of data collection operations, actions that were taken, planned actions, and a description of how the project is addressing the needs of individuals with disabilities from diverse ethnic and racial communities, both in benefits planning and in carrying out outreach activities.

Subsequent reports shall provide: a status of the project, any problems or proposed changes in the project (*e.g.*, requests for technical assistance from contractor, interagency agreement change); specific information (baseline data/program statistics) required by SSA, including that listed above; a description of how the project is addressing the needs of individuals with disabilities from diverse ethnic and racial communities, both in benefits planning and in carrying out outreach activities; actions that were taken, and planned actions. The quarterly reports shall be submitted to SSA, OAG, within 30 days after the end of the quarter.

SSA personnel (SSA Project Officer and/or other staff) expect to visit this project at least once. The SSA Project Officer shall review site operations, including collection of management information, and evaluate how projects are finding ways to make benefits planning, assistance, and outreach activities more effective in achieving SSA's Benefits Planning, Assistance, and Outreach Program goals.

Staff members shall attend an initial training meeting that will include an orientation session by SSA, and subsequent scheduled conferences at SSA headquarters or alternate sites chosen by SSA. Those meetings will provide the awardee of the cooperative agreement with the opportunity to exchange information with SSA and other awardees.

E. Evaluation

Process Evaluation

The purpose of process evaluation is for SSA and the awardee to assess how the project functioned and how the process might be altered to provide more efficiently and/or successfully the services required under section 1149 of the Act. The process evaluation will require both data collection and qualitative observational evaluation through site visits and/or project reporting.

Participant Experience

The goal of these cooperative agreements is the provision of services to enhance beneficiary awareness and understanding of SSA work incentives and thereby enhance beneficiaries'' ability to make informed choices regarding work. The goal is not to provide employment services. Nevertheless, SSA is clearly interested in identifying participant outcomes under the Benefits Planning, Assistance, and Outreach Program to determine the extent to which participants achieve their employment, financial, and health care goals. Therefore, SSA is requiring that cooperative agreement awardees collect data regarding the employment status, benefit status, and income of beneficiaries before providing services under these cooperative agreements.

SSA intends to use this information to support the sample selection for participants in the customer satisfaction survey. This will allow SSA to include the experiences and outcomes of a broad range of beneficiaries.

This project shall submit periodic reports (as described in Part IV, Section D, Management Information and Reporting) to SSA, OAG. Data and information that are used in preparing the reports can be used, for example, to improve the efficiency of the project's operations, use of staff, and linkages between the project and the programs for which benefits planning is needed to better meet the needs of target populations. In addition, the evaluation results will be disseminated to other projects to promote learning, program refinements, and facilitate partnership and achievement of project objectives. Timely comprehensive MI data also allows for cost accounting, which helps improve the efficiency of service approaches and may inform future policy decisions.

Part V. Application Review Process and Evaluation Criteria

A. Screening Requirements

All applications that meet the deadline will be screened to determine completeness and conformity to the requirements of this announcement. Complete and conforming applications will then be evaluated.

1. *Number of Copies:* The applicant must submit one original signed and dated application and a minimum of two copies. The submission of seven additional copies is optional and will expedite processing, but will not affect the evaluation or scoring of the application.

2. *Length:* The program narrative portion of the application (Part III of the SSA–96–BK) may not exceed 30 double-spaced pages (or 15 single-spaced pages) on one side of the paper only, using standard (8½″ × 11″) size paper, and 12-point font. Attachments that support the program narrative count towards the 30-page limit; resumes and letters of support do not count within the 30-page limit.

B. Evaluation Criteria

Applications that pass the screening process will be independently reviewed by at least three individuals, who will evaluate and score the applications based on the evaluation criteria. There are four categories of criteria used to score applications: Capability; relevance/adequacy of program design; resources and management; and quality assurance plan. The total points possible for an application is 100, and sections are weighted as noted in the descriptions of criteria below.

Although the results from the independent panel reviews are the primary factor used in making funding decisions, they are not the sole basis for making awards. The Commissioner will consider other factors as well when making funding decisions. For instance, the need to assure the required geographic distribution of projects may take precedence over rankings/scores of the review panel.

Following are the evaluation criteria that SSA will use in reviewing all applications (relative weights are shown in parentheses):

1. Capability (20 points)

The applicant's capability to deliver benefits planning and assistance services will be judged by:

- Description of how entity will test for Benefits Specialist competencies listed in Part IV and provide any needed training to ensure competencies will be maintained and/or enhanced; (8 points)
- Description of the proposed administration and organization of the project, including the existence of the necessary administrative resources to effectively carry out the project; and (7 points)
- Project Director's and key staff's documentation of experience and results of past projects of this nature (extra consideration may be given to applicants based on the quality and extent of their experience in return-to-work efforts for SSDI and SSI beneficiaries with disabilities). (5 points)

2. Relevance/Adequacy of Project Design (30 points)

The adequacy of project design will be judged by:

- A description of the project operations, including how the project will work (*e.g.*, identification and notification of potential project participants about availability of benefits planning and assistance services, location for providing services, ability to travel to beneficiary, etc.) and the quality of the project design; (6 points)
- A concise and clear statement of the project goals and objectives; MI data to be collected; specification of data sources; including how they will interact with the VCU data base; and how quality assurance will be realized; (5 points)
- A description of how the project will address provision of benefits planning, assistance, and outreach to populations with special cultural or language requirements; (5 points)
- Evidence of collaboration with relevant agencies, including collocation within a DOL One-Stop Career Center organization, in providing benefits planning and assistance services; and extent and clarity of collaborative efforts with other organizations, including letters of intent or written assurances; (5 points)
- A description of how the project will address provision of benefits planning, assistance, and outreach to transition-to-work aged SSI youth; (4 points)
- Description of problems that may arise and how they will be resolved; *e.g.*, how dropouts and inadequate numbers of participants will be handled; and (3 points)
- Evidence of how the proposed approach will accomplish Benefits Planning, Assistance, and Outreach Program goals. (2 points)

3. Resources and Management (30 points)

Resources and management will be judged by:

- Appropriateness of qualifications of the project personnel, as evidenced by training and experience indicating that they have the skills required to competently provide benefits planning and assistance services, and outreach; (8 points)
- Evidence of successful previous experience related to benefits planning, assistance, and outreach program; (4 points)
- Evidence that the applicant has a working knowledge of work incentives and the various programs available to beneficiaries with disabilities; (4 points)
- Evidence of adequate facilities (*e.g.*, collocation within a DOL One-Stop Career Center) and resources to deliver services; (4 points)
- Appropriateness of the case management and monitoring systems and techniques, including an MI system, quality assurance system, and a range of other monitoring and management options; (3 points)
- Extent and quality of project assurances that sufficient resources (including personnel, time, funds, and facilities) will be available to support services to beneficiaries; (3 points)
- Evidence that the applicant will meaningfully involve family members and other representatives of target groups, including advocates in the process of delivery services; and (2 points)
- Cost effectiveness, per client costs, and reasonableness of overall project

cost relative to planned services. (2 points)

4. Quality Assurance (20 points)

The applicant's quality assurance plan will be judged by:

- Extent to which training is accommodated and planned for to ensure that all Benefits Specialists maintain knowledge, skills, and abilities, and acquire more; (6 points)
- Extent to which the awardee proposes to use MI data to improve processes and ensure that all information given is accurate and pertinent; (4 points)
- Extent to which the proposed quality assurance plan complies with the requirements of SSA, in terms of data collection, reporting, and ensuring that only accurate information is provided to beneficiaries and others; (4 points)
- Extent to which the proposed staff demonstrates expertise in the area of benefits planning and assistance; and (4 points)
- The extent to which staff have experience collecting, protecting, and analyzing data on beneficiaries with disabilities to provide benefits planning and assistance services, and outreach. (2 points)

Part VI. Instructions for Obtaining and Submitting Application

A. Availability of Forms

The Internet is the primary means recommended for obtaining an application kit under this program announcement. An application kit containing all of the prescribed forms and instructions needed to apply for a cooperative agreement under this announcement may be obtained at the following Internet address: *http://www.socialsecurity.gov/oag/grants/ssagrant.htm.*

Although the Internet is SSA's preferred method of making application kits available, an application kit also may be obtained by writing to: Grants Management Team, Office of Operations Contracts and Grants, OAG, Social Security Administration, 1–E–4 Gwynn Oak Building, 1710 Gwynn Oak Avenue, Baltimore, Maryland 21207–5279.

Requests submitted by mail should include two return address labels. Also, please provide the name, title and telephone number of the individual to contact; and the organization's name, street address, city, State and ZIP Code.

To ensure receipt of the proper kit, please include program announcement number SSA–OESP–03–1 and the date of this announcement.

B. Checklist for a Complete Application

The checklist below is a guide to ensure that the application package has been properly prepared.

—An original, signed and dated application plus at least two copies. Seven additional copies are optional but will expedite processing.

—The program narrative portion of the application (Part III of the SSA–96–BK) may not exceed thirty double-spaced pages (or fifteen single-spaced pages) on one side of the paper only, using standard (8½″ x 11″) size paper, and 12-point font. Attachments that support the program narrative count towards the 30-page limit; resumes and letters of support do not count in the limit.

—Attachments/Appendices, when included, should be used only to provide supporting documentation. Please do not include books or videotapes as they are not easily reproduced and are therefore inaccessible to reviewers.

—A complete application, which consists of the following items in this order:

(1) Part I (Face page)—Application for Federal Assistance (SF 424, REV 4–88);

(2) Table of Contents;

(3) Project Summary (not to exceed one page);

(4) Part II—Budget Information, Sections A through G (Form SSA–96–BK);

(5) Budget Justification (in Section B Budget Categories, explain how amounts were computed), including subcontract organization budgets;

(6) Part III—Application Narrative and Appendices;

(7) Part IV—Assurances;

(8) Additional Assurances and Certifications—regarding Lobbying and regarding Drug-Free Workplace; and

(9) Form SSA–3966–PC—acknowledgement of receipt of application (applicant's return address must be inserted on the form).

C. Guidelines for Application Submission

All applications for the cooperative agreement project under this announcement must be submitted on the prescribed forms included in the application kit. The application shall be executed by an individual authorized to act for the applicant organization and to assume for the applicant organization the obligations imposed by the terms and conditions of the cooperative agreement award.

In item 11 of the Face Sheet (SF 424), the applicant must clearly indicate the application submitted is in response to this announcement (SSA–OESP–03–1). The applicant also is encouraged to select a SHORT descriptive project title.

Applications must be mailed or hand-delivered to: Grants Management Team, Office of Operations Contracts and Grants, OAG, DCFAM, Social Security Administration, Attention: SSA–OESP–03–1, 1–E–4 Gwynn Oak Building, 1710 Gwynn Oak Avenue, Baltimore, MD 21207–5279.

Hand-delivered applications are accepted between the hours of 8 a.m. and 5 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

1. Received on or before the deadline date at the above address; or

2. Mailed through the U.S. Postal Service or sent by commercial carrier on or before the deadline date and received in time to be considered during the competitive review and evaluation process. Packages must be postmarked by December 4, 2003. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier as evidence of timely mailing. Private-metered postmarks are not acceptable as proof of timely mailing.

Applications that do not meet the above criteria are considered late applications. SSA will not waive or extend the deadline for any application unless the deadline is waived or extended for all applications. SSA will notify each late applicant that its application will not be considered.

Paperwork Reduction Act

This notice contains reporting requirements. However, the information is collected using form SSA–96–BK, Federal Assistance Application, which has the Office of Management and Budget clearance number 0960–0184.

Dated: October 9, 2003.

Jo Anne B. Barnhart,

Commissioner.

[FR Doc. 03–26381 Filed 10–17–03; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Social Security Ruling, SSR 03–2p]

Titles II and XVI: Evaluating Cases Involving Reflex Sympathetic Dystrophy Syndrome/Complex Regional Pain Syndrome

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of Social Security

Ruling, SSR 03–2p. This Ruling explains the policies of the Social Security Administration for developing and evaluating title II and title XVI claims for disability on the basis of Reflex Sympathetic Dystrophy Syndrome (RSDS), also frequently known as Complex Regional Pain Syndrome, Type I (CRPS). These terms are synonymous and are used to describe a unique clinical syndrome that may develop following trauma. This syndrome is characterized by complaints of intense pain and typically includes signs of autonomic dysfunction.

EFFECTIVE DATE: October 20, 2003.

FOR FURTHER INFORMATION CONTACT: Carolyn Kiefer, Office of Disability Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–9104 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 402.35(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and policy interpretations of the law and regulations.

Although Social Security Rulings do not have the same force and effect as the statute or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 402.35(b)(1), and are relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.006 Supplemental Security Income)

Dated: October 8, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

Policy Interpretation Ruling

Titles II and XVI: Evaluating Cases Involving Reflex Sympathetic Dystrophy Syndrome/Complex Regional Pain Syndrome

Purpose: To explain the policies of the Social Security Administration for developing and evaluating title II and title XVI claims for disability on the basis of Reflex Sympathetic Dystrophy Syndrome (RSDS), also frequently known as Complex Regional Pain Syndrome, Type I (CRPS). These terms are synonymous and are used to describe a unique clinical syndrome that may develop following trauma. This syndrome is characterized by complaints of intense pain and typically includes signs of autonomic dysfunction.

Citations (Authority): Sections 216(i), 223(d), 1614(a)(3), 1614(a)(4) and 1614(c) of the Social Security Act (the Act), as amended; Regulations No. 4, subpart P, sections 404.1502, 404.1505, 404.1508–404.1509, 404.1511–404.1513, 404.1520, 404.1520a, 404.1521, 404.1523, 404.1526–404.1530, 404.1545–404.1546, 404.1560–404.1569a; and 404.1593–404.1594 and appendix 1; and Regulations No. 16, subpart I, sections 416.902, 416.905, 416.906, 416.908–416.909, 416.911–416.913, 416.920, 416.920a, 416.921, 416.923, 416.924, 416.924a–416.924c, 416.925, 416.926, 416.926a, 416.927–416.930, 416.945–416.946, 416.960–416.969a, 416.987, and 416.993–416.994a.

Introduction: RSDS/CRPS are terms used to describe a constellation of symptoms and signs that may occur following an injury to bone or soft tissue. The precipitating injury may be so minor that the individual does not even recall sustaining an injury. Other potential precipitants suggested by the medical literature include, but are not limited to, surgical procedures, drug exposure, stroke with hemiplegia, and cervical spondylosis.

Policy Interpretation

What Is RSDS/CRPS?

RSDS/CRPS is a chronic pain syndrome most often resulting from trauma to a single extremity. It can also result from diseases, surgery, or injury affecting other parts of the body. Even a minor injury can trigger RSDS/CRPS. The most common acute clinical manifestations include complaints of intense pain and findings indicative of autonomic dysfunction at the site of the precipitating trauma. Later, spontaneously occurring pain may be associated with abnormalities in the affected region involving the skin, subcutaneous tissue, and bone. It is characteristic of this syndrome that the degree of pain reported is out of proportion to the severity of the injury sustained by the individual. When left untreated, the signs and symptoms of the disorder may worsen over time.

Although the pathogenesis of this disorder (the precipitating mechanism(s) of the signs and symptoms characteristic of RSDS/CRPS) has not been defined, dysfunction of the sympathetic nervous system has been strongly implicated.

The sympathetic nervous system regulates the body's involuntary physiological responses to stressful stimuli. Sympathetic stimulation results in physiological changes that prepare the body to respond to a stressful stimulus by ''fight or flight.'' The so-called ''fight or flight'' response is characterized by constriction of peripheral vasculature (blood vessels supplying skin), increase in heart rate and sweating, dilatation of bronchial tubes, dilatation of pupils, increase in level of alertness, and constriction of sphincter musculature.

Abnormal sympathetic nervous system function may produce inappropriate or exaggerated neural signals that may be misinterpreted as pain. In addition, abnormal sympathetic stimulation may produce changes in blood vessels, skin, musculature and bone. Early recognition of the syndrome and prompt treatment, ideally within 3 months of the first symptoms, provides the greatest opportunity for effective recovery.

How Does RSDS/CRPS Typically Present?

RSDS/CRPS patients typically report persistent, burning, aching or searing pain that is initially localized to the site of the injury. The involved area usually has increased sensitivity to touch. The degree of reported pain is often out of proportion to the severity of the precipitating injury. Without appropriate treatment, the pain and associated atrophic skin and bone changes may spread to involve an entire limb. Cases have been reported to progress and spread to other limbs, or to remote parts of the body.

Clinical studies have demonstrated that when treatment is delayed, the signs and symptoms may progress and spread, resulting in long-term and even permanent physical and psychological problems. Some investigators have found that the signs and symptoms of

RSDS/CRPS persist longer than 6 months in 50 percent of cases, and may last for years in cases where treatment is not successful.

What Are the Diagnostic Criteria for RSDS/CRPS?

A diagnosis of RSDS/CRPS requires the presence of complaints of persistent, intense pain that results in impaired mobility of the affected region. The complaints of pain are associated with:

- Swelling;
- Autonomic instability—seen as changes in skin color or texture, changes in sweating (decreased or excessive sweating), skin temperature changes, or abnormal pilomotor erection (gooseflesh);
- Abnormal hair or nail growth (growth can be either too slow or too fast);
- Osteoporosis; or
- Involuntary movements of the affected region of the initial injury.

Progression of the clinical disorder is marked by worsening of a previously identified finding, or the manifestation of additional abnormal changes in the skin, nails, muscles, joints, ligaments, and bones of the affected region. Clinical progression does not necessarily correlate with specific timeframes. Efficacy of treatment must be judged on the basis of the treatment's effect on the pain and whether or not progressive changes continue in the tissues of the affected region.

Reported pain at the site of the injury may be followed by complaints of muscle pain, joint stiffness, restricted mobility, or abnormal hair and nail growth in the affected region. Further, signs of autonomic instability (changes in the color or temperature of the skin and frequent appearance of goose bumps) may develop in the affected region. Osteoporosis may be noted by appropriate medically acceptable imaging techniques. Complaints of pain can further intensify, and can be reported to spread to involve other extremities. Muscle atrophy and contractures can also develop. Persistent clinical progression resulting in muscle atrophy and contractures, or progression of complaints of pain to include other extremities or regions, in spite of appropriate diagnosis and treatment, hallmark a poor prognosis.

How Is RSDS/CRPS Treated?

Patient education and activity programs designed to increase limb mobility and promote use of the extremity or affected region during activities of daily living are considered the most important treatments for RSDS/CRPS. The medical literature has demonstrated that individuals affected by RSDS/CRPS have a better prognosis when they receive an early diagnosis and mobility is immediately encouraged. In some patients, it is necessary to inject a long-acting anesthetic to block sympathetic activity and reduce pain to allow the individual to increase the mobility of the affected region. Various analgesics, including narcotics and neurostimulators, may be used to minimize pain and promote the individual's ability to tolerate greater mobility.

A mental evaluation may be requested by treating or other medical sources to determine if any undiagnosed psychiatric disease is present that could potentially contribute to a reduced pain tolerance. It is important to recognize that such evaluations are not based on concern that RSDS/CRPS findings are imaginary or etiologically linked to psychiatric disease. The behavioral and cognitive effects of the medications used to treat pain need to be thoroughly considered in the evaluation of this syndrome.

Other types of medications may also be used to reduce pain. Anti-inflammatory preparations, psychotropic medications (for example, antidepressants), certain antiepileptic drugs, muscle relaxants, and drugs that produce generalized reduction in sympathetic outflow may be tried in an effort to reduce the signs and symptoms associated with RSDS/CRPS and improve the mobility of the affected region.

Patients who are noted to have a good response to local sympathetic blocks may be considered candidates for surgical sympathectomy. This procedure permanently disrupts the sympathetic innervation of the affected region. It involves destroying a sympathetic ganglion and must be performed by a physician who is an expert in this technique. This procedure is not without risk of post-surgical complications.

What Is a Medically Determinable Impairment?

Sections 216(i) and 1614(a)(3) of the Act define ''disability'' [1] as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment (or combination of impairments) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.[2]

Sections 223(d)(3) and 1614(a)(3)(D) of the Act, and 20 CFR 404.1508 and 416.908, require that impairment result from anatomical, physiological, or psychological abnormalities that can be shown by medically acceptable clinical and laboratory diagnostic techniques. The Act and regulations further require that impairment be established by medical evidence that consists of signs, symptoms, and laboratory findings, and not only by an individual's statement of symptoms.

How Is RSDS/CRPS Identified as a Medically Determinable Impairment?

RSDS/CRPS constitutes a medically determinable impairment when it is documented by appropriate medical signs, symptoms, and laboratory findings, as discussed above. RSDS/CRPS may be the basis for a finding of ''disability.'' Disability may not be established on the basis of an individual's statement of symptoms alone.

For purposes of Social Security disability evaluation, RSDS/CRPS can be established in the presence of persistent complaints of pain that are typically out of proportion to the severity of any documented precipitant and one or more of the following clinically documented signs in the affected region at any time following the documented precipitant:

- Swelling;
- Autonomic instability—seen as changes in skin color or texture, changes in sweating (decreased or excessive sweating), changes in skin temperature, and abnormal pilomotor erection (gooseflesh);
- Abnormal hair or nail growth (growth can be either too slow or too fast);
- Osteoporosis; or
- Involuntary movements of the affected region of the initial injury.

When longitudinal treatment records document persistent limiting pain in an area where one or more of these abnormal signs has been documented at

[1] Except for statutory blindness.

[2] For individuals under age 18 claiming benefits under title XVI, disability will be established if the individual is suffering from a medically determinable physical or mental impairment (or combination of impairments) that results in ''marked and severe functional limitations.'' See section 1614(a)(3)(C) of the Act and 20 CFR 416.906. However, for clarity, the following discussions refer only to claims of individuals claiming disability benefits under title II and individuals age 18 or older claiming disability benefits under title XVI. It should be understood that references in this Ruling to the ability to do substantial gainful activity, ''RFC,'' and other terms and rules that are applicable only to title II disability claims and title XVI disability claims of individuals age 18 or older are also intended to refer to appropriate terms and rules applicable in determining disability for individuals under age 18 under title XVI.

some point in time since the date of the precipitating injury, disability adjudicators can reliably determine that RSDS/CRPS is present and constitutes a medically determinable impairment. It may be noted in the treatment records that these signs are not present continuously, or the signs may be present at one examination and not appear at another. Transient findings are characteristic of RSDS/CRPS, and do not affect a finding that a medically determinable impairment is present.

How Is Medical Evidence of the Impairment Documented?

In cases involving RSDS/CRPS, the documentation of medical signs or laboratory findings at some point in time in the clinical record since the date of the precipitating injury is critical in establishing the presence of a medically determinable impairment. In cases in which RSDS/CRPS is alleged, longitudinal clinical records reflecting ongoing medical evaluation and treatment from the individual's medical sources, especially treating sources, are extremely helpful in documenting the presence of any medical signs, symptoms and laboratory findings.

Generally, evidence for the 12-month period preceding the month of application should be obtained, unless there is reason to believe that development of an earlier period is necessary, the alleged onset of disability is less than 12 months before the date of the application, or a fully favorable determination can be made with less evidence.

If the adjudicator finds that the evidence is inadequate to determine whether the individual is disabled, he or she must first recontact the individual's treating or other medical source(s) to determine whether the additional information needed is readily available, in accordance with 20 CFR 404.1512 and 416.912. Only after the adjudicator determines that the information is not readily available from the individual's health care provider(s), or that the necessary information or clarification cannot be sought from the individual's health care provider(s), should the adjudicator proceed to arrange for a consultative examination(s) in accordance with 20 CFR 404.1519a and 416.919a. The type of consultative examination(s) purchased will depend on the nature of the individual's symptoms and the extent of the evidence already in the case record.

It should be noted that conflicting evidence in the medical record is not unusual in cases of RSDS due to the transitory nature of its objective findings and the complicated diagnostic process involved. Clarification of any such conflicts in the medical evidence should be sought first from the individual's treating or other medical sources.

Medical opinions from treating sources about the nature and severity of an individual's impairment(s) are entitled to deference and may be entitled to controlling weight. If we find that a treating source's medical opinion on the issue of the nature and severity of an individual's impairment(s) is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record, the adjudicator will give it controlling weight. (See SSR 96–2p, ''Titles II and XVI: Giving Controlling Weight to Treating Source Medical Opinions,'' and SSR 96–5p, ''Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner.'') [3]

How Is the Duration and Severity of RSDS/CRPS Established?

The signs and symptoms of RSDS/CRPS may remain stable over time, improve, or worsen. Documentation should, whenever appropriate, include a longitudinal clinical record containing detailed medical observations, treatment, the individual's response to treatment, complications of treatment, and a detailed description of how the impairment limits the individual's ability to function and perform or sustain work activity over time.

Chronic pain and many of the medications prescribed to treat it may affect an individual's ability to maintain attention and concentration, as well as adversely affect his or her cognition, mood, and behavior, and may even reduce motor reaction times. These factors can interfere with an individual's ability to sustain work activity over time, or preclude sustained work activity altogether. When evaluating duration and severity, as well as when evaluating RFC, the effects of chronic pain and the use of pain medications must be carefully considered.

When the alleged onset of disability secondary to RSDS/CRPS occurred less than 12 months before adjudication, the adjudicator must evaluate the available medical evidence and project the degree of impairment severity that is likely to exist at the end of 12 months. Information about treatment and response to treatment, as well as any medical source opinions about the individual's prognosis at the end of 12 months, are helpful in deciding whether the medically determinable impairment is expected to be of disabling severity for at least 12 consecutive months.

In those cases in which an individual is found disabled based on RSDS/CRPS, but medical improvement is anticipated, the adjudicator should schedule an appropriate medical reexamination date consistent with the information indicating the likelihood of medical improvement.

How Is RSDS/CRPS Evaluated?

Claims in which the individual alleges RSDS/CRPS are adjudicated using the sequential evaluation process, just as for any other impairment. Because finding that RSDS/CRPS is a medically determinable impairment requires the presence of chronic pain and one or more clinically documented signs in the affected region, the adjudicator can reliably find that pain is an expected symptom in this disorder. Other symptoms, including such things as extreme sensitivity to touch or pressure, or abnormal sensations of heat or cold, can also be associated with this disorder. Given that a variety of symptoms can be associated with RSDS/CRPS, once the disorder has been established as a medically determinable impairment, the adjudicator must evaluate the intensity, persistence, and limiting effects of the individual's symptoms to determine the extent to which the symptoms limit the individual's ability to do basic work activities. For this purpose, whenever the individual's statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, the adjudicator must make a finding on the credibility of the individual's statements based on a consideration of the entire case record. This includes the medical signs and laboratory findings, the individual's own statements about the symptoms, any statements and other information provided by treating or examining physicians or psychologists and other persons about the symptoms and how they affect the individual, and any other relevant evidence in the case record. Although symptoms alone

[3] A medical source opinion that an individual is ''disabled'' or ''unable to work,'' has an impairment(s) that meets or equals the requirements of a listing, has a particular residual functional capacity (RFC), that concerns whether an individual's RFC prevents him or her from doing past relevant work, or that concerns the application of vocational factors, is an opinion on an issue reserved to the Commissioner. Every such opinion must still be considered in adjudicating a disability claim; however, the adjudicator will not give any special significance to such an opinion because of its source. See SSR 96–5p for an additional discussion of this issue.

cannot be the basis for finding a medically determinable impairment, once the existence of a medically determinable impairment has been established, an individual's symptoms and the effect(s) of those symptoms on the individual's ability to function must be considered both in determining impairment severity and in assessing the individual's residual functional capacity (RFC), as appropriate. If the adjudicator finds that pain or other symptoms cause a limitation or restriction having more than a minimal effect on an individual's ability to perform basic work activities, a ''severe'' impairment must be found to exist. See SSR 96–3p, ''Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Determining Whether a Medically Determinable Impairment is Severe'' and SSR 96–7p, ''Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements.''

Proceeding with the sequential evaluation process, when an individual is found to have a medically determinable impairment that is ''severe,'' the adjudicator must next consider whether the individual's impairment(s) meets or equals the requirements of the Listing of Impairments contained in appendix 1, subpart P of 20 CFR part 404. Since RSDS/CRPS is not a listed impairment, an individual with RSDS/CRPS alone cannot be found to have an impairment that meets the requirements of a listed impairment. However, the specific findings in each case should be compared to any pertinent listing to determine whether medical equivalence may exist.[4] Psychological manifestations related to RSDS/CRPS should be evaluated under the mental disorders listings, and consideration should be given as to whether the individual's impairment(s) meets or equals the severity of a mental listing.

For those cases in which the individual's impairment(s) does not meet or equal the listings, an assessment of RFC must be made, and adjudication must proceed to the fourth and, if necessary, the fifth step of the sequential evaluation process. Again, in determining RFC, all of the individual's symptoms must be considered in deciding how such symptoms may affect functional capacities. Careful consideration must be given to the effects of pain and its treatment on an individual's capacity to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis. See SSR 96–7p, ''Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements'' and SSR 96–8p, ''Titles II and XVI: ''Assessing Residual Functional Capacity in Initial Claims.''

Opinions from an individual's medical sources, especially treating sources, concerning the effect(s) of RSDS/CRPS on the individual's ability to function in a sustained manner in performing work activities, or in performing activities of daily living, are important in enabling adjudicators to draw conclusions about the severity of the impairment(s) and the individual's RFC. In this regard, any information a medical source is able to provide contrasting the individual's medical condition(s) and functional capacities since the alleged onset of RSDS/CRPS with the individual's status prior to the onset of RSDS/CRPS is helpful to the adjudicator in evaluating the individual's impairment(s) and the resulting functional consequences.

In cases involving RSDS/CRPS, third-party information, including evidence from medical practitioners who have provided services to the individual, and who may or may not be ''acceptable medical sources,'' is often critical in deciding the individual's credibility. Information other than an individual's allegations and reports from the individual's treating sources helps to assess an individual's ability to function on a day-to-day basis and helps to depict the individual's capacities over a period of time, thus serving to establish a longitudinal picture of the individual's status. Such evidence includes, but is not limited to:

- Information from neighbors, friends, relatives, or clergy;
- Statements from such individuals as past employers, rehabilitation counselors, or teachers about the individual's impairment(s) and the effects of the impairment(s) on the individual's functioning in the work place, rehabilitation facility, or educational institution;
- Statements from other practitioners with knowledge of the individual, *e.g.*, nurse-practitioners, physicians' assistants, naturopaths, therapists, social workers, and chiropractors;
- Statements from other sources with knowledge of the individual's ability to function in daily activities; and
- The individual's own record (such as a diary, journal, or notes) of his or her own impairment(s) and its impact on function over time.

In accordance with SSR 96–7p, ''Titles II and XVI: Evaluation of Symptoms In Disability Claims: Assessing The Credibility of An Individual's Statements,'' when additional information is needed to assess the credibility of the individual's statements about symptoms and their effects, the adjudicator must make every reasonable effort to obtain additional information that could shed light on the credibility of the individual's statements.

If the adjudicator determines that the individual's impairment(s) precludes the performance of past relevant work (or if there was no past relevant work), a finding must be made about the individual's ability to perform other work. The usual vocational considerations (see 20 CFR 404.1560–404.1569a and 416.960–416.969a) must be followed in determining the individual's ability to perform other work. See also SSR 96–8p, ''Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims.''

Many individuals with RSDS/CRPS are ''younger individuals'' ages 18 through 49 (see 20 CFR 404.1563 and 416.963). Age, education, and work experience are not usually considered to limit significantly the ability of individuals under age 50 to make an adjustment to other work, including unskilled sedentary work.[5] However, a finding of ''disabled'' is not precluded for those individuals under age 50 who do not meet all of the criteria of a specific rule and who do not have the ability to perform a full range of sedentary work. The conclusion about whether such individuals are disabled will depend primarily on the nature and extent of their functional limitations or restrictions. Thus, if it is determined that an individual is able to do less than the full range of sedentary work, refer to SSR 96–9p, ''Titles II and XVI: Determining Capability to Do Other Work—Implications of a Residual Functional Capacity for Less Than a Full Range of Sedentary Work.'' As explained in that Ruling, whether the individual will be able to make an adjustment to other work requires

[4] In evaluating title XVI claims for disability benefits for individuals under age 18, consideration must be given to the possibility of finding functional equivalence based on the individual's impairment and related symptoms and their effects on whether the individual's impairment(s) results in marked and severe functional limitations.

[5] However, ''younger individuals'' age 45–49 who are unable to communicate in English or who are illiterate in English, whose past work was unskilled (or who had no past relevant work), or who have no transferable skills, and who are limited to a full range of sedentary work must be found disabled under rule 201.17 in Table No. 1 of appendix 2, of the Medical-Vocational Guidelines in 20 CFR part 404.

adjudicative judgment regarding factors such as the type and extent of the individual's limitations or restrictions and the extent of the erosion of the occupational base for sedentary work.

Effective Date: This Ruling is effective on the date of its publication in the **Federal Register**.

Cross-References: SSR 96–2p, ''Titles II and XVI: Giving Controlling Weight to Treating Source Medical Opinions,'' SSR 96–3p, ''Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Determining Whether a Medically Determinable Impairment is Severe,'' SSR 96–5p, ''Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner,'' SSR 96–7p, ''Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements,'' SSR 96–8p, ''Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims,'' and SSR 96–9p, ''Titles II and XVI: Determining Capability to Do Other Work—Implications of a Residual Functional Capacity for Less Than a Full Range of Sedentary Work.''

[FR Doc. 03–26332 Filed 10–17–03; 8:45 am]

BILLING CODE 4910–02–U

DEPARTMENT OF STATE

[Public Notice 4515]

Bureau of Political-Military Affairs: Directorate of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the seven letters.

FOR FURTHER INFORMATION CONTACT: Mr. Peter J. Berry, Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202 663–2700).

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: October 3, 2003.

Peter J. Berry,

Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

United States Department of State,
Washington, D.C. 20520
July 25, 2003.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of major defense equipment and defense articles in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the temporary export of one commercial communications satellite, plus ground maintenance, test and support equipment and secure communications equipment to International Waters in the Pacific Ocean for Sea Launch.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary Legislative Affairs

Enclosure:
Transmittal No. DDTC 075–03

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State,
Washington, D.C. 20520
www.state.gov
September 3, 2003.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and hardware to Algeria and the United Kingdom necessary for the development of a Command, Control, Communications, Computers, Information, Surveillance and Reconnaissance System for the Algerian Ministry of Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary Legislative Affairs

Enclosure:
Transmittal No. DDTC 078–03

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State,
Washington, D.C. 20520
September 3, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles that are firearms controlled under category I of the United States Munitions List sold commercially under a contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 510 M–60E4 7.62 x 51mm machine guns and associated minor equipment to the Colombian Ministry of National Defense for use by the Colombian Army.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary Legislative Affairs

Enclosure:
Transmittal No. DTC 085–03

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State,
Washington, D.C. 20520

September 3, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles for the manufacture in Mexico of a ring laser gyro inertial sensor assembly and circuit card components.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information

submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure:
Transmittal No. DTC 087–03

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State,
Washington, D.C. 20520

September 3, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles to Japan to support the manufacture, maintenance, and marketing of the AN/AAS–44 (JM) and TIFLIR–49(JM) Infrared Detecting Systems for the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure:
Transmittal No. DDTC 087–03

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State,
Washington, D.C. 20520

September 3, 2003.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the manufacture in Denmark and The Netherlands of Optical Waveguide Chips for use as sensing devices for chemical and biological detection for the United States Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Assistant Secretary, Legislative Affairs.

Enclosure:
Transmittal No. DTC 093–03
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State,
Washington, D.C. 20520

September 10, 2003.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the transfer of technical data, assistance and manufacturing know-how to Japan necessary for the production, use, sale, repair, maintenance and overhaul of the F–4EJ Flight Director System for end-use by the Government of Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure:
Transmittal No. DTC 094–03

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

[FR Doc. 03–26403 Filed 10–17–03; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 4518]

Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to Dhamat Houmet Daawa Salafia

Acting under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13286 of July 2, 2002, and Executive Order 13284 of January 23, 2003, and in consultation with the Secretary of the Treasury, the Attorney General, and the Secretary of Homeland Security, I hereby determine that: Dhamat Houmet Daawa Salafia [also known as Group Protectors of Salafist Preaching; aka Houmat Ed Daawa Es Salifiya; aka Katibat El Ahoual; aka Protectors of the Salafist Predication; aka El-Ahoual Battalion; aka Katibat El Ahouel; aka Houmate Ed-Daawa Es-Salafia; aka the Horror Squadron; aka Djamaat Houmat Eddawa Essalafia; aka Djamaatt Houmat Ed Daawa Es Salafiya; aka Salafist Call Protectors; aka Djamaat Houmat Ed Daawa Es Salafiya; aka Houmate el Da'awaa es-Salafiyya; aka Protectors of the Salafist Call; aka Houmat ed-Daaoua es-Salafia; aka Group of Supporters of the Salafiste Trend; aka Group of Supporters of the Salafist Trend] has committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: October 10, 2003.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 03–26524 Filed 10–17–03; 5:00 pm]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation; Suborbital Rocket Launch

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA licenses launches of expendable and reusable launch vehicles (RLVs), including suborbital rockets, under regulations found in 14 CFR Ch. III, parts 400–450. The FAA is issuing this Notice to clarify the applicability of FAA licensing requirements to suborbital rocket launches, in general, and suborbital RLVs, in particular so that a vehicle operator can determine, in advance of consultation with the FAA, whether it

must obtain a launch license. Some suborbital RLVs currently under development use traditional aviation technology and components, including wings, for lift and glide capability, as well as rocket propulsion for thrust to maintain their trajectory. These vehicles may be termed ''hybrid'' in nature, because a single vehicle system uses aviation and aerospace technology during different portions of flight. This Notice advises an operator of a hybrid suborbital RLV that a proposed mission may require other FAA flight authorization, specifically an experimental airworthiness certificate (EAC), as a condition of a launch license, to operate in the National Airspace System (NAS).

FOR FURTHER INFORMATION CONTACT: Jay Garvin, AST–200, Manager, Licensing and Safety Division, Office of the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, U.S. Department of Transportation, 800 Independence Avenue, SW., Washington, DC 20591, (202) 385–4700; or David Hempe, AIR–100, Manager, Aircraft Certification Service, Office of the Associate Administrator for Regulation and Certification, Federal Aviation Administration, U.S. Department of Transportation, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–8235.

Comments Invited

The FAA is not opening a docket for the receipt of comments; however, we welcome input from person interested in submitting views and information to the FAA regarding suborbital RLV missions and concepts. Please send them to the attention of Jay Garvin, AST–200, Manager, Licensing and Safety Division, Office of the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, U.S. Department of Transportation, Room 331, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Background

The Federal Aviation Administration (FAA) licenses the launch of a launch vehicle, reentry of a reentry vehicle and the operation of a launch or reentry site under authority granted to the Secretary of Transportation in the Commercial Space Launch Act of 1984, as amended (CSLA), codified in 49 U.S.C. Subtitle IX, chapter 701, and delegated to the FAA Administrator. Under the CSLA, a U.S. citizen must obtain authorization from the FAA to launch, reenter or operate a launch or reentry site anywhere in the world. Any person wishing to conduct commercial space transportation activities in the United States must also obtain FAA authorization to do so. FAA authorization for these activities is granted by a license issued by the FAA's Associate Administrator for Commercial Space Transportation (AST) to the vehicle or site operator. A license prescribes terms and conditions for conducting authorized activity. Requirements for obtaining and remaining in compliance with a license are located in 14 CFR Chapter III, parts 400–450. U.S. Government space activities, including launches the government carriers out for the Government are not subject to licensing by the FAA.

When the CSLA was enacted in 1984, only expendable launch vehicles (ELVs) and sounding rockets were available for private sector use, along with certain ballistic missiles adapted for commercial applications. A report prepared by the Senate Committee on Commerce, Science, and Transportation accompanying passage of the CSLA recognized that vehicle and space-related technologies would continue to evolve with commercialization of space access and assets and that the regulatory program would have to adapt. The Committee ''recognizes that additional requirements may be necessary to meet the requirements and consideration of future launch technologies and activities and new classes payloads that presently do not exist.'' S. Rept. 98–656, ''Commercial Space Launches, 98th Cong., 2d Sess., at pp. 11–12.

The Committee's observations in 1984 were borne out by the development of reentry capability for commercial use in the 1990s. Increasing emphasis on efficient and lower cost space access, combined with reentry capability, prompted a range of new launch vehicle concepts that would be fully or partially reusable. This new type of launch vehicle became known as a reusable launch vehicle or RLV, in contrast to conventional one-time use expendable launch vehicles or ELVs. In 1998, Congress amended the CSLA by adding reentry licensing authority for reentry vehicles, including RLVs. ''to establish the appropriate legal framework to ensure public safety is protected while minimizing regulatory burden, delay or uncertainty that could inhibit commercial exploitation of reentry capabilities.'' H. Rep. 105–347, ''Commercial Space Act of 1997,'' 105th Cong., 1st Sess., at p. 21. Reentry licensing would authorize the purposeful return of a reentry vehicle and any payload from Earth orbit or outer space to Earth. A reentry vehicle is one that is designed to return from Earth orbit or outer space to Earth substantially intact.

Although the FAA had licensing authority under the CSLA over suborbitally operated RLVs by virtue of its licensing authority over suborbital rocket launches, the addition of licensing authority for reentry activities and specific reference to RLVs in the 1998 amendments eliminated regulatory risk, and removed any investor doubt, that Congress did indeed intend the FAA to address through CSLA licensing the unique safety and policy issues that may result from launch and intact landing of a launch vehicle, whether or not the vehicle enters Earth orbit before returning for landing on Earth.

The FAA promptly issued licensing regulations to implement its newly added statutory authority over reentry activity and RLV missions in general. The FAA covered suborbitally operated RLVs in its rulemaking. Under the licensing requirements for RLV missions, a suborbitally operated RLV may follow either a ballistic or maneuverable trajectory. The FAA explained in its rulemaking a proposal that a ''suborbital trajectory is a flight path that is not closed, whereas an orbit is a closed path. A suborbital trajectory may be ballistic, that is, acted on only by atmospheric drag and gravity, or it can be controlled by external forces and therefore maneuverable.'' *See* 64 FR 19626–19666, April 21, 1999, at p. 19630, fn. 1. The FAA proposed, and codified, a uniform measure of public safety risk for an RLV that is launched and subsequently returns from Earth orbit and one that is launched and operates in suborbital fashion, where maneuvered in its return trajectory or returning through ballistic flight. The final RLV mission licensing rule (14 CFR part 431), issued September 19, 2000, clarified that all RLV missions, whether orbital (consisting of launch and reentry) or suborbital (launch and intact landing) are covered by the rule although only those RLVs that return to Earth from outer space or Earth orbit may be considered to ''reenter'' under the statutory definition of ''reenter; reentry.'' *See* ''Final Rule, Commercial Space Transportation Reusable Launch Vehicle and Reentry Licensing Regulations,'' 65 FR 56618–56667, September 19, 2000.

Despite the efficient development of a comprehensive regulatory regime for RLVs, vehicle development slowed in the late 1990s, with the downturn in the Low Earth Orbit (LEO) satellite market. Recently, though, mounting demand for

space tourism services has prompted renewed interest in commercial RLV possibilities. To spur entrepreneurial competition and development, the X-Prize Foundation promises a $10 million purse for the first qualifying contestant to successfully conduct two piloted flights of a privately financed and built vehicle, within a two-week timeframe, to a minimum altitude of 100 kilometers. Ultimately, RLV technology may provide trans-atmospheric high-speed flight around the globe, for rapid international travel.

The FAA issued reports for the years 1998–2001, surveying the various RLV concepts under development, publicly and privately, including announced X-Prize contestants. The reports are available and can be downloaded from the AST Web site: *http://ast.faa.gov.* A brief overview of vehicles featured in the various reports illustrates the range of RLV concepts, from single-stage-to-orbit vertical take-off models to multi-stage air-launched systems employing wing-generated lift to gain altitude before initiating rocket motors to generate thrust.

Some RLV concepts combine aviation and space technology so that they are essentially hybrid in nature. Some vehicles are hybrid because a single vehicle integrates characteristics of both flight technologies, employing them for different stages of flight. Others are hybrid because two vehicles, each capable of operating independently at some point during flight, are combined or joined, to form a launch system, *e.g.,* where one vehicle serves as a high altitude platform from which a second vehicle begins its flight.

RLV designers whose vehicles embody aircraft operating characteristics, in whole or in part, have expressed uncertainty about the type of regulatory regime that would cover flight operations, *i.e.,* whether a launch license or aircraft certification, such as an experimental airworthiness certificate (EAC), would be required for flight authorization. Some also question whether a test flight is a licensable event or requires only aircraft certification as the sole flight authorization, particularly where flight operations would be limited to high altitude atmospheric tests not bound for low Earth orbit or otherwise into outer space.

There is concern that uncertainty regarding the applicable regulatory regime may impede the ability of developers of hybrid suborbital RLVs to obtain the financing needed to take their concepts from the drawing board into flight testing. Concerns stem from not knowing, in advance of operation, whether suborbital flight would be regulated under the CSLA and the Commercial Space Transportation Regulations, 14 CFR Ch. III, as launch of an RLV that is a suborbital rocket, or under the Federal Aviation Regulations as civil aircraft that must satisfy airworthiness certification requirements. Although both regulatory regimes, launch licensing and aircraft certification, protect the health and safety of the uninvolved public, there are differences in the approval processes that may affect technical choices in terms of vehicle design and planned flight profiles, in addition to the perceived difference in cost of regulatory compliance.

At a July 24, 2003 joint congressional hearing on commercial human space flight, witnesses noted the uncertainty surrounding the appropriate flight authorization for a winged suborbital RLV. They urged Congress to reduce the regulatory risk facing potential investors by mandating an enabling regulatory framework for commercial suborbital human space flight with AST taking the lead in regulating the activity.

The FAA is issuing this Notice to eliminate uncertainty regarding the applicable regulatory regime for a suborbital RLV and suborbital rockets, in general. The Notice provides a technical demarcation between launch vehicles and aircraft so that the public, including vehicle developers, can determine in advance of consultation with the FAA whether a launch license or only aircraft certification is required to conduct flight operations.

Suborbital Rocket

The Secretary of Transportation has authority to differentiate between civil aviation and launch of a launch vehicle, including a suborbital rocket. Authority under the CSLA to license suborbital rocket launches and other commercial space transportation activities was delegated to the FAA Administrator in 1995.[1] Licensing authority is exercised by AST, under a delegation from the FAA Administrator. Safety of air commerce and the National Airspace System (NAS) is regulated under separate statutory authority provided in 49 U.S.C. Subtitle VII, Part A, ''Air Commerce and Safety.''

A license under the CSLA is required to launch a suborbital rocket. The CSLA defines a ''launch vehicle'' to mean a vehicle built to operate in, or place a payload in, outer space, and a suborbital rocket. ''Launch'' means to place or try to place a launch vehicle or reentry vehicle and any payload from Earth—in a suborbital trajectory; in Earth orbit in outer space, or otherwise in outer space. 49 U.S.C. 70102. for a suborbital rocket, ''launch'' under the CSLA means placing a suborbital rocket on a suborbital trajectory.

This Notice informs the public of the criteria used by the FAA to differentiate civil aircraft subject to aircraft certification and operating standards for flight in airspace from a suborbital rocket launch subject to licensing under the CSLA. The FAA considers use of rocket propulsion for thrust, as opposed to wing-generated lift, in determining whether a vehicle that flies through airspace is a suborbital rocket under the CSLA, or an aircraft. Quite simply, a vehicle that relies principally upon rocket-propelled thrust to maintain its intended flight trajectory during powered flight is a launch vehicle, or rocket, subject to licensing under the CSLA unless exempt. A vehicle that relies chiefly upon lift generated by its wings in maintaining its intended course during powered flight is an aircraft subject to regulation under the Federal Aviation Regulations. A rocket-propelled civil aircraft that relies upon wing-borne lift for the majority of its powered flight is not a suborbital rocket requiring a license for operation. The ''E–Z Rocket,'' flown by X–COR, is an example of a rocket-propelled aircraft.

To summarize, a suborbital rocket subject to CSLA licensing is a rocket-propelled vehicle intended for flight on a suborbital trajectory, whose thrust is greater than its lift for the majority of the powered portion of its flight.

The FAA rulemaking regarding RLV missions, concluded in 2000, addressed ''suborbital trajectory'' in the context of RLVs. The FAA regards a suborbital trajectory as the intentional flight path, or any portion of that flight path, of a launch vehicle or reentry vehicle, whose vacuum instantaneous impact point (IIP) does not leave the surface of the earth. The IIP of a launch vehicle is the projected impact point on Earth where the vehicle would land if its engines stop or where vehicle debris, in the event of failure and break-up, would land. The notion of a ''vacuum'' IIP reflects the absence of atmospheric effects in performing the IIP calculation. If the vacuum IIP never leaves the Earth's surface, the vehicle would not achieve Earth orbit and would therefore be on a suborbital trajectory.

[1] Certain small-scale unmanned rocket launches have traditionally been subject to FAA flight authorization under 14 CFR part 101, and are not subject to licensing under the CSLA. FAA authority over those small recreational and hobby rockets was not affected by enactment of the CSLA, nor was delegation of CSLA licensing authority to the FAA Administrator intended to place launch vehicle licensing under 14 CFR part 101 or aircraft certification regulations.

The FAA relies upon thrust versus lift during powered flight in differentiating launch vehicles from aircraft because it provides a clear and objective point of demarcation that relies on technical distinctions grounded in the science of physics, not labels. Other options for differentiating launch vehicles from aircraft are not as well grounded in science or logic. For example, the FAA could point to the use of wings and classify all winged vehicles as aircraft that must satisfy airworthiness certification requirements; however, the Pegasus launch vehicle is a winged vehicle used to place payloads in Earth orbit and is subject to CSLA licensing. Similarly, the Space Shuttle has wings but is not regarded as an aircraft (nor is it subject to licensing because its operation is deemed to be by and for the Government and therefore exempt from the CSLA). The FAA could look to other traditional indicia of space flight, such as use of pressure suits or reaction control systems, but both are used for high altitude aircraft and therefore do not help us distinguish launch vehicles from aircraft. Altitude is also not an appropriate discriminator for launch vehicles and aircraft because some suborbital rockets, including sounding rockets, are not necessarily intended for launch into Earth orbit or outer space and because aircraft can be designed to operate at increasingly extreme altitudes above controlled airspace. Therefore, altitude does not offer an objective means of distinguishing suborbital launch vehicles from aircraft.

The FAA finds that flight physics provides a clear, certain and objective criteria the public can use in determining whether a vehicle requires a license from the FAA under the CSLA. Using the suborbital rocket criteria identified above, a prospective operator can determine whether it must contact AST and begin the pre-application consultation process required for a launch license.

Licensing Requirements for Suborbital RLVs

A launch license is issued consistent with public health and safety, safety of property, and U.S. national security and foreign policy interests, including international obligations. Upon satisfactory completion of the various reviews required under the Commercial Space Transportation Licensing Regulations, AST issues a license to an operator authorizing the mission; however, authorization is subject to operator compliance with license terms and conditions.

The FAA has an established regulatory framework governing launches of suborbital rockets, both expendable and reusable. Suborbital ELVs are regulated under license requirements contained in 14 CFR part 415.[2] Suborbital RLVs, including those that employ traditional aviation characteristics, such as wings and landing gear, are regulated under RLV mission licensing requirements contained in 14 CFR part 431.

Certain suborbital RLVs, described in this Notice as ''hybrid,'' that employ aviation characteristics are also regulated under FAA aircraft regulations. Where operation of a launch vehicle includes operation of a civil aircraft for any portion of flight, an EAC may be required, in addition to a launch license, in order to obtain complete flight authorization for operation in the national airspace system. Where appropriate, obtaining and complying with an EAC under 14 CFR parts 21 and 91, with special operating conditions, would be made a condition of a suborbital RLV mission license. During pre-license application consultation, AST will refer an applicant proposing a hybrid suborbital RLV mission to the FAA's Aircraft Certification Service and Flight Standards Service to obtain the required certificate if the applicant has not already done so.

AST has issued an advisory circular (AC) regarding test flight launch licensing to illustrate acceptable means of satisfying safety requirements of 14 CFR part 431. Test flights may be a desirable means of validating performance capabilities of a new vehicle under increasingly demanding flight parameters. AC 431.35–3, ''Licensing Test Flight RLV Missions,'' issued August 2002, explains how a license applicant can streamline its submissions under the safety requirements of part 431, when seeking authorization to conduct a series of suborbital RLV test flights that are subject to licensing under the CSLA.

Not all test flights will require licensing under the CSLA. A license will be required only for those vehicles that operate as a suborbital rocket and that are launched. In addition, the Commercial Space Transportation Licensing Regulations exempt from licensing certain low-powered rocket launches known as ''amateur rocket activities.'' Test flights of a hybrid suborbital RLV that fit the definition of ''amateur rocket activities'' are not licensed by the FAA, although an EAC may be required. The term, ''amateur rocket activities,'' is defined in 14 CFR 401.5. It means launch activities conducted at private sites that satisfy all three of the following characteristics:

- Powered by a motor(s) having a total impulse of 200,000 pound-seconds or less;
- Total burning or operating time of less than 15 seconds; and
- A ballistic coefficient—*i.e.,* gross weight in pounds divided by frontal area of rocket vehicle—less than 12 pounds per square inch.

The FAA also retains authority to waive for a particular applicant the requirement to obtain a license where the agency determines that the waiver is in the public interest and will not jeopardize public health and safety, the safety of property and U.S. national security and foreign policy interests.

Issued in Washington, DC, on October 14, 2003.

Patricia Grace Smith,

Associate Administrator for Commercial Space Transportation.

Nicholas A. Sabatini,

Associate Administrator for Regulation and Certification.

[FR Doc. 03–26373 Filed 10–15–03; 4:42 pm]

BILLING CODE 4910–13–M

[2] AN FAA rulemaking is pending that would revise licensing and safety requirements for licensed ELV launches, including suborbital ELVs. *See* Docket No. FAA–2000, accessible through the Department of Transportation's electronic Docket Management System (DMS), for the most current rulemaking proposal and public comments. You can access the DMS using the following Web site: *http://dms.dot.gov.*

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Mobile and Baldwin Counties, AL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Mobile and Baldwin Counties, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. Joe D. Wilkerson, Division Administrator, Federal Highway Administration, 500 Eastern Blvd., Suite 200, Montgomery, Alabama 36177, Telephone: (334) 223–7370.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Alabama Department of Transportation (ALDOT) will prepare an environment impact statement on a proposal to increase the capacity of Interstate Route 10 at Mobile by constructing a new six-lane bridge across the Mobile River at Mobile and

widening the existing bridges across Mobile Bay from four to eight lanes.

Interstate Route 10 now goes under the Mobile River in a four-lane tunnel and crosses Mobile Bay on two, two-lane bridges, each seven mile long bridges. Existing and predicted traffic volumes require that additional capacity on I–10 across the Mobile River and Mobile Bay be added. Currently, vehicles transporting flammables, corrosives, and explosives are prohibited from using the I–10 tunnel, which requires these hazardous materials to be transported along a circuitous route along a surface street, part of I–165, a bridge over the Mobile River, and a segment of a noncontrolled-access State route.

An Environmental Assessment (EA) has been prepared for the project which essentially evaluated a single alignment. The alignment evaluated in the EA emerged from a *Feasibility Study for a Mobile River I–10 Bridge,* which was completed in 1997 for the South Alabama Regional Planning Commission. The proposed design for the new bridge provides 190 feet of vertical clearance with a 1,250-foot span over the Mobile River ship channel.

Because of concerns relating to visual impacts of the bridge on historic properties, including a National Register Landmark structure (Old City Hall), it has been decided to prepare an EIS which will include reevaluation of all three alignments included in the feasibility study.

Alternatives under consideration are no build and adding capacity by constructing a six-lane bridge across the Mobile River, which will tie or merge with the existing I–10 bridges across Mobile Bay, and widening the current Mobile Bay bridges from four to eight lanes. Three build alternates were considered in a feasibility study performed for the project. All three alternates will be further evaluated in the development of the EIS.

The prior EA process included two public involvement meetings, meetings with local historic interests, resource agencies, a Bridge Aesthetic Design Workshop, a neighborhood workshop, and two public hearings. Early coordination letters were sent to resource agencies, tribes, and interested parties. The EA was also distributed to interested parties.

Cooperating agencies include the U.S. Coast Guard and U.S. Army Corps of Engineers.

New early coordination letters, two additional public involvement meetings, and two public hearings are proposed at this time. The existing, cooperating agencies will be requested to maintain that status for the EIS.

During the evaluation of effect on historic properties, an adverse effect was determined for several properties including the Old City Hall. Therefore, coordination with the Department of Interior, the Advisory Council on Historic Preservation, and the State Historic Preservation Officer (Alabama Historic Commission) is required. Also, the National Trust on Historic Preservation and the Mobile Historic Commission requested to be consulting parties during the EA process. That coordination will continue during the EIS process.

To ensure that the full range of issues related to this project are addressed and that all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Joe D. Wilkerson,

Division Administrator, Montgomery, Alabama.

[FR Doc. 03–26342 Filed 10–17–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking approval of the following information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than December 19, 2003.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–New''. Alternatively, comments may be transmitted via facsimile to (202) 493–6230 or (202) 493–6170, or E-mail to Mr. Brogan at *robert.brogan@fra.dot.gov*, or to Ms. Steward at *debra.steward@fra.dot.gov*. Please refer to the assigned OMB control number or collection title in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, Sec. 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the

methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of proposed new information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Work Schedules and Sleep Patterns of Maintenance of Way Employees.

OMB Control Number: 2130–New.

Abstract: In a continuing effort to improve rail safety and to reduce the number of injuries and fatalities to rail workers, FRA and the rail industry have recently focused on the issue of fatigue among train and engine crew personnel. Because railroading is an around-the-clock, seven-days-a-week operation and because a wide array of workers are needed both to operate and to maintain the nation's railroads, other crafts—besides train and engine crews—can also be subject to fatigue. The non-operating crafts, including locomotive and car repair, track maintenance, signal system maintenance and telecommunications, fall into this second category. FRA is proposing a study which will focus on maintenance of way employees, one of the non-operating railroad crafts. The project will be very similar in both method and scope to a current study focusing on railroad signalmen. To develop an understanding of the work schedule-related fatigue issues for maintenance of way employees, FRA proposes to undertake this study. The proposed study has two primary purposes: (1) It aims to document and characterize the work/rest schedules and sleep patterns of the maintenance of way employees; and (2) It intends to examine the relationship between these schedules and level of alertness/fatigue for the individuals who work these schedules. The intent is to report results in the aggregate, not by railroad. Subjective ratings from participants of their alertness/sleepiness on both work and non-work days will be an integral part of this study. The data will be collected through the use of a daily diary or log, as well as a brief background questionnaire for each participant. Analysis of the diary data will allow FRA to assess whether or not there are any work-related fatigue issues for maintenance of way employees.

Form Number(s): FRA F 6180.113; FRA F 6180.114.

Affected Public: Rail Workers.

Respondent Universe: 338 Maintenance of Way Employees.

Frequency of Submission: On occasion.

Estimated Annual Burden: 874 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on October 14, 2003.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 03–26377 Filed 10–17–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR), §§ 211.9 and 211.41 notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waiver of compliance from certain requirements of Federal railroad safety regulations. The individual petition is described below, including the parties seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Alaska Railroad Corporation

[Docket Number FRA–2003–15756]

The Alaska Railroad Corporation (ARRC) seeks a waiver of compliance from certain sections of 49 CFR parts 216, Special Notice and Emergency Order Procedures: Railroad Track, Locomotive and Equipment; 217, Railroad Operating Rules; 218, Railroad Operating Practices; 229, Railroad Locomotive Safety Standards; 233, Signal Systems Reporting Requirements; 235, Instructions Governing Applications for Approval of a Discontinuance or Material Modification of a Signal System or Relief from the Requirements of Part 236; 236, Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances; and 240, Qualification and Certification Of Locomotive Engineers, under § 211.51, Tests, to allow them to acquire, test, and implement technology designed to prevent train collisions, overspeed violations, and protect roadway workers. The program will enable ARRC to demonstrate and validate an integrated system provided by three vendors, Quantum Engineering, Inc. provider of the on-board equipment, Meteor Communications Corporation, provider of the communications backbone and wayside devices, and Engesis, provider of the computer-aided dispatching (CAD) system. This technology is referred to as a Collision Avoidance System (CAS).

Petitioner's Justification

The petitioner provided the following justification for relief:

CAS is a communications-based train control system designed to enhance safety by precisely managing the movements of locomotives, trains, and on-track equipment in real time. The CAS safety enhancements are achieved through a communications-based system that enforces movement authority and speed restrictions for CAS equipped trains.

The CAS integrates four segments to provide the enforcement: the location segment, the locomotive segment, the dispatcher system segment, and the communications segment. The location segment utilizes Global Position System (GPS) satellites to precisely determine the location of equipped locomotives and/or end of train devices using Differential GPS based location system. The dispatcher segment provides full support for train dispatching over the ARRC. The system is field proven, runs in logical modules, and is interfaced

with satellite and radio technology. Communication among dispatchers and train crews is over a field proven communications segment, and is mainly by means of messages that are processed and converted into visual information. The dispatcher confirms or modifies the meet/pass locations and the system automatically incrementally generates and delivers the electronic enforcable authority and temporary speed limits for each train under CAS control. This information is delivered through the communications segment to the locomotive. Procedures are implemented to ensure the data received is complete and correct. Several modules within the locomotive segment manage authority limit enforcement, speed enforcement, switch monitoring, signal compliance and signal comparitor functionality, track integrity, and wayside detector monitoring and enforcement. Failsafe design dictates that an undelivered message will stop the train at the end of its active authority. The approaching locomotive interrogates wayside devices, including signals, and designated switches to ensure proper alignment and aspect for the route. The locomotive segment confirms the locomotive's location, via the location segment, and enforces movement and speed limits by monitoring the train's location and speed and applying the brakes to stop the train if necessary to prevent a violation. The crew is presented a graphical and textual view of the authorities, speed restrictions, and current location, and is alerted in advance to any upcoming restriction. Human reaction to the prompts issued by the system will prevent intervention by CAS. All on-board and dispatcher office information and human actions are recorded.

The CAS will be tested and demonstrated system wide on the ARRC in the State of Alaska on the subdivisions/branches shown in Table 1.

TABLE 1

Subdivision/Branch	Length (miles)
Seward: Anchorage to Seward	114.3
Whittier: Portage to Whittier	12.4
Anchorage: Anchorage to Fairbanks	356.0
Anchorage Intl Airport Branch: Anchorage to End of Track	2.45
Palmer Branch: Matanuska to Palmer	6.2
Suntrana Branch: Healy to End of Track	1.7
Fairbanks Intl Airport Branch: Fairbanks to End of Track	10.0
Eielson Branch: Fairbanks to Eielson	28.0
Total	531.05

The present methods of operation on the CAS territories are shown in Table 2.

TABLE 2

Subdivision/Branch	CTC	CTC 2 main tracks	Non-ABS	Rest/yard limits
Seward: Anchorage to Seward	4.8	0	106.1	3.4
Whittier: Portage to Whittier	2.7	0	5.6	4.1
Anchorage: Anchorage to Fairbanks	8.45	2.8	341.95	2.8
Anchorage Intl Airport Branch	0	0	0	2.45
Palmer Branch: Matanuska to Palmer	0	0	0	6.2
Suntrana Branch: Healy to End of Track	0	0	0	1.7
Fairbanks Intl Airport Branch	0	0	0	10.0
Eielson Branch: Fairbanks to Eielson	0	0	0	28.0
Total (531.05 miles)	15.95	2.8	453.65	58.65

The CAS production system will enforce the General Code of Operating Rules (GCOR) rules governing the movement of trains. Operating Rules changes required to support the CAS will be identified and documented during testing and evaluation.

The waiver is requested for a testing period commencing September, 2003, and extending to the conclusion of the test phase. The testing period will terminate December, 2005 unless AARC notifies FRA of an earlier termination date.

The following are the specific waiver requests and their justifications. References are to Chapter II, Subtitle B, Title 49 of the Code of Federal Regulations.

Section 216.13

Special notice for repairs—locomotive. During development, demonstration, and test, waiver is requested for CAS locomotives to the extent that non-operation of CAS equipment installed on-board, whether through malfunction or deactivation, shall not be construed as an unsafe condition requiring special notice for repairs. Waiver is also sought for non-CAS-equipped locomotives operating in the CAS test territory to the extent that the absence of CAS equipment on-board shall not be construed as an unsafe condition requiring special notice for repairs.

Justification: With or without CAS equipment operating on-board the controlling locomotive, a train remains subject to applicable railroad operating rules. CAS tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. The initial CAS tests will equip only a small subset of locomotives operating in the pilot territory or test bed.

Section 217.9

Program of operational tests and inspections; recordkeeping. Waiver is requested exempting operation of CAS equipment and procedures from the requirements for operational tests, inspections, and associated recordkeeping during the test phase.

Justification: During the CAS test program procedures for using CAS equipment and functions will be refined and modified. Until such procedures are defined, they cannot be addressed in the GCOR.

Section 217.11

Program of instruction on operating rules; recordkeeping; and electronic recordkeeping. Waiver is requested exempting operation of CAS equipment and procedures from the requirements for instruction and associated record keeping during the test phase.

Justification: During the CAS test phase procedures for using CAS equipment and functions will be refined and modified. Until such procedures are defined, they cannot be addressed in the GCOR.

Part 218

(Subpart D) Prohibition Against Tampering With Safety Devices. Waiver is requested exempting on-board CAS equipment from the requirements of §§ 218.51, 218.53, 218.55, 218.57, 218.59, and 218.61 to the extent that CAS equipment on-board a locomotive shall not be considered a ''safety device'' subject to the provisions of this subpart at any time during the test phase.

Justification: CAS tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. ARRC requires the flexibility to permanently disable or remove CAS equipment in the event that a production system is not implemented.

Section 229.7

Prohibited acts. Waiver is requested to the extent that CAS equipment on-board a locomotive shall not be considered ''appurtenances'' rendering the locomotive subject to the provisions of this section.

Justification: CAS tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. ARRC requires the flexibility to temporarily or permanently disable on-board equipment. Whether or not the on-board CAS equipment is functioning, the train remains subject to the provisions of the rules governing the current methods of operation. CAS will be subject to the provisions of 49 CFR part 236, subparts A through G, and proposed Subpart H if promulgated, and therefore, should not be subject to part 229 in any fashion.

Section 229.135

Event recorders. Waiver is requested to the extent that CAS equipment on-board a locomotive shall not be considered an ''event recorder'' subject to the provisions of this section.

Justification: CAS equipment by design will operate intermittently during the pilot program. CAS tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. ARRC requires the flexibility to temporarily or permanently disable on-board CAS equipment.

Section 233.9

Annual Reports. Waiver is requested exempting CAS operations in the test phase from the reporting requirements of this section.

Justification: ARRC recognizes that a CAS production system is subject to the provisions of this section, however, imposition of the requirements during the test phase would impose an unnecessary paperwork burden.

Section 235.5

Changes requiring filing of application. Waiver is requested exempting the CAS from the filing requirements of this section during the test phase.

Justification: CAS tests require flexibility in installing, removing, turning on, and turning off the CAS equipment. ARRC requires the flexibility to permanently disable or remove CAS equipment in the event the production system is not implemented.

Section 236.4

Interference with normal functioning of device. Waiver is requested to the extent that CAS equipment be excluded from this requirement during the test phase.

Justification: During the CAS test phase, the ''normal functioning'' will be identified, defined and redefined. CAS tests require flexibility in installing, removing, turning on, and turning off the CAS equipment. With or without CAS equipment on-board the controlling locomotive, the train remains subject to the provisions of the rules governing the existing methods of operation.

Section 236.5

Design of control circuits on closed circuit principle. Waiver is requested excepting CAS equipment from the closed circuit design requirement.

Justification: CAS is composed of solid-state components that are software driven. Neither the hardware nor software can technically be designed to meet the provisions of this section. However, all safety-critical circuits external to the CAS equipment will be designed to meet this requirement.

Section 236.11

Adjustment, repair, or replacement of component. Waiver is requested exempting CAS components on-board a locomotive from the requirements of this section during the test phase.

Justification: CAS tests require flexibility in installing, removing, modifying, turning on and turning off equipment. Failure of a CAS component during the test phase will not jeopardize the safety of train operations. With or without CAS equipment operating on-board the controlling locomotive, the train remains subject to the provisions of the rules governing the existing method of operation.

Section 236.15

Timetable instructions. Waiver is requested exempting the CAS territory from the timetable designation requirement of this section during the CAS test phase.

Justification: The CAS test phase will consist of tests and demonstrations at undetermined intervals and identifying the test territory in the timetable as ''CAS'' (or some similar label) would be both premature and an unnecessary paperwork burden.

Section 236.76

Tagging of wires and interference of wires or tags with signal apparatus. Waiver is requested exempting CAS equipment from the wire-tagging requirement.

Justification: CAS hardware consists of computers, computer peripherals, and communication devices. While the inapplicability of this section to circuit boards, connectors, and cables would appear obvious, waiver is sought for clarification.

Section 236.101

Purpose of inspection and tests; removal from service of relay or device failing to meet test requirements. Waiver is requested exempting CAS equipment from the requirement for removal of failed equipment from service during the test phase.

Justification: CAS requires flexibility in installing, removing, turning on, and turning off the CAS equipment. With or without CAS equipment operating on-board, a train remains subject to the provisions of the rules governing the existing methods of operation.

Section 236.109

Time releases, timing relays and timing devices. Waiver is requested exempting CAS equipment from the testing requirement of this section during the test phase.

Justification: The timing devices in CAS equipment are software-driven, have no moving parts, and are far more reliable than the devices for which this regulation was promulgated to address.

Section 236.110

Results of tests. Waiver is requested exempting CAS tests from the record keeping requirements of this section.

Justification: During the CAS test phase, the types of tests needed to ensure appropriate levels of maintenance will be defined.

Section 236.501

Forestalling device and speed control. Waiver is requested exempting CAS from the requirement for medium-speed restriction.

Justification: CAS receives input from the track database, bulletins, and signal

system with regard to speed. In the event of a failure of the engineer to obey any restrictive speed CAS will enforce a stop.

Section 236.511

Cab signals controlled in accordance with block conditions stopping distance in advance. Waiver is requested exempting the CAS on-board display from the cab-signal requirements of this section.

Justification: CAS is not an automatic cab signal system and will have no connection to a signal system. CAS will receive data radio input from the signal system and display the signal name that forms the basis for limits of authority that will be depicted on the display.

Section 236.515

Visibility of cab signals. Waiver is requested exempting the CAS display from the visibility requirement of this section during the test phase.

Justification: The visibility requirements of this rule will be met in the CAS production system.

Section 236.534

Entrance to equipped territory; requirements. Waiver is requested exempting CAS from the requirements of this section during the test phase.

Justification: CAS tests require flexibility in installing, removing, turning on, and turning off CAS equipment.

Section 236.552

Insulation resistance; requirement. Waiver is requested exempting CAS equipment from the insulation resistance requirement of this section.

Justification: CAS equipment consists of computers, computer peripherals, and communications equipment. Insulation resistance tests could be damaging to such components.

Section 236.553

Seal, where required. Waiver is requested exempting CAS from the seal requirement of this section.

Justification: The CAS will allow for manual disablement of on-board CAS functions and equipment through an on-board manual function. Use of the on-board cutout function will be electronically monitored and reported to the dispatcher as an alarm. The CAS tests require flexibility in installing, removing, turning on, and turning off CAS equipment.

Section 236.566

Locomotive of each train operating in train stop, train control or cab signal territory; equipped. Waiver is requested to the extent that the equipped requirements in the section shall not apply to CAS during the test phase.

Justification: A small subset of locomotives operating in the test territory will be CAS equipped; the majority of trains will not be equipped. CAS tests require flexibility in installing, removing, turning on and turning off the on-board equipment. In any case, all CAS tests will be conducted under the provisions of the rules governing the existing methods of operation.

Section 236.567

Restrictions imposed when device fails and/or is cut out enroute. Waiver is requested exempting CAS tests from the restrictions associated with device failure or cutout.

Justification: CAS tests require flexibility in installing, removing, turning on and turning off the on-board equipment. All CAS tests will be conducted under the provisions of the rules governing the existing methods of operation. A failure or deactivation of the CAS equipment will not jeopardize safety of train operations.

Section 236.586

Daily or after trip test. Waiver is requested exempting CAS from the requirements of this section during the test phase.

Justification: During the CAS test phase, the requirements for a daily or after trip test, if necessary, will be defined. An objective is to perform this test without human intervention.

Section 236.587

Departure test. Waiver is requested exempting CAS from the requirements of this section during the test phase.

Justification: During the CAS test phase, the requirements for a departure test will be defined. An objective is to perform this test without human intervention.

Section 236.588

Periodic test. Waiver is requested exempting CAS from the requirements of this section during the test phase.

Justification: During the CAS test phase, the requirements for a departure test will be defined.

Section 240.127

Criteria for examining skill performance. Waiver is requested exempting CAS from the testing requirements of this section during the test phase.

Justification: Criteria and procedures for CAS performance evaluation do not yet exist; they will be identified and defined during the CAS test phase.

Section 240.129

Criteria for monitoring operational performance of certified engineers. Waiver is requested exempting CAS from the performance monitoring procedures during the test phase.

Justification: Criteria and procedures for CAS performance evaluation do not yet exist; they will be identified and defined during the test phase.

It is acknowledged for clarification that CAS, when fully operative during the test phase, will comply with the following regulations:

Section 236.8

Operating characteristics of electromagnetic, electronic, or electrical apparatus. CAS computing equipment will comply with this regulation.

Section 236.501

Forestalling device and speed control. CAS is designed to enforce maximum authorized speeds, speed restrictions, slow speed, and absolute stop. CAS will comply with § 236.501 except for paragraph (b)(2).

Section 236.502

Automatic brake application, initiation by restrictive block conditions stopping distance in advance. CAS is designed to initiate an automatic brake application stopping distance in advance of the end of limits of authority; or the beginning of each speed restriction in the route.

Section 236.503

Automatic brake application; initiation when predetermined rate of speed exceeded. CAS will comply with this regulation.

Section 236.505

Proper operative relation between parts along roadway and parts on locomotive. CAS will function as intended under all conditions of speed, weather, oscillation, and shock. CAS will comply with this regulation.

Section 236.506

Release of brakes after automatic application. After a CAS initiated brake application, brakes cannot be released until the train is stopped.

Section 236.507

Brake application; full service. CAS will comply with this regulation.

Section 236.508

Interference with application of brakes by means of brake valve. CAS equipment will not interfere with or impair the efficiency of the automatic or independent brake valves.

Section 236.509

Two or more locomotives coupled. CAS will be made operative only on the controlling locomotive; however, CAS tests that do not affect train operations may occur on the trailing locomotives.

Section 236.513

Audible indicator. The audible indicator for CAS will have a distinctive sound and be clearly audible under all operating conditions.

Section 236.516

Power supply. CAS equipment will have its own isolated power supply.

Section 236.565

Provision made for preventing operation of pneumatic brake-applying apparatus by double-heading cock; requirement. Operation of the double-heading cock (cutoff pilot valve) will not cut out CAS before the automatic brake is cut out.

Section 236.590

Pneumatic apparatus. Pneumatic apparatus will be inspected and cleaned as required.

Part 236, Subpart G

Definitions. As applicable except § 236.703 and § 236.805.

Interested parties are invited to participate in these proceedings by submitting written views, data or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2003–15756) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590–0001. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.). At the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on October 14, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–26374 Filed 10–17–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

New Jersey Transit Corporation

(Supplement to Waiver Petition Docket Number FRA–1999–6135)

As a supplement to New Jersey Transit (NJ Transit) Corporation's Petition for Approval of Shared Use and Waiver of Certain Federal Railroad Administration Regulations (the Waiver was granted by the FRA on December 3, 1999), NJ Transit seeks permanent waiver of compliance from additional sections of Title 49 of the CFR for operation of its Southern New Jersey Light Rail Transit (SNJLRT) system. *See Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment,* 65 FR 42529 (July 10, 2000). *See also Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems,* 65 FR 42626 (July 10, 2000).

In this regard, NJ Transit has advanced the design and construction of the SNJLRT system towards implementation (Fall 2003) and in the process, has identified the following additional regulation from which it hereby seeks waiver: 49 CFR 238.231(h)(i) Braking System-SNJLRT vehicles are equipped with a passenger-accessible emergency brake handle that, when activated, initiates a full service brake application rather than an emergency brake application.

Since FRA has not yet completed its investigation of NJ Transit's petition, the agency takes no position at this time on the merits of NJ Transit's stated justifications. As part of FRA's review of the petition, the Federal Transit Administration will appoint a representative to advise FRA's Safety Board and that person will participate in the board's consideration of NJ Transit's waiver petition.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number 1999–6135) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received by November 10, 2003 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site 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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov*.

Issued in Washington, DC on October 14, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–26375 Filed 10–17–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Docket 2001–8622]

Wheeling & Lake Erie Railway Company Order

Background

Pursuant to Part 235 of title 49 Code of Federal Regulations, the Wheeling & Lake Erie Railway Company (WLE) filed an application to discontinue and remove the traffic control system on its single main track and sidings between Spencer, Ohio, and Bellevue, Ohio. After hearing, and for the reasons discussed in its July 25, 2003 letter to WLE (letter), the Railroad Safety Board determined that it was appropriate to approve WLE's application, provided execution of the railroad's obligations under conditions placed on the approval can be ensured. Since certain of these obligations do not involve subject matters specifically regulated by FRA, FRA has made consent to entry of this order a further condition on approval of the discontinuance. WLE has consented to entry of the order.

Authority

The Federal Railroad Safety Act of 1970, as codified, gives FRA extensive authority with which to enforce Federal railroad safety laws and regulations. Authority to enforce Federal railroad safety laws has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. Railroads are subject to FRA's safety jurisdiction under the Federal railroad safety laws. 49 U.S.C. 20101, 20103.

Order

Effective upon notification to the WLE that the conditions precedent to removal of the traffic control system have been fulfilled, the WLE shall be subject to the further continuing requirements:

1. WLE shall maintain in place and shall enforce bulletin orders and special instructions required under the conditions to the approval of the application.

2. All track currently signalized shall be subject to an annual internal rail flaw inspection in the same manner required for Class 4 track under 49 CFR 213.237.

3. Dragging equipment detectors shall be installed per the railroad's proposal in this docket at or near the following locations: West of Hartland West at Milepost 72; Townline Road at Milepost 69.5; Old State Road at Milepost 66.6; Benedict Avenue at Milepost 65.3; North West Street at Milepost 64.1; Halfway Road, east of Monroeville, Ohio, at Milepost 62.5; and Williams Road, west of Monroeville, Ohio, at Milepost 58.7. The existing hot box and dragging detector at Clarksfield at Milepost 77.7 shall be maintained. In addition, the hazard detector at Milepost 62.5 shall be required to be equipped to detect hot bearings. These detectors shall be maintained in good working order at all times and shall be promptly restored (without undue delay) in the case of unexpected failure.

4. Remote health monitoring shall be provided for the highway-rail crossing signals in Norwalk and Monroeville, Ohio, as per the railroad's proposal at the following locations: Townline Road at Milepost 69.5; Laylin Road at Milepost 68; Old State Road at Milepost 66.6; Conrwin and Pine Streets at Milepost 65.8; Woodlawn Avenue at Milepost 65.7; Benedict Avenue at Milepost 65.3; Newton and Jefferson Streets at Milepost 64.7; North Pleasant Street at Milepost 64.6; and North West Street at Milepost 64.1 in the Norwalk Area, also Main Street at Milepost 61.0; Ridge Street at Milepost 60.5; and Monroe Street at Milepost 60.2 in the Monroeville Area.

a. Implementation of this capability must provide effective immediate notification to the dispatcher of any false activation or activation failure detected.

b. If the dispatcher cannot immediately account for an alarm condition, the dispatcher shall instruct crews to reduce their speed to restricted speed within one-half mile of approaching the crossing and flag the crossing on both sides. Trains approaching a malfunctioning highway-rail crossing must proceed at restricted speed for one half mile in advance of the crossing and remain at restricted speed until the entire train is one-half mile past the highway-rail crossing.

These systems shall be maintained in working order thereafter and shall be repaired without undue delay in the case of unexpected failure.

5. Power operated switches that remain in this application area shall be maintained with a separate lock rod and separate point detector rod that will be attached to the switch and switch point separately.

6. Switches shall be upgraded to radio controlled operation per the railroad's proposal in this docket.

7. Derails currently installed at turnouts in the application area shall be maintained and utilized consistent with the WLE operating rules in effect as of the date of this letter unless the turnout is no longer needed and is removed.

Violation of this order is subject to civil penalty and other applicable sanctions as provided in 49 U.S.C. 21301 *et seq.*

Issued in Washington, DC on October 10, 2003.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 03–26376 Filed 10–17–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34411]

New Orleans & Gulf Coast Railway Company, Inc.—Lease Exemption—Union Pacific Railroad Company

New Orleans & Gulf Coast Railway Company, Inc. (NOGC), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Union Pacific Railroad Company (UP) and operate approximately 11.52 miles of rail line. The line consists of 7.02-miles of UP's main line located between milepost 0.98 at Goldsboro, LA, and milepost 8.00 near Westwego, LA, and the 4.5-mile spur line known as the Hooper Spur located between Harvey Yard, at Harvey, LA, and the end of the spur at Bayou Street. NOGC certifies that its projected revenues as a result of this transaction will not result in NOGC becoming a Class II or Class I rail carrier, and further certifies that its projected annual revenues will not exceed $5 million.

NOGC indicates that it expects to consummate the transaction on or shortly after October 19, 2003.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34411, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, Suite 225, 1455 F St., NW., Washington, DC 20005.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV*.

Decided: October 10, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–26281 Filed 10–17–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–167 (Sub–No. 1095X)]

Consolidated Rail Corporation—Abandonment Exemption—Lancaster and Chester Counties, PA

AGENCY: Surface Transportation Board, Department of Transportation.

ACTION: Notice responding to comments received on the October 2002 notice to the parties and requesting comments on an attached proposed draft memorandum of agreement.

SUMMARY: This Notice to the Parties responds to the comments received on the October 2002 Notice to the Parties in this rail line abandonment proceeding, discusses the possibility of trail use for the rail line right-of-way, describes and solicits comments on the attached proposed draft Memorandum of Agreement, and provides information for a public meeting to be held on November 19, 2003.

DATES: Comments are due by December 3, 2003.

ADDRESS: If you wish to file written comments regarding the attached proposed draft Memorandum of Agreement, please send an original and two copies to the Surface Transportation Board, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001, to the attention of Troy Brady. Please refer to Docket No. *AB–167 (Sub-No. 1095X*) in all correspondence addressed to the Board.

FOR FURTHER INFORMATION CONTACT: If you have questions regarding this Notice, you should contact Troy Brady, the environmental contact for this case, by phone at (202) 565–1643 or by fax at (202) 565–9000. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On October 24, 2002, the Surface Transportation Board (Board) issued a Notice to the Parties (October 2002 Notice) in the above-titled rail abandonment proceeding. The October 2002 Notice set forth the background of the case, described the Board's reinitiation of the section 106 process of the National Historic Preservation Act (NHPA), 16 U.S.C. 470f, pursuant to the decision of the United States Court of Appeals for the Third Circuit in *Friends of the Atglen-Susquehanna Trail, Inc.* v. *Surface Transportation Bd.,* 252 F.3d 246 (3rd Cir. 2001) (*FAST*), and solicited comments on certain issues regarding this reinitiation. In response to the October 2002 Notice, the Board received 18 comment letters, as well as a letter replying to the comments of other parties, all of which were placed on the Board's Web site.

The Board's Section of Environmental Analysis (SEA) has reviewed the comments. Based on the information therein as well as ongoing consultations with the Advisory Council on Historic Preservation (ACHP), the Pennsylvania State Historic Preservation Officer (SHPO), and Norfolk Southern Railway Corporation (NS), SEA has developed a plan to complete the section 106 process for this proceeding. The ACHP, the SHPO, and NS have indicated their approval of SEA's plan, as well as their willingness to sign the attached proposed draft Memorandum of Agreement (MOA). Changes suggested pursuant to consulting party and public review and comment will be considered. Below, SEA (1) summarizes and responds to the comments, including those that favor converting this railroad right-of-way to interim trail use/rail banking pursuant to 16 U.S.C. 1247(d) (Trails Act), or a privately negotiated trail use agreement entered into after the abandonment is consummated, (2) discusses the remaining steps in the section 106 process for this case, assuming that trail use here is unsuccessful, and (3) describes the attached proposed draft Memorandum of Agreement (MOA) setting forth proposed section 106 mitigation. As discussed in more detail below, SEA has also scheduled a public meeting on this case and the proposed draft MOA and is providing a 45-day period for interested parties to file written comments on the proposed draft MOA.

I. Comment Summary and Response

A. Historic Eligibility of the Enola Branch Rail Line

Comment. NS states that it disagrees with the designation of the Keeper of the National Register of Historic Places (Keeper) that the entire line is historic.

Response. As explained in the October 2002 Notice, pursuant to the Keeper's determination, the ACHP regulations, and the court's holding in FAST, the entire line is historic. NS has not provided any compelling reasons that would undermine the conclusions of the Keeper, the ACHP, and the court.

B. Clarification of the Length and Location of NS's Remaining Line

Comment. NS's reply comments attempt to clarify the name, exact length and location of the rail line that is the subject of this proceeding. NS states that the proper name for the rail line was the Atglen and Susquehanna Branch, because the rail line runs from a location near Atglen, PA to a location near the Susquehanna River. According to NS, the notice of exemption Consolidated Rail Corporation (Conrail) filed in 1989 was for 66.5 miles of track, but only 33.9 miles of this is actual rail right-of-way. NS states that the rail line extends from Milepost 0.0 at CP ''Park'' in Parkesburg, PA to Milepost 33.9 near a connection with the Port Road Brach at CP ''Port'' in Manor Township, PA. The other 32.6 miles of track referred to in the notice of exemption refer to the second track of the double tracked rail line between approximately Milepost 1.1 and Milepost 33.7. Subsequently, NS has indicated that it will return to the use of the designation ''Enola Branch'' for this line in this proceeding because of Conrail's use of this name during the period that it operated the line and the long use of this name in this proceeding.

NS also states that it currently intends to retain the property between Milepost 27.0 at Safe Harbor, PA and Milepost 33.9 at Port, PA in connection with its operation of the Port Road Branch; and between Milepost 0.0 at Parkesburg, PA and Milepost 1.5 at Lenover, PA, except for Amtrak's bridge, for use as the Parkesburg Industrial Track. According to NS, no abandonment authority or exemption was necessary because these line segments will continue to be owned by NS and used for railroad purposes; only one of the two tracks will be removed. For the same reason, NS states that there will be no adverse effect on historic properties on these segments.

NS also states that Conrail sold the portion of the rail line between Milepost 1.5 at Lenover to Milepost 4.0 near the Chester County-Lancaster County line to Southeastern Pennsylvania Transportation Authority (SEPTA) in 1996. Thus, according to NS, the only portion of the rail line (if any) that is subject to this section 106 process is from about Milepost 4.0 in Chester County, PA (the end of a bridge over Noble Road and Octoraro Creek and about 50 yards of access to the bridge) to Milepost 27.0 at Safe Harbor, or approximately 23 miles of rail right-of-way.

Response. Conrail described the line to be abandoned in its 1989 notice of

exemption filing as two parallel tracks of a double tracked line. According to Conrail, track number 1 extended 32.6 miles from Milepost 1.1 in Parkesburg to Milepost 33.7 in Manor Township. Track number 2 extended 33.9 miles from Milepost 0.0 in Parkesburg to Milepost 33.9 in Manor Township. Subsequent descriptions of the line mistakenly referred to the total length of the line to be abandoned as either 66.5 miles of track or 66.5 miles of rail line. SEA agrees with NS that the length of the line is the actual length of the right-of-way. Thus, the line originally at issue here extended 33.9 miles, from Milepost 0.0 in Parkesburg to Milepost 33.9 in Manor Township.[1]

Moreover, it now appears that Conrail sold the portion of the line between Milepost 1.5 to Milepost 4.0 to SEPTA in 1996, so that NS now retains ownership only of the line from Milepost 0.0 to Milepost 1.5 and from Milepost 4.0 to Milepost 33.9. As the court stated in *FAST*, ''[i]f, on remand, the [Board] concludes that [NS] has disposed of some portion of the line, the [Board] will be without power to expand the historical condition to cover that property already sold.'' *See FAST* 252 F.3d at 262. Accordingly, this proceeding, pursuant to the court's remand, will be applicable to the NS-owned portions of the line from Mileposts 0.0 to 1.5 and Mileposts 4.0 to 33.9.

NS suggests that this proceeding does not apply to the line between approximately Mileposts 0.0 and 1.5, and between Mileposts 27.0 and 33.9 because NS intends to retain that portion of the Enola Branch as industrial track. However, NS never sought to dismiss its request for authority to abandon that track, and, under the court's remand, this proceeding includes that track.

C. The Possibility of Trail Use Here

Comment. Friends of the Atglen-Susquehanna Trail, Inc. (FAST), the Pennsylvania Department of Conservation and Natural Resources (DCNR),[2] the County of Chester, the Historic Preservation Trust of Lancaster County, and certain individuals commented that interim trail use/rail banking would be appropriate here, which, if an agreement could be entered into, would result in preservation on any railbanked portions of the right-of-way for the duration of the interim trail use. In consultations, the SHPO indicated that, if the Trails Act remains available, and if a Trails Act agreement could be reached that would preserve the contributing resources on the rail line right-of-way, there would be no adverse effect on historic properties, thereby presumably mooting the need to continue with the mitigation stage of the section 106 process (development of an appropriate MOA).

Comment. NS has stated that it would consider a proposal for trail use that meets certain criteria. Specifically, NS states [3] that it would seriously consider any proposal for trail use that is made promptly so as not to delay the conclusion of this proceeding and that:

(1) Does not result in the commitment of any additional railroad funds than are already committed to this project, (2) does not result in the commitment of any substantive amount of railroad time to the project, (3) does not result in any additional liability for the railroad, (4) does not result in any continuing responsibility to the project by the railroad after it has consummated that abandonment and conveyed the relevant segment of the [l]ine, (5) completely satisfies all of the [Townships of West Sadsbury, Sadsbury, Eden, Bart, Providence, Martic, and Conestoga (Townships)] and [Pennsylvania Department of Transportation (PennDOT)], and (6) is acceptable to the [Pennsylvania Public Utility Commission (PUC)] in substitution for its previous order.

NS also has indicated that it will honor the settlement agreements entered into by Conrail and approved by PUC. Specifically, Conrail entered into an agreement with the Townships under which it would convey segments of the abandoned line to the respective Township through which each segment passed; the Townships would assume future ownership and maintenance responsibility for the line and the crossing structures; Conrail would contribute an agreed sum of money to the Townships for the future maintenance of the crossing structures that are to remain in place; and certain other crossing structures deemed to constitute serious highway safety hazards would be removed by either Conrail or a specified Township. Conrail entered into a similar settlement agreement with PennDOT. *See* PUC Docket Nos. A–00111016 and C–00913256, *Board of Supervisors of Bart Township* v. *Consolidated Rail Corporation, Pennsylvania Department of Transportation, and Lancaster County, et al.*, October 9, 1997. NS has indicated that any agreement with a potential trail sponsor to use the right-of-way as a trail would have to be acceptable to the Townships and PennDOT.

Response. The Trails Act allows rail line that would otherwise be abandoned to be preserved (rail banked) and used in the interim as trails. *See Preseault* v. *ICC,* 494 U.S. 1 (1990). The trail sponsor must assume responsibility for any taxes on, and tort liability for, the property. 16 U.S.C. 1247(d). The Trails Act delays abandonment of a line (and any consequent reversion of rail easements to adjacent property owners) as a matter of law while the line is rail banked and interim trail use continues, and provides that the line may be reactivated for rail service at any time. *Id.* Alternatively, if the railroad owns the property in fee, a railroad can convert its property to trail use outside the auspices of the Trails Act after the abandonment is consummated. *See Hayfield N. R. Co.* v. *Chicago & North Western Transp. Co.,* 467 U.S. 622, 633–34 (1984) (Hayfield Northern) (following abandonment, rail right-of-way is like any other property).[4]

The Board's procedures for establishing interim trail use/rail banking on a rail line proposed for abandonment pursuant to 16 U.S.C. 1247(d) are detailed in the Board's regulations at 49 CFR 1152.29 and are separate from the section 106 process. Parties interested in pursuing interim trail use under the Trails Act for this proceeding would have to follow the Board's regulations to do so. Although trail use requests are normally due within 10 days after the date on which the notice of exemption is published in the **Federal Register** for notice of exemption abandonment proceedings, the Board generally accepts late-filed requests for interim trail use as long as it retains jurisdiction over the subject rail line in a particular proceeding. However, interim trail use under 16 U.S.C. 1247(d) is voluntary on the part of both the railroad and the potential trail sponsor,[5] and the Board cannot impose an interim trail use arrangement upon unwilling parties. Thus, while it is possible that interim trail use under the Trails Act could occur in this case on

[1] The October 2002 Notice incorrectly described the line as extending from Milepost 0.0 to Milepost 27.0.

[2] DCNR stated that the Lancaster County Commissioners have expressed interest in sponsoring a rail-to-trail project.

[3] *See* NS Reply Comments at 47.

[4] Just as with interim trail use under 16 U.S.C. 1247(d) there presumably would be no adverse effect on historic properties under a private trail arrangement that would preserve the contributing resources on the rail line right-of-way and the need to continue with the mitigation phase of the NHPA process could be mooted.

[5] A railroad is under no obligation either to negotiate concerning or enter into an interim trail use/rail banking arrangement. *See* 49 CFR 1152.29(b)(1); *Connecticut Trust for Historic Preservation* v. *ICC,* 841 F.2d 479, 482–483 (2d Cir. 1988); *National Wildlife Fed'n* v. *ICC,* 850 F.2d 694, 696 (D.C. Cir. 1988); *Washington State Dep't of Game* v. *ICC,* 829 F.2d 877, 879–82 (9th Cir. 1987).

the portion of the line that NS still owns and controls [6]—if a potential trail sponsor files an interim trail use/rail banking request in accordance with 49 CFR 1152.29 during this remanded proceeding, NS agrees to negotiate with the potential trail sponsor, and the parties ultimately enter into a Trails Act arrangement—it would be inappropriate for the Board to force the parties to negotiate or to include a trail use condition as part of the section 106 mitigation measures for this proceeding.[7]

D. Summary of Other Comments and SEA's Response

Assuming that there is no agreement for trail use and that the mitigation phase of the section 106 process goes forward for the NS-owned portions of the line from Mileposts 0.0 to 1.5 and Mileposts 4.0 to 33.9, this section discusses the comments and responses received regarding section 106.

1. *Identification of additional consulting parties to the section 106 process. Comment.* FAST commented that SEA needs to make a greater effort to identify as many consulting parties as possible, and should include local community groups in the consultation process. FAST and other commenters requested that certain specific parties be included as consulting parties to the proceeding.

Response. Prior to issuing the October 2002 Notice and pursuant to the ACHP's regulations for implementing the section 106 process, 36 CFR 800.3(f), SEA consulted with the SHPO to identify possible consulting parties. SEA also conducted internet searches, contacted local government entities, and obtained updated addresses for parties that had been interested in earlier stages of the case. The Board then served the October 2002 Notice on 149 parties, placed the October 2002 Notice on the Board's Web site, and published the October 2002 Notice in the **Federal Register**, requesting comments and information on the identification of additional consulting parties. The Historic Preservation Trust of Lancaster County, Lancaster County Conservancy, Lancaster Farmland Trust, the Northeast Regional Field Office of the Rails-to-Trails Conservancy, PennDOT, and Southern End Community Association have requested to be granted official consulting party status. SEA agrees that these six parties should be consulting parties, and, based on the history of this proceeding, has also included FAST and the Townships as official consulting parties for this section 106 process. All of these parties will be invited to concur on the terms of the final MOA.

Furthermore, SEA has added the names of all additional parties identified by commenters to the service list for this proceeding,[8] and has updated the names of the elected officials on the service list. The service list now stands at 211 parties.[9] SEA believes that its efforts to identify consulting parties have been extensive.

All official consulting parties as well as all parties on the service list will receive a copy of the attached proposed draft MOA, an opportunity to provide written comments on the proposed draft MOA, and information on how to participate in a planned public meeting. Opportunities for public involvement are discussed in more detail below in Section II.

2. *Any need for further assessment of adverse effects on the line.*

Comment. PennDOT submitted comments stating that if any of the bridges on the line are individually eligible for inclusion in the National Register of Historic Places (National Register), then the effects of the proposed abandonment on the individually eligible bridges should be determined and taken into consideration when developing appropriate mitigation.

Response. As stated above and in the October 2002 Notice at 4–6, the Keeper has determined that the entire line is historic, including all sites and structures on the line. Therefore, SEA will treat the entire line as historic in accordance with the Keeper's determination and the ACHP regulations. Separate review of the bridges on the line is unnecessary because all bridges on the line will be treated as historic.

Comment. FAST commented that a current analysis of the historic and archeological resources, and a new environmental study of the environmental and physical characteristics of the line should be performed. FAST also recommended that a title search be undertaken and that the assessment of adverse effects should be extended to a continuation of the line in Cumberland and York Counties.

Response. Because SEA is considering the entire line to be historic, including all sites and structures on the line, conducting a survey of all the archeological and historic resources on the line before developing mitigation measures is unnecessary. However, a SEA staff member has driven by portions of the right-of-way and inspected the current physical condition of the line. As stated in the October 2002 Notice, the tracks and ties have mostly been removed, and though there is some overgrowth of vegetation in the area, the right-of-way on NS's line appears to be intact.[10] Additionally, because the tracks and ties have already been removed from much of the right-of-way, there is little chance that the abandonment will affect previously undisturbed ground or impact archeological sites.[11] However, after completion of the section 106 process and the conclusion of the abandonment proceeding before the Board, NS would be able to remove the structures on the line and any remaining track and ties, which could disturb previously undisturbed ground. As discussed in more detail in Section III, the proposed draft MOA contains provisions for protecting any potential archeological resources from unforeseen impacts.

In accordance with the National Environmental Policy Act (NEPA), the Board issued an Environmental Assessment for this proceeding in 1989. According to the Council on Environmental Quality's regulations for implementing the procedural provisions of NEPA, environmental analyses should be supplemented if ''[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.'' 40 CFR 1502.9(c). The NEPA review of this proceeding was completed long ago. No party has submitted any evidence indicating new

[6] *See* discussion above on pages 2–3.

[7] NS has indicated that although it might agree to a proposal to use this right-of-way as a trail under the circumstances discussed above, it does not believe that issuance of a trail condition by the Board (a notice of interim trail use or NITU) would be appropriate here. If NS continues to take this position, any trail use would have to be by private arrangement of the parties following consummation of the abandonment and conclusion of the section 106 process.

[8] SEA was unable to locate the addresses of several of the additional organizations submitted by FAST. These organizations are: Town and Country Garden Club, Christiana Lions Club, Lancaster County Wildlife Center, the Lancaster Environmental Alliance, Octoraro Area Trail Society, Penn Manor Neighborhood of Girl Scouts, and a high school track and cross country club.

[9] The 51 potential consulting parties identified in the October 2002 Notice were primarily group entities or organizations. For some of these parties, multiple names were acquired and added to the service list for this proceeding. Therefore, the total number of 211 parties includes multiple individuals affiliated with the same organization, as well as individuals unaffiliated with any organization.

[10] In its reply comments, NS explains that portions of the line have been retained by NS and are still being used for industrial track use.

[11] NS has stated that it plans to remove a limited number of structures on the line, and that ''little land will be disturbed by the removal of these structures which are mainly above ground.'' *See* NS Reply Comments at 61.

circumstances or information that would warrant the undertaking of a supplemental environmental analysis at this late date. Furthermore, the court in *FAST* only remanded this proceeding to the Board to deal with procedural matters related to the historic review process under section 106. Therefore, SEA need not reconsider the adequacy of its NEPA review here.

SEA does not believe that a title search need be undertaken as part of the section 106 process. The Board cannot compel post-abandonment use of a rail line for non-transportation purposes. *See Hayfield Northern.* Therefore, the ownership of the property after an abandonment is consummated is not affected by the Board's action and not part of the Board's section 106 review.

The Board cannot extend the assessment of adverse effects to areas in Cumberland and York Counties that are not on the line because this proceeding is necessarily limited to the rail line proposed for abandonment. *See Implementation of Environmental Laws,* 7 I.C.C.2d 807, 828–29 (1991).[12]

3. *Appropriate section 106 mitigation measures.* As stated in the October 2002 Notice at 6–7, the Board's ability to protect historic properties is very limited. Essentially, documentation of the historic resources (taking photographs or preparing a history) before they are altered or removed is the only form of nonconsensual mitigation that the Board can require. The Board does not have the power to force a railroad to sell (or donate) its property, or impose a restrictive covenant upon the railroad's transfer of its property, as a condition to obtaining abandonment authority. Any attempt to either preclude or force a railroad to sell (or donate) property for a non-rail purpose, as a condition to obtaining abandonment authority, would plainly constitute an unauthorized taking under the Fifth Amendment. *See Implementation of Environmental Laws,* 7 I.C.C.2d at 828–29, and cases cited therein.

The October 2002 Notice requested comment on appropriate historic preservation mitigation measures, including comments on the measures specified in a proposed draft MOA for this line developed earlier, and suggestions for additional or alternative measures, as well as information regarding the current condition of the rail line. As stated in the October 2002 Notice at 3, the earlier proposed draft MOA would have provided for photographic documentation of certain bridges, and the development of a public, interpretative display in the form of a 6–8 minute video outlining the history of the Enola Branch.

Comment. NS commented that it has complied with the terms of the earlier proposed draft MOA. NS states that the five bridges that the PUC has ordered to be removed for safety reasons have been recorded to state standards, and that NS has paid $15,437 to the Pennsylvania Railroad Museum to develop a video and exhibit of the rail line. NS states that the settlement agreement between Conrail and the Townships should also be considered a mitigation measure.

Comment. PennDOT states that mitigation should provide for documenting a sampling of the bridges rather than all of the bridges on the line. PennDOT also suggests that additional outreach and preservation should be conducted, such as publishing a more comprehensive history of the line and providing money to municipalities to take over the maintenance of as many bridges as possible.

Response. As discussed in more detail in Section III and the proposed draft MOA, the Board, the SHPO, and NS will work together to develop a list of appropriate representative structures to be documented. Documentation of these representative structures will serve to document the historic nature of the line as a whole. Moreover, NS will be required to conduct archival research and to consolidate all information—documentation and the results of the archival research—into one cohesive document to be archived at the SHPO's office. The mitigation in the proposed draft MOA constitutes a marked change from the first proposed draft MOA, which treated only six bridges as historic, not the line as a whole, and did not require archival research. As stated above, NS's settlement agreements with the Townships and with PennDOT provide for local maintenance of structures that would remain intact. However, because the Board's ability to impose mitigation for the protection of historic resources is limited, such agreements, if any, must be entered into voluntarily and are not within the scope of this section 106 process. As discussed in Section III below, SEA believes that the archival research discussed above and documentation of the line to Pennsylvania state standards[13] using representative structures on the Enola Branch is sufficient and that, given the mitigation that NS has already undertaken, a more comprehensive history of the line need not be prepared.[14]

4. *Methods or outlets for publicizing a proposed MOA. Comment.* Commenters recommend widespread notification and public participation in the section 106 process, including press releases and public meetings.

Response. To ensure widespread notice and opportunity for public participation the Board placed all comments received in response to the October 2002 Notice on the Board's Web site, and informed all interested parties of the availability of the comments on the Web site. SEA is sending this current Notice to the Parties (October 2003 Notice) to all 211 parties on the service list for this proceeding, as well as publishing the October 2003 Notice in the **Federal Register** and posting it on the Board's Web site. The Board has also issued a press release describing the contents of the October 2003 Notice.

As discussed in more detail below, SEA will accept written comments on the attached proposed draft MOA, and will also hold a public meeting before the close of the comment period to enable interested parties to provide oral comments. As a result, there will be ample opportunity for public participation and broad notice of the continuing section 106 process here.

Comment. PennDOT states that public input is required while developing the proposed draft MOA and before deciding how to resolve adverse effects of the undertaking, rather than after the proposed draft MOA is developed. PennDOT also states that the Board should provide the documentation regarding the section 106 process to the public in the manner set forth in 36 CFR 800.11(e).

Response. The October 2002 Notice provided members of the public with the opportunity to comment on all aspects of this proceeding, including ways to mitigate adverse effects. All comments received were placed on the Board's Web site, and the proposed draft MOA is also being distributed for public comment and placed on the Board's Web site. Moreover, as discussed in

[12] The Enola Branch rail line is part of a larger rail corridor that extends into Cumberland and Dauphin Counties. Although the proceeding before the Board and this section 106 process pertains only to the right-of-way described above in Section II(B), it should be noted that the SHPO has determined that the portions of the rail corridor in Cumberland and Dauphin Counties are eligible for listing in the National Register.

[13] Pennsylvania state standards are outlined in the guidance document titled ''How To Complete the Pennsylvania Historic Resource Survey Form,'' available from the SHPO, and require the submission of a photo/site plan sheet, a data sheet, and a narrative sheet.

[14] As indicated above, NS has already paid to the Pennsylvania Railroad Museum $15,437 to fund an exhibit or video of the history of the Enola Branch.

detail below, SEA will host a public meeting to receive additional public input on this proceeding in Quarryville, Pennsylvania on November 19, 2003. Thus, SEA believes that ample opportunity has been provided to the public to participate in the section 106 process here.

Section 800.11(e) of 36 CFR outlines the documentation that must be made available to the public when an agency determines that an action will have an adverse effect on historic properties. SEA believes that all of the required documentation already has been prepared and made publicly available.[15]

5. *Other concerns.*

Comment. Several parties commented that they are concerned about public safety at the road crossings along the right-of-way of the line, and advocated bringing the section 106 process to a close as soon as possible. Commenters also state that the PUC issued an order addressing existing safety issues, which has been stayed pending the outcome of this section 106 process.

Response. SEA acknowledges the public safety concerns expressed by the commenters. SEA is working to complete the section 106 process as expeditiously as possible, pursuant to the relevant regulations and procedures.

Comment. FAST states that NS's plans regarding the line should be made known.

Response. In its reply comments at 50, NS directly responded to FAST's request to detail its plans regarding the line. SEA has made all comments received to date, including NS's reply comments, available to all on the Board's Web site. NS's response is as follows:

> [NS] now intends to retain that portion of the Line between Milepost 0.0 at Parkesburg, PA and Milepost 1.5 at Lenover, PA, except for Amtrak's bridge, for use as the Parkesburg Industrial Track. Conrail sold the Line between Milepost 1.5 at Lenover, PA and Milepost 4.0 near the Lancaster County/Chester County Line to SEPTA. [NS] intends to honor the Settlement Agreements with PennDOT and the Townships pertaining to disposition of the Line between Milepost 4.0 near the county line and Milepost 27.0 near Safe Harbor, PA to the Townships and with respect to the bridges to be removed. [NS] intends to retain possession of the property between Milepost 27.0 near Safe Harbor, PA and Milepost 33.9 at Port, PA in connection with its operation of, and in order to protect, the Port Road Branch. It may retain or place excepted track on all or a portion of this Line.

Comment. FAST states that the PUC order approving the settlement agreement with the Townships conflicts with the section 106 process because the order does not include mitigation, does not incorporate the viewpoints of all the consulting parties, and was formulated prior to the issuance of the Keeper's determination and the court's decision. FAST states that NS should acknowledge that the order may need to be modified or vacated depending on the outcome of the section 106 process.

Response. The requirements of NHPA and the ACHP's regulations apply to the abandonment action pending before the Board. Post-abandonment use of the line's right-of-way is outside of the Board's jurisdiction. The settlement agreement is thus outside the Board's abandonment process, including section 106.

Comment. NS argues that the section 106 process does not apply to rail line abandonment proceedings, because rail abandonment proceedings and the railroad's post-abandonment activities are not Federal undertakings for the purposes of section 106 review, as specified at 16 U.S.C. 470w(7). NS argues that a project must be Federally funded in whole or in part to be considered a Federal undertaking, and notes that in notice of exemption proceedings, such as this abandonment, Federal funding is not involved. Furthermore, according to NS, in notices filed pursuant to a class exemption, the Board's responsibilities are ministerial in nature, because the exercise of the class exemption must be allowed so long as the statutory and regulatory criteria are met. NS also states that the Board's jurisdiction over a rail line ceases as soon as an abandonment is consummated, and that the Board cannot control a railroad's post-abandonment activities regarding the rail line, which is private property. Therefore, NS argues, the section 106 process causes unnecessary delay, and the Board should discontinue the section 106 process in this proceeding and in all other rail line abandonment proceedings.[16]

Response. It is well settled that section 106 of NHPA applies to all rail line abandonment proceedings. *See Implementation of Environmental Laws,* 7 I.C.C.2d at 826; *Illinois Commerce Comm'n* v. *ICC,* 848 F.2d 1246, 1260–61 (D.C. Cir. 1988) *cert. denied,* 488 U.S. 1004 (1989). Indeed, in *FAST,* the court specifically found that rail abandonment proceedings, including this particular notice of exemption proceeding, were subject to section 106. *See* 252 F.3d at 251. An undertaking for the purposes of NHPA clearly includes actions that require Federal approval, not simply those that are federally funded. The ACHP's regulations implementing NHPA define an undertaking covered by NHPA as embracing ''a project, activity, or program * * * requiring a Federal permit, license or approval.'' *See* 36 CFR 800.16(y). A railroad must obtain Board authority under 49 U.S.C. 10903 or 49 U.S.C. 10502 to abandon a common carrier line of railroad such as the Enola Branch. Moreover, use of a class exemption for an abandonment can be revoked for a particular line, when the STB finds that regulation is necessary to carry out the national rail transportation policy. 49 U.S.C. 10502(d). Thus, section 106 applies to notice of exemption abandonment proceedings such as this abandonment.

Comment. FAST states that the comments provided by the SHPO and the ACHP on the October 2002 Notice prior to its issuance should be made public.

Response. The October 2002 Notice incorporated the comments that the SHPO and the ACHP provided. The written comments provided by the SHPO and the ACHP prior to the issuance of the October 2002 Notice have been placed in the public docket for this proceeding and thus are available to the public.

II. Next Steps in the Section 106 Process

A. Public Meeting

The Board will hold a public meeting to solicit oral comments on this case and the attached proposed draft MOA. The meeting will be held at the Hoffman Building, located at the Solanco Fair Ground in Quarryville, PA, on

[15] Section 800.11(e) states that documentation of a finding of adverse effect ''shall include: (1) A description of the undertaking specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary; (2) A description of the steps taken to identify historic properties; (3) A description of the affected historic properties, including information on the characteristics that qualify them for the National Register; (4) A description of the undertaking's effects on historic properties; (5) An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and (6) Copies or summaries of any views provided by consulting parties and the public.'' Here, the October 2002 Notice described the undertaking, specified the area of potential effects, described the steps taken to identify historic properties, described the determination of eligibility of the line for inclusion on the National Register, and discussed the finding of adverse effect. As discussed above, all comments received in response to the October 2002 Notice have been made publicly available.

[16] NS has subsequently indicated that because this argument was raised in comments to the October 2002 Notice rather than a formal motion before the Board, it is not requesting a response from the Board on this matter at this time. SEA's response is provided here to clarify SEA's position on the section 106 process for this proceeding, and should not be construed as a formal Board response to NS's argument.

November 19, 2003 from 3 p.m. to 5 p.m. and from 6 p.m. to 8 p.m. SEA will give a brief presentation and interested parties may submit written comments or make oral comments. SEA will have a court reporter available at each session to ensure that oral comments are accurately captured. Both the afternoon and evening sessions will follow the same format and utilize the same agenda; it is not necessary to attend both sessions.

Persons wanting to speak at the public meeting are strongly urged to pre-register by calling (202) 565–1643 and providing their name, telephone number, the name of any group, business, or agency they are representing, if applicable, and whether they wish to speak at the afternoon or evening session. The deadline for pre-registration is November 7, 2003. Persons will be called to speak in the order in which they pre-registered. Those wishing to speak but that did not pre-register will be accommodated at each session as time allows. Those wishing to speak at both the afternoon and evening sessions will also be accommodated as time allows and after all others have had an opportunity to participate in the evening session. As SEA desires for as many persons as possible to participate and given that there will be a limited amount of time, all speakers are strongly encouraged to prepare summary oral comments, and submit detailed comments in writing. SEA also encourages groups of individuals with similar comments to designate a representative to speak for them.

B. Final Memorandum of Agreement

After the close of the 45-day comment period on the attached proposed draft MOA, SEA will review all written comments, as well as any oral comments received at the public meeting. If trail use is unsuccessful, SEA will then prepare a final MOA.

III. Description of the Proposed Draft Memorandum of Agreement

Based on the comments received in the October 2002 Notice and in consultation with the ACHP, the SHPO, and NS, SEA has developed a proposed draft MOA for this proceeding, assuming that no agreement for trail use is reached. The proposed draft MOA briefly summarizes the background of this proceeding and then sets forth several stipulations. As discussed above, because imposition of any nonconsensual mitigation other than documentation would be an unauthorized taking under the Fifth Amendment, the mitigation measures in the proposed draft MOA are limited to documentation.

The SHPO, NS, and SEA are currently working together to develop a list of representative structures on the line. Documentation of these structures will serve to document the historic qualities of the line as a whole. The first stipulation of the draft MOA contains a provision requiring the list of representative structures to be completed prior to the commencement of any documentation efforts. The first stipulation also requires NS to document the NS-controlled portion of the rail line by documenting appropriate representative sites and structures on the line, to Pennsylvania state standards, as described in footnote 13. SEA believes that documentation to Pennsylvania state standards is appropriate in this proceeding. Previously, the SHPO, Conrail, and the Board had all agreed that documentation to Pennsylvania state standards was the appropriate level of documentation when formulating the previous proposed draft MOA for this proceeding, and SEA has received no new information to indicate that the level of documentation should now be different. In addition, the stipulation requires NS to conduct archival research and to consolidate all information—documentation and the results of the archival research—into one cohesive document to be archived at the SHPO's office.

Although the tracks and ties have already been removed from most of the right-of-way, the proposed draft MOA also sets forth provisions for the protection of unexpected discoveries of historic resources, including archeological resources, in the event that documentation efforts identify a potential for unanticipated effects on archeological sites or in the event that one or more archeological sites, any additional cultural resources, or human remains are discovered during any remaining salvage activities associated with the abandonment.

Date made available to the public: October 20, 2003.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

Attachment to STB Docket No. AB–167 (Sub-No. 1095X) Notice to the Parties—Memorandum of Agreement Among the Surface Transportation Board and the Advisory Council on Historic Preservation and the Pennsylvania Historical and Museum Commission and Norfolk Southern Railway Company Regarding Docket No. AB–167 (Sub-No. 1095X) Consolidated Rail Corporation—Abandonment Exemption—Lancaster and Chester Counties, Pennsylvania

Whereas, in 1989 Consolidated Rail Corporation (Conrail) filed a notice of exemption with the Interstate Commerce Commission (ICC) [1] pursuant to 49 CFR 1152.50 seeking an exemption from the requirements of 49 U.S.C. 10903 to abandon a segment of a line of railroad commonly known as the Enola Branch. The Enola Branch extends generally westward from Milepost 0.0 in Parkesburg, Chester County, PA to Milepost 33.9 at Port in Lancaster County, PA.[2] The Enola Branch passes through the Townships of Sadsbury, Bart, Eden, Providence, Martic, Conestoga, and Manor, and the Borough of Quarryville in Lancaster County, and the Township of West Sadsbury, the Borough of Atglen, and the City of Parkesburg in Chester County;

Whereas, the portions of the Enola Branch that are the subject of this Memorandum of Agreement are the portions between Mileposts 0.0 to 1.5 and between Mileposts 4.0 to 33.9.[3]

Whereas, the ICC issued a decision served February 22, 1990 allowing the abandonment subject to a condition, developed as a result of consultation with the Pennsylvania State Historic Preservation Officer (SHPO), that Conrail take no steps to alter the historic integrity of the bridges—the only properties on the Enola Branch that had been identified

[1] The ICC Termination Act of 1995, Pub. L. 104–88, abolished the ICC and transferred certain rail functions, including the rail line abandonment functions at issue in this case, to the Surface Transportation Board (Board), effective January 1, 1996.

[2] Conrail described the Enola Branch in its 1989 notice of exemption filing as two parallel tracks of a double tracked line. Track number 1 extended 32.6 miles from Milepost 1.1 in Parkesburg to Milepost 33.7 in Manor Township. Track number 2 extended 33.9 miles from Milepost 0.0 in Parkesburg to Milepost 33.9 in Manor Township.

[3] Conrail sold the portion of the Enola Branch from Milepost 1.5 to Milepost 4.0 to the Southeastern Pennsylvania Transportation Authority in 1996. On June 23, 1997, Norfolk Southern Railway Company (NS) and CSX Transportation Inc. sought permission from the Board to acquire Conrail and to divide its assets between them. On July 23, 1998, the Board approved the Conrail Acquisition. *CSX Corp., et al.—Control—Conrail Inc., et al.*, 3 S.T.B 196 (1998). The Enola Branch property was allocated to Pennsylvania Line LLC, a subsidiary of Conrail, as part of the Conrail Acquisition transaction. NS operates the Pennsylvania Line LLC allocated assets under an operating agreement approved by the Board. This Memorandum of Agreement pertains to the NS-controlled portions of the Enola Branch.

as potentially eligible for inclusion on the National Register of Historic Places (National Register)—until completion of the section 106 process of the National Historic Preservation Act (NHPA), 16 U.S.C. 470f;

Whereas, the purpose of the condition was to allow the ICC to work with consulting parties to develop a plan to avoid, minimize, or mitigate any adverse effects of the abandonment on the bridges. The development of a mitigation plan was held in abeyance, however, pending negotiations to transfer the Enola Branch for interim trail use/rail banking under 16 U.S.C. 1247(d) (Trails Act) or other public use under former 49 U.S.C. 10906 (now 49 U.S.C. 10905). When those negotiations proved unsuccessful,[4] the agency resumed the NHPA process;

Whereas, while the Board's Section of Environmental Analysis (SEA) was working through the steps of the NHPA process, Friends of the Atglen-Susquehanna Trail, Inc. (FAST) filed a petition with the Board to reopen the proceeding and broaden the NHPA condition so that it would apply to the entire Enola Branch;

Whereas, the Board denied FAST's request in a decision served October 2, 1997, and FAST filed a petition for reconsideration;

Whereas, the Board, in a decision served August 13, 1999, believing that the only part of the NHPA process that remained open was the development of mitigation for the bridges determined to be historic, denied FAST's petition for reconsideration of the 1997 decision and FAST then sought judicial review;

Whereas, in *Friends of the Atglen-Susquehanna Trail, Inc.* v. *Surface Transportation Bd.,* 252 F.3d 246 (3rd Cir. 2001), the United States Court of Appeals for the Third Circuit vacated the Board's 1997 and 1999 decisions and remanded the case back to the Board, ruling that the Board had failed to comply fully with the procedural requirements of the NHPA;

Whereas, SEA has reinitiated the section 106 historic review process pursuant to the court's remand and the procedural provisions of the NHPA;

Whereas, SEA has consulted with the Advisory Council on Historic Preservation (ACHP), the SHPO, and NS, and in two separate Notices to the Parties and a public meeting solicited comments from consulting parties and the public regarding the possibility of using the portions of the Enola Branch that are the subject of this Memorandum of Agreement for interim trail use/rail banking, and assuming that trail use is unsuccessful, completion of the mitigation phase of the section 106 process;

Whereas, based on the Keeper of the National Register's 1999 finding that the entire Enola Branch is eligible for inclusion in the National Register, and in consultation with the ACHP and the SHPO, SEA has determined that the entire Enola Branch is eligible for inclusion in the National Register;

Whereas, based on consultation with the ACHP and the SHPO and the public comments, SEA has determined that the abandonment at issue here would adversely affect the Enola Branch;

Whereas, NS already has paid to the Pennsylvania Railroad Museum $15,437 to fund an exhibit or video of the history of the Enola Branch;

Whereas, based on consultation with the ACHP, the SHPO, NS, and on all of the comments received from interested and official consulting parties, SEA has devised additional measures to mitigate the adverse effects on the Enola Branch that would be caused by the abandonment;

Now Therefore, the Board, the ACHP, the SHPO, and NS agree that the consummation of the abandonment of the Enola Branch shall be subject to the following stipulations to take into account and to mitigate the effect of the abandonment on historic properties.

Stipulations

The Board shall ensure that the following measures are carried out. The Board may direct NS (and its contractor) to assist in fulfilling these stipulations or may use an independent third party contractor, working under SEA's supervision, direction and control, and at NS's expense, to assist in fulfilling these stipulations.

I. Additional Documentation Requirements

NS shall retain a professional historian to prepare documentation and to conduct archival research of the history of the Enola Branch rail line (to include the segments of the Enola Branch from Milepost 0.0 to Milepost 1.5 and Milepost 4.0 to Milepost 33.9 and appropriate representative structures). The documentation shall be completed in accordance with the relevant state standards as specified by the SHPO and outlined in the guidance document titled ''How To Complete The Pennsylvania Historic Resource Survey Form.'' The historian also shall prepare a written report discussing the methods and results of the archival research.[5] Prior to the commencement of documentation efforts, the Board, the SHPO, and NS shall work together to develop a list of representative structures on the Enola Branch. Documentation of these structures shall serve to document the historic qualities of the line as a whole.

Upon completion of the documentation and archival research, NS shall consolidate all information into one cohesive document and submit the document to the Board's Federal Preservation Officer (FPO) (the Chief of SEA), the ACHP, and the SHPO for review.

As provided in Pennsylvania state standards, this document shall include:

A. a Photo/Site Plan Sheet, which will contain: (1) Historic name of the property; (2) county; (3) non-color coded sketch maps or other non-color maps showing the location of the rail line; and (4) photographs of the representative structures;

B. a Data Sheet, which will describe the rail line, its historic function and current use, the representative structures, including, relevant historical and descriptive information such as the architectural classification, composition of the exterior materials, classification of the structural system, width, depth and height measurements, dates of construction and known significant changes or rebuilding, proposed disposition of the structures after abandonment, and, to the extent relevant information exists in railroad or local libraries, museums or archives, cultural affiliations, associated individuals or events, and names of builders or craftsmen who constructed the rail line;

C. a Narrative Sheet, which will include a physical description (a brief description of the current and historic physical appearance and condition of the rail line segments and all associated structures) and a historical narrative (a summary of the history and significance of the property);

In addition to the requirements of the Pennsylvania state recordation standards, the document shall also include:

A. a written report describing the methods and results of the archival research; and

B. copies of any relevant historical documents found pursuant to the archival research, as well as any available maps of the rail line and local area. The Board's FPO, the ACHP, and the SHPO shall have 30 days to review and comment on the draft document. At the end of the 30 day period, NS shall prepare a final version of the document, taking into consideration any comments received, and submit the final document to the Board, the ACHP, and the SHPO. NS shall also submit two (2) additional copies of the final document to the SHPO to be archived at the SHPO's office.

II. Dispute Resolution

Disagreement and misunderstanding about how this Memorandum of Agreement is or is not being implemented shall be resolved in the following manner:

A. If the SHPO or NS should object in writing to the Board's FPO regarding any action carried out or proposed with respect to the undertaking or implementation of this Memorandum of Agreement, then the Board's FPO shall consult with the objecting party to resolve this objection. If after such consultation the Board's FPO determines that the objection cannot be resolved through consultation, then the Board's FPO shall forward all documentation relevant to the objection to the ACHP, including the Board's proposed response to the objection. Within 45 days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:

1. Provide the Board with a staff-level recommendation; or

2. Notify the Board that the objection will be referred for formal comment pursuant to 36 CFR 800, and proceed to refer the objection and comment.

B. The Board shall take into account any ACHP comment or recommendations in reaching a final decision regarding its

[4] The ICC terminated the trail use negotiation condition with respect to the Enola Branch in a decision served April 19, 1993.

[5] Archival research that is conducted from information or records supplied by or available at the railroad, the Pennsylvania Historical and Museum Commission, the Pennsylvania State Archives, the Lancaster County Historical Society, the Southern Lancaster Historical Society, the Chester County Historical Society, the Railroad Museum of Pennsylvania and the Pennsylvania Railroad Technical and Historical Society (as available) shall satisfy this requirement.

response to an objection. The Board's responsibility to carry out all actions under the Memorandum of Agreement that are not the subjects of the objection shall remain unchanged.

III. Post Review Discovery

In the event that the professional historian identifies a potential for unanticipated effects on archeological sites during the implementation of this Memorandum of Agreement, NS shall notify the Board's FPO. The Board's FPO shall then consult with the SHPO to determine whether additional mitigation measures are necessary. If the Board's FPO and the SHPO determine that additional mitigation measures are required, all signatories shall consult to devise appropriate mitigation measures and amend the Memorandum of Agreement, pursuant to Part IV of this Memorandum of Agreement.

In the event that one or more archeological sites, any additional cultural resources, or human remains are discovered during NS's salvage activities, NS shall immediately cease all work and notify the Board's FPO. The Board's FPO shall then consult with the SHPO to determine whether additional mitigation measures are necessary. If the Board's FPO and the SHPO determine that additional mitigation measures are required, all signatories shall consult to devise appropriate mitigation measures and amend the Memorandum of Agreement, pursuant to Part IV of this Memorandum of Agreement.

Any additional mitigation developed shall be consistent with the provisions of the Pennsylvania Historic & Museum Commission's Policy on the Treatment of Human Remains adopted March 10, 1993, the Native American Graves Protection and Repatriation Act, and ACHP guidance documents, such as the ACHP's *Recommended Approach for Consultation on Recovery of Significant Information From Archaeological Sites.*

IV. Amendment

Any Signatory to this Memorandum of Agreement may request that it be amended, whereupon the parties shall consult to consider the proposed amendment. 36 CFR part 800 shall govern the execution of any such amendment.

V. Termination

A. If the terms of this Memorandum of Agreement have not been implemented within 1 year of the execution of this agreement, this Memorandum of Agreement shall be considered null and void, unless the parties agree to a written extension. In such an event, the Board shall notify the parties to this Memorandum of Agreement, and if NS chooses to continue with this undertaking, the Board shall re-initiate review of this undertaking in accordance with 36 CFR part 800.

B. Any signatory to the Memorandum of Agreement may terminate it by providing thirty (30) days notice to the other parties, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the Board shall comply with 36 CFR 800 with regard to the review of the undertaking.

VI. Scope of Agreement

This Memorandum of Agreement is limited in scope to the abandonment of the portions of Enola Branch from Milepost 0.0 to 1.5 and Milepost 4.0 to 33.9 and is entered into solely for that purpose. Execution and implementation of this Memorandum of Agreement by the Board, the ACHP, the SHPO, and NS evidences that the Board has afforded the ACHP an opportunity to comment on the project and its effects on historic properties, and has taken into account the effects of the undertaking on those properties, and has, therefore, satisfied its section 106 responsibilities for this undertaking.

Signatories

Advisory Council on Historic Preservation

State Historic Preservation Officer
Pennsylvania Historical and Museum Commission, Bureau for Historic Preservation

Surface Transportation Board

Norfolk Southern Railway Company

Concurring Parties

Friends of the Atglen-Susquehanna Trail

Historic Preservation Trust of Lancaster County

Lancaster County Conservancy

Lancaster Farmland Trust

Northeast Regional Field Office of the Rails-to-Trails Conservancy

Pennsylvania Department of Transportation

Southern End Community Association

Township of Bart

Township of Conestoga

Township of Eden

Township of Martic

Township of Providence

Township of Sadsbury

Township of West Sadsbury

[FR Doc. 03–26384 Filed 10–17–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–54–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–54–90 (TD 8459), Settlement Funds (§§ 1.468B–1, 1.468B–2, 1.468B–3, and 1.468B–5).

DATES: Written comments should be received on or before December 19, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack at (202) 622–3179, or *Larnice.Mack@irs.gov,* or Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Settlement Funds.

OMB Number: 1545–1299.

Regulation Project Number: IA–54–90.

Abstract: This regulation prescribes reporting requirements for settlement funds, which are funds established or approved by a governmental authority to resolve or satisfy certain liabilities, such as those involving tort or breach of contract. The regulation relates to the tax treatment of transfers to these funds, the taxation of income earned by the funds, and the tax treatment of distributions made by the funds.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not for-profit institutions, farms and Federal, state, local or tribal governments.

Estimated Number of Respondents: 1,500.

Estimated Time Per Respondent: 2 hours, 22 minutes.

Estimated Total Annual Burden Hours: 3,542.

The following paragraph applies to all of the collections of 1information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 14, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–26415 Filed 10–17–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–59–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–59–91 (TD 8674), Debt Instructions With Original Issue Discount; Contingent Payment; Anti-Abuse Rule (§§ 1.1275–2, 1.1275–3, 1.1275–4, and 1.275–6).

DATES: Written comments should be received on or before December 19, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack at (202) 622–3179, or *Larnice.Mack@irs.gov,* or Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Desk Instruments With Original Issue Discount; Contingent Payments; Anti-Abuse Rule.

OMB Number: 1545–1450.

Regulation Project Number: FI–59–91.

Abstract: This regulation relates to the tax treatment of debt instruments that provide for one or more contingent payments. The regulation also treats a debt instrument and a related hedge as an integrated transaction. The regulation provides general rules, definitions, and reporting and recordkeeping requirements for contingent payment debt instruments and for integrated debt instruments.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and state, local, or tribal governments.

Estimated Number of Respondents: 180,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 89,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 14, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–26416 Filed 10–17–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 202

Monday October 20, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA087–DESIG; FRL–7568–3]

Clean Air Act Area Designations; California

Correction

In rule document 03–25136 beginning on page 57820 in the issue of Tuesday, October 7, 2003, make the following corrections:

§ 81.305 [Corrected]

1. On page 57822, in § 81.305, in the table titled ''CALIFORNIA—CARBON MONOXIDE'', under the column heading ''Designated area'', in the second line, ''Basin Area Attainment'' should read, ''Basin Area''.

2. On page 57823, in the same section, in the table, under the column heading ''Designated area'', in the second line, ''South and Coast'' should read, ''South Coast''.

[FR Doc. C3–25136 Filed 10–17–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506, 559, 562, and 563

[No. 2003–50]

RIN 1550–AB55

Savings Associations—Transactions With Affiliates

Correction

In rule document 03–25217 beginning on page 57790 in the issue of Tuesday, October 7, 2003, make the following corrections:

1. On page 57790, in the document heading, correct the CFR parts affected to read as set forth above.

2. On page 57796, under the heading ''**List of Subjects**,'' add the following CFR part in chronological order:

''*12 CFR Part 506*

Reporting and recordkeeping requirements.''

3. On the same page, in the words of issuance paragraph, in the fourth line, ''parts 559, 562'' should read, ''parts 506, 559, 562''.

[FR Doc. C3–25217 Filed 10–17–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
October 20, 2003

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1

Federal Acquisition Regulations—Contract Bundling and Small Entity Compliance Guide; Final Rules

Small Business Adminstration

13 CFR Part 125

Small Business Government Contracting Programs; Final Rule and Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 7, 8, 10, 16, 19, and 42

[FAC 2001–17; FAR Case 2002–029]

RIN 9000–AJ58

Federal Acquisition Regulation; Contract Bundling

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) governing contract bundling. Specifically, this final rule: Revises the definition of contract bundling to expressly include multiple award contract vehicles and task and delivery orders under such contract vehicles; mandates that procuring activities coordinate with the Small Business Specialist (SBS) proposed acquisition strategies or plans contemplating awards above specified dollar thresholds, and that the SBS notify the agency Office of Small and Disadvantaged Business Utilization (OSDBU) when those strategies include contract bundling that is unnecessary or unjustified; revises the threshold and documentation required for substantial bundling; and requires agency OSDBUs to perform certain oversight functions. These amendments are intended to implement a number of the recommendations included in an October 2002, Office of Management and Budget (OMB) report on contract bundling.

DATES: *Effective Date:* October 20, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044. Please cite FAC 2001–17, FAR case 2002–029.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 68 FR 5138, January 31, 2003, to solicit comments on its proposal to implement several recommendations included in OMB's October 2002 report, entitled ''Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business.'' (*See http://www.fac.gov*).

Contract bundling is defined in the Small Business Act as the consolidation of two or more procurement requirements for goods and services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is ''unlikely to be suitable for award to a small business concern'', 15 U.S.C. 632(o). The President's Small Business Agenda directed OMB to develop a strategy for unbundling contracts, as a means of expanding small business access to Federal procurements.

In response, the Office of Federal Procurement Policy (OFPP), within OMB, issued the October 2002 bundling report, providing a nine-point action plan to hold agencies accountable for eliminating unnecessary contract bundling and for mitigating the effects of necessary contract bundling.

The proposed rule detailed the changes to the FAR that would implement the five action items requiring regulatory amendments. In particular, the rule proposed to: (1) Revise the definition of bundling to expressly include multiple award contract vehicles and task and delivery orders under such contracts; (2) require procuring activities to coordinate with their SBS proposed acquisition strategies or plans contemplating awards above specified dollar thresholds and require the SBS to notify the agency OSDBU when those strategies include unnecessary and unjustified contract bundling; (3) reduce the threshold and revise the documentation required for substantial bundling; and (4) require agency OSDBUs to perform periodic oversight reviews of agency bundling activities.

The proposed rule invited the public to submit comments on the proposed amendments by April 1, 2003. In response to the proposed rule, 43 comment letters were received. Some respondents complained that a few of the proposed changes did not go far enough to curb contract bundling. Others, on the other hand, criticized some of the proposed changes for going too far with the bundling regulations.

The Councils considered all of the comments and recommendations in developing this final rule. The specific comments to each proposed amendment and the Councils' corresponding response are summarized as set forth below.

1. *Comments on Clarification of Bundling Definition.* Eleven comments were received on the proposal to implement the OMB bundling report recommendation to require bundling reviews for task and delivery order awards under multiple award contract vehicles. The proposed regulation adds new language (paragraph (3)) to the FAR part 2 definition of ''bundling'' that defines a ''single contract'' to include: (1) multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources; and (2) an order placed against an indefinite quantity contract under a Federal Supply Schedule contract; or task-order contract or delivery-order contract awarded by another agency (*i.e.*, Governmentwide acquisition contract or multiagency contract).

Some respondents suggested that any change in the definition of bundling (*e.g.*, to specifically include multiple award contracts and orders under multiple award contracts) is questionable. Another respondent wants expansion of the FAR case to include ''consolidated contract procurements on IDIQ multiple award vehicles'' so that small businesses will have more opportunities to compete.

One respondent believes that the scope of bundling is unclear and that a consistent definition must be agreed upon and supported by a cost-benefit analysis before proceeding. The Councils believe that a cost-benefit analysis is unnecessary and that the definition is clear and consistent by defining the type of contract actions that fall under the revised bundling definition. Two respondents oppose the definition of ''single contract'' particularly as it applies to Indefinite Delivery/Indefinite Quantity (ID/IQ) contracts for A–E services and recommends limiting the definition to those instances in which bundling under ID/IQ contracts for A–E services would replace two or more previous contracts with small business primes with one bundled contract on which it is unlikely that small businesses could be competitive as a prime contractor. The strategy of the proposed definition is intended to close loopholes that otherwise would allow certain types of acquisitions to escape effective review.

A number of respondents commented on the proposed definition of ''single contract'' and ''order.'' One respondent commented that the definition did not fully implement OMB's bundling recommendation to close the loophole of bundling task and delivery order awards because it does not cover the orders an agency issues against its own

multiple award contracts. This commenter pointed out that the new definition only covers the orders placed against GSA's Federal Supply Schedules, or against an indefinite quantity contract awarded by another agency and urged that the definition of contract bundling include orders placed against indefinite quantity, multiple award contracts awarded by any agency. The Councils do not agree that an agency's orders against its own contract should be subject to additional bundling reviews. The underlying multiple award contract of an agency is subject to the requirements for Small Business Specialist (SBS) and procurement center representative (PCR) review for contract bundling and small business participation. Unlike FSS orders, theoretically, the SBS and PCR reviews of an agency's proposed acquisition strategy or plan for its multiple award contract should encompass that agency's anticipated orders under that contract. Consequently, the agency's own orders presumably were part of the underlying PCR and SBS review. It would therefore be duplicative to require yet another bundling review of each individual order the agency places against its already reviewed multiple award contract. As a result, the Councils are not adopting this recommendation, particularly in light of the limited resources available to conduct the reviews.

Another respondent noted that the proposed definition of bundling is deficient because it does not cover ''new work.'' New work is work that was never performed by contract before. Therefore, it was never part of a separate smaller contract, and so it is not bundled, by definition. Bundling is a concept which describes consolidation of prior contracts.

Two respondents believe that the definition should be broader to include ''accretive bundling,'' which occurs when dissimilar tasks are added onto GWACs, ID/IQs, Schedules, and multiple award type contracts. The Councils disagree. FAR Subpart 19.2 requires that the Offices of Small and Disadvantaged Business Utilization (OSDBUs) work with the Small Business Administration's PCR to identify proposed solicitations that involve bundling. Further, FAR 19.202–1(e) requires the contracting officer to provide a copy of the proposed acquisition package to the PCR at least 30 days prior to the issuance of the solicitation if the proposed acquisition is for a bundled requirement. In particular, since FAR 19.202–1 requires procuring activities to submit acquisitions strategies above the established threshold to PCRs, strategies that contemplate orders that are above the threshold and that are not against an agency's own multiple award contract, would be subject to PCR review for bundling. Second, FAR 19.202–1 requires a procuring activity to submit a copy of a proposed acquisition strategy to the PCR, whenever that strategy involves a bundled requirement. Because the proposed definition in FAR Part 2 defines a bundled requirement to include certain task and delivery orders under another agency's contract, agencies would be required to submit such orders to PCRs for review, when the orders include bundling.

For the purposes of bundling, the proposed rule now defines a single contract to include orders placed against an indefinite quantity contract under a Federal Supply Schedule or a task-order contract or delivery-order contract awarded by another agency and requires strategy review when the estimated contract or order value reaches or exceeds the thresholds. After considering all of the comments on the proposed single contract definition within the meaning of bundling, the Councils believe that the amendment effectively implements OMB's recommendation to compel bundling reviews of task and delivery orders. The Councils are therefore adopting it as proposed.

2. *Comments on Requirement for Bundling Reviews.* The Councils received several comments concerning its proposal to add FAR 7.104(d)(1), requiring bundling reviews of proposed acquisition strategies or plans. As proposed, that section requires an agency to coordinate its acquisition strategy or plan with its SBS whenever the agency's contemplated strategy or plan contemplates award of a contract or order that exceeds the applicable agency threshold established and is not set-aside for small businesses. As previously stated, FAR 19.202–1(e) provides a minimum period of no later than 30 days before the issuance of the solicitation for the agency to coordinate its plan with the SBS. In addition, under FAR 7.104(d)(1), the SBS is required to notify the agency OSDBU if the proposed acquisition strategy or plan includes bundled requirements that the agency has not identified as bundled or includes unnecessary or unjustified bundling of requirements. Several commenters proposed exemptions for certain types of contracts (A–E services, Federal Supply Schedules). One commenter disagreed with applying contract bundling reviews to contracts (not orders) under GSA's Multiple Award Schedules (MAS) Program. The Councils disagree. Contract bundling has been applicable to GSA's Multiple Award Schedules Program since the FAR and SBA bundling regulations first became effective. This final rule specifically covers agency orders under the MAS program and provides more detailed review of various contract actions at agency-specific thresholds. The strategy is intended to close loopholes that otherwise would allow certain types of acquisitions to escape effective review.

Some respondents commented that the proposed rule adds additional burdens and would require additional resources or a reallocation of existing resources. Although agency reallocation of resources may be necessary, the Councils believe that this rule is in response to the President's Small Business Agenda and OMB's strategy for unbundling Federal contracts to increase Federal contracting opportunities for small businesses. The proposed rule provides for eliminating unnecessary contract bundling and mitigating the effects of necessary contract bundling and ensuring maximum compliance with current contract bundling laws by fully using the resources of the Small Business Administration and agency OSDBUs.

Some commenters suggested that OSDBUs should have authority to block an acquisition. That comment ignores existing regulations that would operate in tandem with proposed FAR 7.104(d)(2). The Councils believe this recommended change is unnecessary. Specifically, FAR 19.202–1(e)(4) and FAR 19.505 already provide the mechanism for resolving disagreements with agencies concerning contract bundling and small business participation in procurements. FAR 19.202–1(e)(4) requires the contracting officer to document the basis for the rejection and notify the PCR in accordance with 19.505 if the contracting officer rejects the PCR's recommendation, made in accordance with 19.402(c)(2). FAR 19.505 allows the PCR to appeal the contracting officer's rejection to the head of the contracting activity (or designee).

The proposed rule, specifically FAR 19.201 and FAR Subpart 19.4, encourages SBSs and OSDBUs to cooperate with PCRs in reviewing procurements and in identifying possible small business contracting opportunities. SBSs and OSDBUs therefore can work with PCRs in using the PCR appeal mechanism to challenge unnecessary and unjustified contract bundling.

Accordingly, the Councils believe that the proposed FAR 7.104(d)(2) properly balances the need for SBS reviews of acquisition strategies with the need for operational efficiency in the procurement process. In adopting FAR 7.104(d)(2), the Councils have made minor revisions. The first is a technical change to clarify that the proposed strategies include ''acquisitions'' meeting the dollar threshold. The second is the inclusion of additional language reinforcing the SBS's responsibility to assist in identifying alternative strategies when an acquisition plan involves substantial bundling.

3. *Comments on Acquisition Dollar Thresholds.* FAR 7.104(d)(2) establishes three agency-specific dollar thresholds that would trigger the bundling reviews required under FAR 7.104(d)(1). The three-tiered dollar threshold proposed is: $7 million or more for the Department of Defense (DoD); $5 million or more for the National Aeronautics and Space Administration (NASA), the Department of Energy (DoE) and the General Services Administration (GSA); and $2 million or more for all other agencies.

The Councils received numerous comments on FAR 7.104(d)(2). Several respondents suggested increasing the agency review thresholds by doubling or tripling them or raising the threshold as applied to a particular agency. A few respondents recommended lowering the thresholds, either for review of Federal Supply Schedule orders or as applied to a particular agency. Of these respondents, some believed that adopting different thresholds for different agencies would unnecessarily complicate the acquisition process. They recommended adoption of a single Governmentwide threshold that would apply to all agencies equally. One of these respondents suggested that the Councils consider keeping the threshold already provided in FAR 7.107(e) for documenting substantial bundling ($10 million). Another respondent indicated that close monitoring of DOD's procurement is essential to limiting the adverse impact of contract bundling on small businesses. Another commenter also believed that the three-tiered approach is too complicated. This commenter suggested one threshold of $1 million. The proposed dollar amounts of the thresholds are based on a comparative analysis of the number and size of the contracting actions of the major procuring activities. The objective of the tiered approach is two-fold: (1) to target those contracting actions for individual agencies that would most likely involve significant contract bundling as well as opportunities for small business contracting; and (2) to minimize the extent to which the bundling reviews would disrupt the procurement process of individual agencies. The Councils continue to believe that the proposed three-tiered threshold will best achieve those objectives. The Councils therefore decline to adopt the recommendations for a single Governmentwide threshold to trigger bundling reviews. The respondents' expressed diverse opinions as to the appropriate structure and amount of the thresholds were not persuasive enough to divert from the proposed range in the strategy (*i.e.*, $2 million, $5 million, and $7 million) or the proposed regulatory approach (three thresholds). The Councils are instead adopting the proposed threshold of $7 million for DoD, $5 million for NASA, DoE and GSA, and $2 million for all other agencies. These agency-specific levels will capture those procurements that would most likely involve contract bundling for individual agencies, will minimize the disruption to the procurement process, and will properly account for the limited resources and contracting personnel to conduct the bundling reviews.

One respondent recommended that the rule clearly state the basis for determining review levels on orders placed against GSA, NASA, and DoE contracts by other agencies with lower thresholds and recommends that the specific agency threshold apply to that agency regardless of whether another agency's contract is used. An agency's threshold applies to that agency regardless of whether another agency's contract is being used.

4. *Comments on Additional Requirements for Acquisitions Involving Bundling.* Two respondents disagreed with the proposed requirement to identify alternative strategies and recommended deleting that requirement. The Councils disagree. The proposed language is intended to require agencies to fully investigate all alternatives to bundling during the acquisition planning stage.

Several respondents did not agree with thresholds proposed for substantial bundling. However, these comments were not persuasive enough to divert from the proposed thresholds. The Councils recognize that lowering the threshold for ''substantial bundling'' would mean enlarging the number of procurements that would require the additional written justification under FAR 7.107. However, the Councils continue to believe that this change will simplify the application by using the same three-tiered dollar threshold to trigger the bundling reviews and the required supporting analysis for substantial bundling. Also, the changes in the requirement for written justifications are consistent with OMB's report recommendations relating to the identification of alternative acquisition strategies.

Finally, one respondent recommended that FAR 7.105 be changed to require any requirement previously procured be identified and an explanation given if it was satisfied by a separate smaller contract or order and is now planned for consolidation into contract or order. The Councils agree and have added the following language: ''When the proposed acquisition strategy involves bundling, identify the incumbent contractors and contracts affected by the bundling''.

5. *Comments on Part 8—Required Sources of Supplies and Services.* Three comments were received for this part. The first respondent believes that clarifying that FSS contracts must comply with bundled contracts is helpful but the proposed requirement at 19.202–1(e)(1)(iii) cited in 8.404(a)(1) is unnecessary. The Councils believe that this reference is appropriately placed and is necessary in Part 8 in order to advise those contracting officers utilizing Part 8 to know what is applicable and not applicable to orders placed against Federal Supply Schedules. The second respondent recommends caution in opening the Schedules program to mandatory compliance without considering the impact on meeting agency needs. The strategy of the definition is intended to include orders placed against the Schedules program in order to close loopholes that otherwise would allow acquisitions to escape effective review. Finally, the third respondent believes that federal statutes specifically provide that task and delivery orders issued under a Schedules contract satisfy statutory competition requirements. While FSS contracts meet the statutory competition requirements, the bundling statute is silent on orders placed against these contracts. Including Schedule orders in the definition of bundling will close loopholes that currently allow those orders to escape effective review.

6. *Comments on Part 16—Types of Contracts.* Two comments were received. The first respondent opposes the requirement in FAR 2.101 whereby the definition affects the contract and task order requirements in 16.505(a)(7) and believes it would be devastating to the Government's procurement of surveying and mapping services, disruptive to emergency response activities (*e.g.*, war efforts), and urges

that A–E services as defined in FAR Part 36 be exempt from these provisions. The Councils disagree. As previously stated, the strategy of the definition is intended to include orders to close loopholes that otherwise would escape effective review. The second respondent believes that the addition of FAR 16.505(a)(7)(iii) may conflict with statutory provisions. The Councils do not believe that this rule conflicts with statutory provisions but merely is intended as strategy to close loopholes that otherwise would allow certain types of acquisitions to escape effective review.

7. *Comments on Part 19—Small Business Programs, Subpart 19.2, Policies.* Two comments were received for FAR 19.201 General policy. Both respondents recommended including a timeframe for periodic reviews. The Councils adopted the recommendation and amended the language to require annual reviews rather than periodic reviews.

Three comments were received for FAR 19.202, Specific policies. The first respondent wants to ensure that OSDBU offices in all agencies have the necessary authority, resources, and independence to perform their function and wants to require written notification to agency OSDBUs early in the requisition stage of all GWAC and bundled proposals.

The second respondent recommends revisions to require the negotiation of two-part goals for contracts awarded to the various types of small business concerns, with agency specific goals set for prime contracts and subcontracts awarded to small business concerns and for the OSDBU, in performing assessments of contracts awarded to small business concerns, to identify and track the number of Federal contracting dollars going to the various small business categories. The Councils believe that this comment is outside the scope of this rule.

The third respondent questions the language ''Agencies shall establish procedures including dollar thresholds for review of acquisitions'' and questions who will decide the agency thresholds for review. These agency procedures would be issued as other agency regulations, orders, and procedures are, by the agency head or his designee. That person would decide what the agency review thresholds are. The FAR Council is adopting the proposed rule as final.

Three comments were received for FAR 19.202–1, Encouraging small business participation in acquisitions. The first respondent believes that additional language requiring the contracting officer to provide all information relative to the justification of contract bundling is inappropriate because release of information must be decided on a case-by-case basis in accordance with existing laws and regulations (*i.e.*, Procurement Integrity, FOIA, and the FAR) and may be in conflict with existing laws. The Councils believe that this requirement complies with the Procurement Integrity Act.

The second respondent comments that when the OSDBU directors undertake new responsibilities that the regulations further require an assessment of the impact and that they should also review the impact of any such decision on effective competition and on proven technical capabilities available in the marketplace. The final respondent suggests that the OSDBUs review and consider alternative strategies that maximize the use of small and mid-size firms in procurements. The Councils believe that with the additional responsibilities placed on OSDBUs with this rule, no additional responsibilities are necessary at this time.

8. *Comments on Subpart 42.15, Contractor Performance Information.* Eighteen respondents commented on the proposed revision to FAR 42.1502 that requires an assessment of agency contractor compliance with the goals identified in the small business subcontracting plan when the contract includes the clause at FAR 52.219–9, Small Business Subcontracting Plan. Although the comments applauded the intent of the proposed language added to FAR 42.1502, the majority of the comments indicated that it is insufficient to monitor and ensure compliance with subcontracting plans. The primary issues of the respondents were general comments pertaining to subcontracting plans and performance evaluations both of which are addressed as follows:

(a) *Comments on the Subcontracting Plans.* Four general comments were received regarding subcontracting plans. Two of the three respondents recommended that subcontracting plans include other information, such as a description of the nature of the work to be subcontracted and the efforts the offeror will make to ensure that small businesses have an equitable opportunity to compete for subcontracts. These requirements are already in FAR 19.704(a) and no further change is necessary. The third respondent recommended that the regulations mandate that PCRs share their compliance assessments with SBA's breakout PCRs, who are assigned to major contracting centers. This commenter also recommended that SBA develop a system to enable PCRs and breakout PCRs to submit their assessments to the cognizant contracting office. The fourth respondent recommended inserting a clause in each contract requiring a prime contractor to prove it has met its original subcontracting plan and requiring a prime's subcontracting partners to sign off on a joint statement of compliance before the prime gets paid.

(b) *Comments on Performance Evaluations.* Two respondents expressed the need for further guidance on evaluating compliance with subcontracting plans and a contractor's ''good faith'' efforts to achieve its small business goals. One of these two respondents further indicated that Government agencies should be required to ''evaluate large businesses on the same basis and understanding of the small business subcontracting plan regulations.'' This respondent also complained that large businesses need additional guidance in completing commercial plans, which cover a commercial contractor's entire fiscal year and commercial production.

One respondent commented that performance evaluations are inadequate, penalties have never been assessed, and the proposed change does not link performance evaluations to the penalty. The FAR already provides for liquidated damages for noncompliance with subcontracting plans. Under FAR 19.705–7, a prime contractor is liable for such damages for failing to make a ''good faith effort'' to comply with its subcontracting plans. Since governing regulations already provide monetary consequences for noncompliance with subcontracting plans, the Councils are not adopting this recommendation. Another commenter recommended that large businesses that are awarded task and delivery orders under the Federal Supply Schedules should be subject to the requirement for subcontracting plans under 8(d) of the Small Business Act, 15 U.S.C. 637(d). The Councils agree that effective procedures to mitigate the effects of contract bundling on small businesses necessitates more stringent requirements for monitoring compliance with subcontracting plans to ensure that small businesses receive the maximum practical opportunity to participate as subcontractors in large Federal contracts. Many of the commenters recommended amendments that require further consideration to evaluate their likely effectiveness and impact on the procurement process. As a result, concurrent with publication of this FAR final rule, the Small Business Administration (SBA) is issuing a final

rule to incorporate parallel changes in 13 CFR part 125. At the same time, SBA is issuing a proposed rule to provide more guidance on subcontracting, including guidelines for evaluating a company's good faith efforts to comply with subcontracting plan requirements. When the SBA proposed rule becomes final, the Councils will consider incorporating appropriate provisions in the FAR.

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and is as follows:

Final Regulatory Flexibility Analysis

FAR Case 2002–029, Contract Bundling

This Final Regulatory Flexibility Analysis has been prepared consistent with the criteria of 5 U.S.C. 604.

1. Reasons for the final rule:

This rule amends the Federal Acquisition Regulation (FAR) to implement the recommendations of the Office of Management and Budget (OMB) in its report entitled ''A Strategy for Increasing Opportunities for Small Business.'' The FAR changes will: (1) Clarify the definition of ''bundling'' to indicate it applies to orders placed against Federal Supply Schedules and another agency's Governmentwide Acquisition Contracts or Multi-agency Contracts when those orders otherwise meet the parameters of the definition; (2) require the small business specialist to coordinate on agency acquisition strategies at specified dollar thresholds and notify the agency Office of Small and Disadvantaged Business Utilization when those strategies include contract bundling that is unnecessary, unjustified, or not identified as such by the agency; (3) reduce the threshold for ''substantial bundling''; (4) revise the documentation requirements for substantial bundling to include identification of alternative acquisition strategies that would result in the bundling of fewer requirements, along with justification for not choosing those alternatives; (5) require contracting officers to provide bundling justification documentation to the agency Office of Small and Disadvantaged Business Utilization when substantial bundling is involved; (6) require contractor performance evaluations to include an assessment of contractor compliance with small business subcontracting goals; and (7) require the Office of Small and Disadvantaged Utilization to be responsible for conducting annual reviews to assess agency contract bundling requirements and the extent to which small businesses are receiving a fair share of Federal procurements.

2. Objectives of and legal basis for this rule:

The objective of this final rule is to further the Administration's commitment of creating a Government strategy to increase Federal contracting opportunities for small business. In order to accomplish this commitment this final rule provides FAR coverage that implements the recommendations of the Office of Management and Budget (OMB) in its report entitled ''A Strategy for Increasing Opportunities for Small Business.''

3. Description of and estimate of the number of small entities to which the rule will apply, or an explanation if such estimate is not available:

The final rule will indirectly apply to all large and small entities that seek award of Federal contracts. The rule should have a positive economic impact on small prime contractors and subcontractors by providing more Federal contracting opportunities for small businesses. In the SBA's 2001 State of Small Business Report filed with the House and Senate Small Business Committees, SBA identified only four material bundling cases with a total value of $60 million for the first three quarters of Fiscal Year (FY) 2001. This represents 0.0004% of Federal contract dollar activity ($60 million divided by $150 billion for the first three quarters of the fiscal year). Based on FY 2001 data, the final rule will impact approximately $3 billion in orders placed against FSS contracts, Governmentwide acquisition contracts, and multiagency contracts. Applying the contract bundling estimate of 0.0004% to these unreviewed orders, SBA expects approximately $1 million will be identified as bundled. This rule establishes a three-tiered dollar threshold of $7 million for DOD, $5 million for NASA, DOE and GSA, and $2 million for all other civilian agencies. The dollar amount is based on a comparative analysis of the number and size of the contracting actions of the major procuring activities and is intended to target reviews of the contracting actions that would most likely involve contract bundling, without undue disruption to the acquisition process.

4. Description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The final rule imposes no reporting, recordkeeping, or other compliance requirements.

5. Relevant Federal rules that may duplicate, overlap, or conflict with the rule:

Simultaneously with the publication of this final rule, SBA is publishing its final rule on contract bundling to implement the required action items in OMB's October 2002 report, entitled ''Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business.'' In some instances, SBA's final rule duplicates language in the FAR final rule.

6. Description of any significant alternatives to the final rule which accomplish the stated objectives of applicable statutes and which minimize the rule's economic impact on small entities.

Currently, there are no practical alternatives that will accomplish the objectives of this final rule.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 2, 7, 8, 10, 16, 19, and 42

Government procurement.

Dated: October 16, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–17 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–17 is effective October 20, 2003.

Dated: October 9, 2003.

Deidre A. Lee,

Director, Defense Procurement and Acquisition Policy.

Dated: October 2, 2003.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: October 2, 2003.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 7, 8, 10, 16, 19, and 42 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 7, 8, 10, 16, 19, and 42 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101(b)(2) in the definition ''Bundling'' by redesignating paragraph (3) as paragraph (4) and

adding a new paragraph (3) to read as follows:

2.101 Definitions.

* * * * *

Bundling means—

* * * * *

(3) Single contract, as used in this definition, includes—

(i) Multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources (see FAR 16.504(c)); and

(ii) An order placed against an indefinite quantity contract under a—

(A) Federal Supply Schedule contract; or

(B) Task-order contract or delivery-order contract awarded by another agency (*i.e.*, Governmentwide acquisition contract or multi-agency contract).

* * * * *

PART 7—ACQUISITION PLANNING

■ 3. Amend section 7.104 by adding paragraph (d) to read as follows:

7.104 General procedures.

* * * * *

(d)(1) The planner shall coordinate the acquisition plan or strategy with the cognizant small business specialist when the strategy contemplates an acquisition meeting the dollar amounts in paragraph (d)(2) of this section unless the contract or order is entirely reserved or set-aside for small business under part 19. The small business specialist shall notify the agency Office of Small and Disadvantaged Business Utilization if the strategy involves contract bundling that is unnecessary, unjustified, or not identified as bundled by the agency. If the strategy involves substantial bundling, the small business specialist shall assist in identifying alternative strategies that would reduce or minimize the scope of the bundling.

(2)(i) The strategy shall be coordinated with the cognizant small business specialist in accordance with paragraph (d)(1) of this section if the estimated contract or order value is—

(A) $7 million or more for the Department of Defense;

(B) $5 million or more for the National Aeronautics and Space Administration, the General Services Administration, and the Department of Energy; and

(C) $2 million or more for all other agencies.

(ii) If the strategy contemplates the award of multiple contracts or orders, the thresholds in paragraph (d)(2)(i) of this section apply to the cumulative maximum potential value, including options, of the contracts and orders.

■ 4. Amend section 7.105 in paragraph (b)(1) by adding a sentence after the third sentence to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b)(1) * * * When the proposed acquisition strategy involves bundling, identify the incumbent contractors and contracts affected by the bundling.

* * *

* * * * *

■ 5. Amend section 7.107 in the third sentence of paragraph (a) by removing ''an agency'' and adding ''an agency or the Government'' in its place; in paragraphs (b)(1), (b)(2), and (d) by removing the word ''contract'' and adding ''contract or order'' in its place; by revising the introductory text of paragraph (e), paragraphs (e)(4) and (e)(5); and by adding paragraph (e)(6) to read as follows:

7.107 Additional requirements for acquisitions involving bundling.

* * * * *

(e) Substantial bundling is any bundling that results in a contract or order that meets the dollar amounts specified in 7.104(d)(2). When the proposed acquisition strategy involves substantial bundling, the acquisition strategy must additionally—

* * * * *

(4) Specify actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract, or order, that may be awarded to meet the requirements;

(5) Include a specific determination that the anticipated benefits of the proposed bundled contract or order justify its use; and

(6) Identify alternative strategies that would reduce or minimize the scope of the bundling, and the rationale for not choosing those alternatives.

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND CONTRACTS

■ 6. Amend section 8.404 in the introductory text of paragraph (a)(1) by removing the period at the end of the first sentence and adding ''and the requirement at 19.202–1(e)(1)(iii).'' in its place; and revising paragraph (a)(2) to read as follows:

8.404 Using schedules.

(a) * * *

(2) Orders placed under a Federal Supply Schedule contract—

(i) Are not exempt from the development of acquisition plans (*see* subpart 7.1), and an information technology acquisition strategy (*see* part 39); and

(ii) Must comply with all FAR requirements for a bundled contract when the order meets the definition of ''bundled contract'' (*see* 2.101(b)).

PART 10—MARKET RESEARCH

■ 7. Amend section 10.001 by revising the introductory text of paragraph (c)(2) to read as follows:

10.001 Policy.

* * * * *

(c) * * *

(2) At least 30 days before release of the solicitation or 30 days prior to placing an order without a solicitation—

* * * * *

PART 16—TYPES OF CONTRACTS

■ 8. Amend section 16.505 by removing the word ''and'' from the end of paragraph (a)(7)(i); removing the period at the end of paragraph (a)(7)(ii) and adding ''; and'' in its place; and adding paragraph (a)(7)(iii) to read as follows:

16.505 Ordering.

(a) * * *

(7) * * *

(iii) Must comply with all FAR requirements for a bundled contract when the order meets the definition of ''bundled contract'' (*see* 2.101(b)).

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

■ 9. Amend section 19.201 by removing the period at the end of paragraph (d)(10) and adding a semicolon in its place; and adding paragraphs (d)(11) and (d)(12) to read as follows:

19.201 General policy.

* * * * *

(d) * * *

(11) Conduct annual reviews to assess the—

(i) Extent to which small businesses are receiving a fair share of Federal procurements, including contract opportunities under the programs administered under the Small Business Act;

(ii) Adequacy of contract bundling documentation and justifications; and

(iii) Actions taken to mitigate the effects of necessary and justified contract bundling on small businesses.

(12) Provide a copy of the assessment made under paragraph (d)(11) of this

section to the Agency Head and SBA Administrator.

* * * * *

■ 10. Amend section 19.202 by adding a new sentence after the first sentence to read as follows:

19.202 Specific policies.

* * * Agencies shall establish procedures including dollar thresholds for review of acquisitions by the Director or the Director's designee for the purpose of making these recommendations. * * *

■ 11. Amend section 19.202–1 by revising paragraph (e)(1)(iii) to read as follows:

19.202–1 Encouraging small business participation in acquisitions.

* * * * *

(e)(1) * * *

(iii) The proposed acquisition is for a bundled requirement. (*See* 10.001(c)(2)(i) for mandatory 30-day notice requirement to incumbent small business concerns.) The contracting officer shall provide all information relative to the justification of contract bundling, including the acquisition plan or strategy, and if the acquisition involves substantial bundling, the information identified in 7.107(e). When the acquisition involves substantial bundling, the contracting officer shall also provide the same information to the agency Office of Small and Disadvantaged Business Utilization.

* * * * *

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 12. Amend section 42.1502 by adding a new sentence to the end of paragraph (a) to read as follows:

42.1502 Policy.

(a) * * * These procedures shall require an assessment of contractor performance against, and efforts to achieve, the goals identified in the small business subcontracting plan when the contract includes the clause at 52.219–9, Small Business Subcontracting Plan.

* * * * *

[FR Doc. 03–26463 Filed 10–17–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001–17 which amends the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 2001–17, which precedes this document. These documents are also available via the Internet at *http://www.arnet.gov/far.*

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, General Services Administration, at (202) 501–0044.

*** Contract Bundling (FAR Case 2002–029)**

This final rule implements the Office of Management and Budget's October 2002 report, entitled ''Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business'' which requires amendments to the Federal Acquisition Regulation (FAR) to implement the following action items: (1) Revise the definition of bundling to expressly include multiple award contract vehicles and task and delivery orders under such contracts; (2) require procuring activities to coordinate with their small business specialist (SBS) proposed acquisition strategies or plans contemplating awards above specified dollar thresholds and require the SBS to notify the agency Office of Small and Disadvantaged Utilization (OSDBU) when those strategies include unnecessary and unjustified contract bundling; (3) reduce the threshold and revise the documentation required for substantial bundling; and (4) require agency OSDBUs to perform periodic oversight reviews of agency bundling activities. To implement the action items, this final rule amends FAR Parts 2, 7, 8, 10, 16, 19, and 42.

Dated: October 16, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

[FR Doc. 03–26464 Filed 10–17–03; 8:45 am]

BILLING CODE 6820–EP–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 125

RIN 3245–AF07

Small Business Government Contracting Programs

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Small Business Administration (SBA) regulations governing small business prime contracting assistance. Specifically, this final rule: revises the definition of contract bundling to expressly include multiple award contract vehicles and task and delivery orders under such contracting vehicles; mandates that procuring activities coordinate with the Small Business Specialist (SBS) on proposed acquisition strategies or plans contemplating awards above specified dollar thresholds, and that the SBS notify the agency's Office of Small and Disadvantaged Business Utilization (OSDBU) when those strategies include contract bundling that is unnecessary or unjustified; revises the threshold and documentation required for substantial bundling; and requires the agency's OSDBU to perform certain oversight functions. These amendments are intended to implement a number of the recommendations included in the October 2002 Office of Management and Budget (OMB) report entitled ''Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business.''

DATES: This rule is effective November 19, 2003.

FOR FURTHER INFORMATION CONTACT: Dean Koppel, Assistant Administrator, Office of Policy and Research, (202) 401–8150 or *dean.koppel@sba.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

On January 31, 2003, SBA published a proposed rule in the **Federal Register**, 68 FR 5134, to solicit comments on its proposal to implement several recommendations included in OMB's October 2002 report, entitled ''Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business.'' *See http://www.acqnet.gov/Notes/contractbundlingreport.pdf* or *http://www.acqnet.gov/.*

Contract bundling is defined in the Small Business Act as the consolidation of two or more requirements for goods and services into a single procurement that is ''unlikely to be suitable for award to a small business concern.'' 15 U.S.C. 632(o). The dramatic increase in the size of contracts in recent years has resulted in a significant reduction in the number of Federal contracting opportunities for small businesses. As a result, the President's Small Business Agenda directed OMB to develop a strategy for unbundling contracts as a means of expanding small business access to Federal procurements.

In response, the Office of Federal Procurement Policy (OFPP), within OMB, issued the October 2002 bundling report, providing a nine-point action plan to hold agencies accountable for eliminating unnecessary contract bundling and for mitigating the effects of necessary contract bundling. Five of the nine action items specifically called for regulatory implementation, while the remaining four contemplated other administrative initiatives involving OMB, SBA and agency OSDBUs. The specific action items necessitating regulatory implementation are: Action Item 3, which requires a clarification of the definition of contract bundling to require bundling reviews of task and delivery orders under multiple award contract vehicles; Action Item 4, which dictates bundling reviews of agency acquisitions above specific dollar thresholds; Action Item 5, which mandates the identification of alternative acquisition strategies and justification for bundled procurements above established thresholds; Action Item 6; which requires measures to strengthen compliance with subcontracting plans of large business prime contractors; and Action Item 7, which demands measures to facilitate small business teaming arrangements.

SBA's proposed rule published on January 31, 2003 (68 FR 5134) detailed the changes to the SBA's regulations that would implement the five action items requiring regulatory amendments. In particular, the rule proposed to: (1) Revise the definition of bundling to expressly include multiple award contract vehicles and task and delivery orders under such contracts; (2) require procuring activities to coordinate with their SBS proposed acquisition strategies or plans contemplating awards above specified dollar thresholds and require the SBS to notify the agency OSDBU when those strategies include unnecessary and unjustified contract bundling; (3) reduce the threshold and revise the documentation required for substantial bundling; and (4) require the agency's OSDBU to perform periodic oversight reviews of agency bundling activities.

The proposed rule invited the public to submit comments on the proposed amendments by April 1, 2003. By the end of the comment period, SBA had received a total of 26 timely comment letters from a variety of sources, consisting of one member of Congress; the Public Contract Law Section of the American Bar Association; two national women's organizations; five national trade organizations; six Federal agencies; and 11 firms and individuals from numerous industries.

The overwhelming majority of the 26 commenters supported the Administration's effort to address the problem of contract bundling. Some of the commenters, however, complained that a few of the proposed changes did not go far enough to curb contract bundling. Others, on the other hand, criticized some of the proposed changes for going too far to unbundle contracts.

SBA considered all of the comments and recommendations in developing this final rule. The specific comments to each proposed amendment and SBA's corresponding responses are set forth below.

B. Section-by-Section Analysis of Comments

1. Comments on Requirement for Bundling Reviews

SBA received six comments concerning its proposal to add a new § 125.2(b)(2), requiring bundling reviews of proposed acquisition strategies or plans. As proposed, that section requires an agency to coordinate its acquisition strategy or plan with its SBS whenever the agency's contemplated strategy or plan exceeds the applicable agency threshold established in the proposed § 125.2(b)(2)(i) (discussed below) and is not set-aside for small businesses. The proposed § 125.2(b)(2) provides a minimum period of no later than 30 days before the issuance of the solicitation, for the agency to coordinate its plan with the SBS. In addition, under the proposed § 125.2(b)(2), the SBS is required to notify the agency OSDBU if the proposed acquisition strategy or plan includes bundled requirements that the agency has not identified as bundled or includes unnecessary or unjustified bundling of requirements.

All six comments on the proposed § 125.2(b)(2) expressed support for the requirement for SBS bundling reviews. Three of those six comments recommended allowing the SBS more time to complete the bundling reviews. These three commenters believed that a notification timeframe of no later than 30 days prior to the issuance of the solicitation may be too late in the process for the SBS to influence the structure of the acquisition and assist in identifying small business sources. As an alternative, one of these three commenters recommended official SBS notification at the time the contracting officer is first notified of the requirement; the second suggested a provision precluding the contracting officer from finalizing the acquisition plan until the SBS completed the bundling review within a ''limited number of days''; and the third recommended a minimum 40-day review period.

SBA has declined to adopt any of these recommendations because they would unduly burden the procurement process. The requirement for bundling reviews under the proposed § 125.2(b)(2) implicitly recognizes the need for SBS and OSDBU involvement in the acquisition process to facilitate greater participation of small businesses in Federal contracts. The necessity for their involvement in the process, however, must be balanced against the practical imperative for an operationally efficient Federal acquisition system. SBA does not believe that mandating a specific time that SBSs must receive the acquisition plan or strategy accommodates the unique planning processes of individual agencies and procurements. The proposed language in § 125.2(b)(2) for coordination ''as early in the planning process as practicable, but no later than 30 days,'' affords the flexibility that the process dictates and also emphasizes the agency's obligation for early coordination.

The other commenters on the proposed § 125.2(b)(2) urged for a more stringent provision. Two commenters recommended that the section authorize OSDBUs to stop an acquisition if the OSDBU determines that it includes unnecessary or unjustified bundling. Still another commenter urged for a provision precluding all contract

bundling, asserting that this was the only acquisition strategy that would benefit small businesses.

Like the other suggestions concerning this section, SBA believes that these recommendations also would unduly interfere with the operational efficiencies of the procurement process. Both governing law and OMB's October 2002 bundling report acknowledge that necessary and justified contract bundling may serve a useful purpose. SBA therefore has no authority to prohibit all bundled contracts, including those that are determined to be both necessary and justified.

In addition, the comment that OSDBUs should have authority to block an acquisition ignores existing regulations that would operate in tandem with proposed § 125.2(b)(2). Specifically, existing § 125.2(b)(6) already provides a mechanism for resolving disagreements with agencies concerning contract bundling and small business participation in procurements. Section 125.2(b)(6) authorizes Procurement Center Representatives (PCRs) to initiate an appeal to the head of the contracting activity when there is a disagreement concerning the bundling of a requirement or the suitability of an acquisition to be set aside for small business competition. The proposed rule, specifically § 125.2(b)(8) and § 125.2(d)(7)(ii), encouraged SBSs and OSDBUs to cooperate with PCRs in reviewing procurements and in identifying possible small business contracting opportunities. SBSs and OSDBUs therefore can work with PCRs in using the PCR appeal mechanism to challenge unnecessary and unjustified contract bundling.

Accordingly, SBA believes that the proposed § 125.2(b)(2) properly balances the need for SBS reviews of acquisition strategies, with the need for operational efficiency in the procurement process. In adopting § 125.2(b)(2), SBA has made three minor revisions. The first clarifies that the proposed strategies are for ''acquisitions'' that meet the applicable dollar threshold. The second revision adds language to reinforce the SBS's responsibility to assist in identifying alternative strategies when an acquisition plan involves substantial bundling. The third revision adds a new § 125.2(b)(2)(ii) to explain the application of the dollar thresholds to multiple award contracts and orders. The new § 125.2(b)(2)(ii) indicates that the thresholds provided in § 125.2(b)(2)(i) apply to the cumulative value of an acquisition strategy that contemplates multiple award contracts or orders, including options.

2. Comments on Acquisition Dollar Thresholds

SBA specifically requested comments on the proposed § 125.2(b)(2)(i). That section establishes three separate agency-specific dollar thresholds that would trigger the bundling reviews required under § 125.2(b)(2) and the additional documentation and justification required for substantial bundling under § 125.2(d)(1)(v) (discussed below). The three-tier dollar threshold proposed was $7 million or more for the Department of Defense (DOD); $5 million or more for the National Aeronautics and Space Administration (NASA), the Department of Energy (DOE) and the General Services Administration (GSA); and $2 million or more for all other agencies.

SBA received nine comments on this proposal. Only one of the nine commenters objected to the adoption of any dollar threshold. That one objecting commenter believed that the imposition of thresholds for SBS bundling reviews would mean that contract bundling could occur below the established thresholds without review. This commenter asserted that focusing review on contracts above the threshold would somehow eliminate bundling reviews of smaller contracts and thereby reduce rather than increase contracting opportunities for small businesses.

This commenter misunderstands the purpose and application of the proposed thresholds under § 125.2(b)(2)(i). The proposed thresholds are not intended to relieve procuring officials of their existing responsibilities to justify contract bundling at any dollar threshold, and to mitigate the effects of necessary bundling. The existing § 125.2(b)(3), which implements 15 U.S.C. 644(a), requires procuring activities to provide a copy of all proposed bundled procurements, irrespective of amount, to the activity's PCR at least 30 days before the solicitation is issued. The proposed § 125.2(b)(2)(i) leaves that requirement in place, and focuses additional resources instead on reviewing higher-dollar valued procurements that will likely have an even greater adverse impact by foreclosing small business prime contract participation.

Proposed § 125.2(b)(2)(i) is intended to supplement and not replace current PCR reviews of procurement strategies. As a result, instead of reducing small business contracting opportunities as the objecting commenter asserts, proposed § 125.2(b)(2)(i) and related provisions will serve to expand small business access to Federal contracts by providing more reviews of those bundled procurements that possess the greatest potential to harm small businesses.

With the exception of that one objecting commenter, the remaining eight commenters on § 125.2(b)(2)(i) supported the adoption of dollar thresholds for SBS reviews, but expressed diverse opinions as to the appropriate structure and amount of the thresholds. One commented that the proposed three-tier approach and dollar amounts are reasonable, but further indicated that the Agency should be aware that substantial bundling may occur at levels below the threshold.

Two commenters recommended that SBA reduce the dollar amounts—one of these commenter failed to specify any alternative amount, while the other recommended the adoption of thresholds between $1 and $2 million.

Two other commenters recommend increasing the thresholds to an unspecified amount. Both of these commenters believed that higher thresholds would better accommodate the limited agency resources available to conduct bundling reviews and provide the additional justifications required for substantial bundling.

Two additional commenters believed that adopting different thresholds for different agencies would unnecessarily complicate the acquisition process. They recommended that SBA adopt a single government-wide threshold that would apply to all agencies equally. One of these two commenters suggested that SBA establish the government-wide threshold at $7 million. The other commenter urged that DOD be subject to the same dollar threshold as the other agencies. This commenter asserted that it is just as important for DOD to sustain its small business industrial base as it is for civilian agencies. This commenter further indicated that close monitoring of DOD's procurement is essential to limiting the adverse impact of contract bundling on small businesses.

Another commenter also believed that the three-tier approach is too complicated. This commenter suggested that SBA adopt one threshold of either $2 or $5 million for all agencies and a second threshold of greater than $5 million to trigger ''additional requirements'' for all agencies procurements above that amount.

As SBA explained in its preamble to the proposed rule published on January 31, 2003, the proposed dollar amounts of the thresholds are based on a comparative analysis of the number and size of the contracting actions of the major procuring activities. The objective of the tier approach is two-fold: (1) To target those contracting actions for

individual agencies that would most likely involve contract bundling; and (2) to minimize the extent to which the bundling reviews would disrupt the procurement process of individual agencies.

SBA continues to believe that the proposed three-tier threshold will best achieve those objectives. SBA therefore declines to adopt the recommendations for a single government-wide threshold to trigger bundling reviews and the additional documentation requirements for substantial bundling (discussed below). SBA is instead adopting the proposed threshold of $7 million for DOD, $5 million for NASA, DOE and GSA, and $2 million for all other agencies. These agency-specific levels will capture those procurements that would most likely involve contract bundling for individual agencies, will minimize the disruption to the procurement process, and will properly account for the limited resources and contracting personnel to conduct the bundling reviews.

3. Comments on Compliance With Subcontracting Plans

The redesignated § 125.2(b)(6)(iii)(C) under the proposed rule clarifies the language of the former § 125.2(b)(5)(iii)(C) to make clear that as part of the responsibilities of PCRs to ensure that small business participation is maximized through subcontracting opportunities, PCRs may review an agency's oversight of its subcontracting programs, including the agency's overall and individual assessment of contractor compliance. The proposed § 125.2(b)(6)(iii)(C) contemplates a systemic review of an agency's general assessment of subcontracting plan compliance to facilitate greater consistency in agency oversight in the future.

SBA received 11 comments on this proposed clarification. Although the comments applauded the intent of proposed § 125.2(b)(6)(iii)(C), the majority of the comments indicated that it is insufficient to monitor and ensure compliance with subcontracting plans. Three commenters recommended the imposition of penalties or sanctions on large prime contractors for noncompliance with their small business subcontracting plans. The Federal Acquisition Regulation (FAR) already provides for liquidated damages for noncompliance with subcontracting plans. Under FAR section 19.750–7, a prime contractor is liable for such damages for failing to make a ''good faith effort'' to comply with its subcontracting plans. Since governing regulations already provide monetary consequences for noncompliance with subcontracting plans, SBA is not adopting this recommendation.

Continuing on the issue of compliance with subcontracting plans, one commenter suggested that SBA explore incentives that would reward large prime contractors that achieve their subcontracting goals. Along those lines, another commenter similarly recommended reinforcing prime contractor compliance with subcontracting plans by requiring the inclusion in all solicitations a past performance evaluation factor assessing subcontracting plan compliance. This commenter believed that such a mandatory source selection factor, in both bundled and non-bundled acquisitions alike, would encourage greater small business subcontracting awards. Additionally, because of the increase in task and delivery orders under multiple award contracts, the commenter also suggested that the regulations encourage the inclusion of a similar evaluation source selection criterion for task and delivery order awards.

Another commenter recommended that large businesses that are awarded task and delivery orders under GSA's Federal Supply Schedule (FSS) should be subject to the requirement for subcontracting plans under section 8(d) of the Small Business Act, 15 U.S.C. 637(d).

SBA agrees that a subcontracting plan compliance evaluation factor may serve as an effective incentive to encourage greater compliance with the plans. SBA is therefore adopting the proposed § 125.2(b)(6)(iii), with a new paragraph (D), recommending a separate evaluation factor of ''significant weight'' for achievements of subcontracting goals on previous contracts. SBA declines to make that evaluation factor mandatory or to extend it to task and delivery order awards at this time, since it has not yet determined the potential impact of such requirements.

Also, regarding the issue of SBA's review of subcontracting compliance, one commenter suggested that the regulations mandate that PCRs share their compliance assessments with SBA's breakout PCRs, who are assigned to major contracting centers. This commenter also recommended that SBA develop a system to enable PCRs and breakout PCRs to submit their assessments to the cognizant contracting officer.

Two commenters expressed the need for further guidance on evaluating compliance with subcontracting plans and a contractor's ''good faith'' efforts to achieve its small business goals. One of these two commenters further indicated that government agencies should be required to ''evaluate large businesses on the same basis and understanding of the small business subcontracting plan regulations.'' This commenter also complained that large businesses need additional guidance in completing commercial plans, which cover a commercial contractor's entire fiscal year and commercial production.

Two additional commenters recommended that in addition to goals, subcontracting plans should include other information, such as a description of the nature of the work to be subcontracted and the efforts the offeror will make to ensure that small businesses have an equitable opportunity to compete for subcontracts.

Likewise, another commenter suggested that prime contractor subcontracting plans should be reviewed not only for the extent of small business participation, but also for the extent to which they generate ''reasonable profit margins'' for small businesses. This commenter explained that review of the small business profit margins is necessary because prime contractors often give the low margin, high revenue producing products to small businesses, and thereby achieve their percentage of participation but leave the small business with little profit. This commenter also recommended the collection and dissemination of best practices and strategies for maximizing small business prime and subcontract opportunities.

SBA agrees that effective procedures to mitigate the effects of contract bundling on small businesses necessitates more stringent requirements for monitoring compliance with subcontracting plans to ensure that small businesses receive the maximum practical opportunity to participate as subcontractors in large Federal contracts. Many of the commenters recommended amendments that require further consideration to evaluate their likely effectiveness and impact on the procurement process. As a result, SBA is proposing a separate rule, published elsewhere in this issue of the **Federal Register**, to address many of these comments and suggestions, including the suggestion for more guidance in determining good faith compliance.

Although published separately, that proposed rule addressing the comments on § 125.2(b)(6)(iii)(C), remains part of the Administration's initiative to implement OMB's October 2002 report on contract bundling. However, because the rule proposes additional changes to SBA's regulations that were not

published for public comment as part of SBA's earlier January 31, 2003, proposed rule, SBA is publishing these proposed changes separately to solicit public comment before they become final.

4. Comments on Requirement for PCR, SBS and OSDBU Cooperation

SBA received four comments addressing proposed § 125.2(b)(8). This section reiterates the requirement for PCRs to work with SBSs and agency OSDBUs as early in the acquisition process as practicable, to identify acquisitions involving bundling and to increase small business prime contract participation. Several of the commenters requested additional language and guidance for developing and monitoring the utilization of small business teams.

Additionally, two of the commenters did not believe that the amendment sufficiently referenced joint ventures, teaming and mentor-protégé relationships as effective mechanisms for increasing small business access to Federal procurements. One of these commenters maintained that small business involvement in Federal procurements through subcontracting should be the exception rather than the rule. Another commenter suggested that small business teams should be based on ''market driven strategies to develop the competitiveness of small firms in non-traditional areas of weakness.''

SBA agrees that additional guidance on identifying and developing small business teams is necessary. Nonetheless, proposed § 125.2(b)(8) was not intended to provide such detailed guidance. The efforts to develop additional guidance are part of a separate administrative initiative to implement one of OMB's non-regulatory recommendations under Action Item 8 of its October 2002 bundling report. That item requires SBA to collect and disseminate best practices for maximizing small business opportunities. In implementing that recommendation, on January 23, 2003, SBA issued a memorandum to Senior Procurement Executives and OSDBU Directors, requesting proven strategies for increasing opportunities for small businesses. The memorandum invited the officials to submit to SBA's Office of Government Contracting no later than February 28, 2003, best practices for maximizing small business opportunities.

Once SBA completes its review of the agency submissions, it will publish a compilation of best practices, strategies and guidance for maximizing prime and subcontracting opportunities for small businesses. Since SBA will provide additional guidance on small business teams as part of this separate initiative, it will not include such guidance in this rulemaking action and is therefore adopting § 125.2(b)(8) as proposed.

5. Comments on Clarification of Bundling Definition

SBA received seven comments on its proposal to implement the OMB bundling report recommendation to require bundling reviews for task and delivery order awards under multiple award contract vehicles. The proposed regulations add new § 125.2(d)(1)(iii) to define a ''single contract'' to include: (1) an indefinite quantity contract awarded to two or more sources under a single solicitation for the same or similar supplies and services; and (2) an order under a FSS contract or a task or delivery order contract awarded by another agency. The proposed rule also adds new § 125.2(d)(1)(iv) defining an ''order'' as an order placed under a FSS contract or a task or delivery order contract awarded by another agency. The purpose of providing definitions of a ''single contract'' and an ''order'' is to clarify that task and delivery orders under multiple award contract vehicles are subject to the applicable requirements for bundling reviews and justifications.

The majority of the seven commenters expressed support for the proposed clarification. One commenter suggested that SBA clarify that the § 125.2(d)(1)(iii) definition of ''single contract'' is ''for purposes of this subpart 125.2 only.'' Section 125.2(d)(1)(iii) already contains the qualifying statement ''as used in this definition.'' SBA believes that language sufficiently clarifies that the definition of ''single contract'' is provided as part of the overall definition of contracting bundling. There is therefore no need for further clarifying language.

By far, the most common issue the commenters raised on the proposed definition of ''single contract'' and ''order'' was the type of multiple award contracts encompassed under the proposed definition. One commenter complained that the definition did not fully implement OMB's bundling recommendation to close the loophole of bundling task and delivery order awards because it does not cover the orders an agency issues against its own multiple award contracts. This commenter pointed out that the new definition only covers the orders placed against GSA's FSS, or against an indefinite quantity contract awarded by another agency. This commenter urged that the definition of contract bundling should include orders placed against indefinite quantity, multiple award contracts awarded by any agency.

Also on this issue, two other commenters indicated that the regulations should not exempt an agency's order against its own multiple award contract, since agencies may also bundle requirements when ordering against their own multiple award contracts.

SBA does not agree that an agency's orders against its own contract should be subject to bundling reviews. The underlying multiple award contract of an agency is subject to the requirements for SBS and PCR review for contract bundling and small business participation. Unlike FSS orders, theoretically, the SBS and PCR reviews of an agency's proposed acquisition strategy or plan for its multiple award contract should encompass that agency's anticipated orders under that contract. Consequently, the agency's own orders presumably were part of the underlying PCR and SBS review. It would therefore be duplicative to require yet another bundling review of each individual order the agency places against its already reviewed multiple award contract. As a result, SBA is not adopting this recommendation, particularly in light of the limited resources available to conduct the reviews.

Another commenter asserted that the proposed clarification under §§ 125.2(d)(1)(iii) and (iv) is ''vague as to whether task or delivery orders added to existing contracts will be covered by the definition and reviewed, or whether only task or delivery orders over certain thresholds will be reviewed.'' Under the proposed definitions, task and delivery order awards under any indefinite quantity contract other than an agency's own multiple award contract, would be subject to SBS review under § 125.2(b)(2), if it is above the established threshold, and would be subject to review by the cognizant PCR under § 125.2(b)(3), if it involves bundling.

In particular, since § 125.2(b)(2) requires procuring activities to submit acquisitions strategies above the established threshold to SBSs, strategies that contemplate orders that are above the threshold and that are not against an agency's own multiple award contract, would be subject to SBS review for bundling. Second, § 125.2(b)(3) requires a procuring activity to submit a copy of a proposed acquisition strategy to the PCR, whenever that strategy involves a bundled requirement. Because §§ 125.2(d)(1)(iii) and (iv) define a bundled requirement to include certain task and delivery orders under another

agency's contract, agencies would be required to submit such orders to PCRs for review, when the orders include bundling.

The final comment on proposed §§ 125.2(d)(1)(iii) and (iv) noted that the proposed definition of bundling is deficient because it does not cover ''new work.'' Contrary to that commenter's assertion, nothing in the regulations exempts a new requirement from falling within the scope of the definition of contract bundling. The regulatory definition of ''separate smaller contract'' is based on the definition of that term under Section 3(o)(3) of the Small Business Act, 15 U.S.C. 632(o)(3). Like the statutory definition, § 125.2(d)(1)(ii) defines a ''separate smaller contract'' for purposes of a bundled contract, as one that ''has previously been performed by one or more small business concerns or was suitable for award to one or more small business concerns.'' This definition does not mean that none of the individual requirements comprising the bundled acquisition can qualify as ''new work.'' Instead, it requires that some portion of the bundled procurement must have been either performed or suitable for performance by a small business.

After considering all of the comments on proposed §§ 125.2(d)(1)(iii) and (iv), SBA believes that the amendment effectively implements OMB's recommendation to compel bundling reviews of task and delivery orders. SBA is therefore adopting the definition of ''single contract'' as proposed in § 125.2(d)(1)(iii), but is deleting the proposed definition of ''order'' under § 125.2(d)(1)(iv), as unnecessary.

6. Comments on Amendments Concerning ''Substantial Bundling''

In an effort to streamline the requirements for reviewing and justifying bundled requirements, this proposed rule provides new § 125.2(d)(1)(v) to replace the existing § 125.2(d)(1)(iii). This new section defines ''substantial bundling'' as any bundling that meets the dollar amounts specified in proposed § 125.2(b)(2)(i). The proposed rule also adds new § 125.2(d)(7)(i)(E), requiring that in the event of substantial bundling, the agency must identify the alternative strategies that would reduce or minimize the scope of the bundling and the rationale for not selecting those alternatives. The rule further proposed new § 125.2(d)(7)(ii), directing the procuring agency to provide the PCR and agency OSDBU a copy of the proposed acquisition strategy containing substantial bundling and the required analysis, at least 30 days prior to the release of a solicitation.

SBA received one comment on this proposal. This commenter objected to the amendments because the commenter believes that government acquisition professionals need additional training and support and because the change will increase the workload of contracting officers.

SBA recognizes that lowering the threshold for ''substantial bundling'' would mean enlarging the number of procurements that would require the additional written justification under § 125.2(d)(7). However, SBA continues to believe that this change will simplify the application of § 125.2(b)(2)(i) and § 125.2(d)(7), by using the same three-tier dollar threshold to trigger the bundling reviews and the required supporting analysis for substantial bundling. Also, the changes in the requirement for written justifications are consistent with OMB's report recommendations relating to the identification of alternative acquisition strategies. As a result, SBA is adopting these proposed amendments with one change. SBA renumbered § 125.2(d)(1)(v) as § 125.2(d)(1)(iv).

7. Comments on Requirement for Contract Bundling Report

SBA received three comments on its proposal to add new § 125.2(e) to impose a new OSDBU oversight function. The proposed § 125.2(e) dictates that OSDBUs conduct periodic reviews to assess: (1) The extent to which small businesses are receiving their fair share of Federal procurements; (2) the adequacy of bundling documentation and justification; and (3) the adequacy of actions taken to mitigate the effects of necessary and justified contract bundling, including the agency's oversight of compliance with subcontracting plans. OSDBUs also would be required to submit a copy of their assessment to the Agency Head and SBA Administrator.

One commenter recommended that this section be amended to require that Federal agencies negotiate with SBA two-part goals for prime and subcontract awards to the various types of small businesses and that OSDBUs assess and track the awards to the various categories of small business concerns.

SBA declines to adopt this recommendation because there is already a process in place for negotiating small business goals. Section 15(j) of the Small Business Act, 15 U.S.C. 644(j), charges SBA with responsibility for negotiating small business goals with Federal agencies. Pursuant to those responsibilities, the SBA has issued Goaling Guidelines that provide policy direction for establishing annual goals, reporting procurement activity and submitting corrective action plans when the goals are not satisfied. *See http://sba.gov/GC*. Most recently, on July 23, 2003, SBA published a notice in the **Federal Register**, soliciting comments on proposed revisions to its Goaling Guidelines. 68 FR 43566. The proposed revisions clarify SBA's goaling policies and are designed to ensure that the process is transparent. The proposed Goaling Guidelines are posted on SBA's Web site at *http://www.sba.gov/GC/goals*. Accordingly, there is no need for SBA to revise § 125.2(e) to address SBA procedures for negotiating and monitoring goal achievements.

Another commenter suggested that SBA require annual OSDBU reviews rather than ''periodic'' reviews. This commenter also suggested that the OSDBU reviews encompass agency performance in the area of contracting with women and minority-owned small businesses.

SBA agrees that a requirement for ''annual'' reviews is much clearer than one for merely ''periodic'' reviews. Thus, SBA has incorporated that suggestion. SBA is not, however, adopting the second recommendation regarding the contents of the OSDBU reviews. The proposed § 125.2(e) already provides that the OSDBU review should address the extent to which small businesses are receiving their fair share of Federal procurement, which includes contracting with women and minority-owned small businesses. There is, therefore, no need to single out these two categories of small businesses in the section. For this reason, SBA has adopted § 125.2(e) as proposed, with the exception of changing the requirement for periodic review to reviews on an annual basis.

C. Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

OMB has determined that this final rule is a significant regulatory action under Executive Order 12866. The rule implements the recommendations of the OMB report entitled ''Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business.'' This rule is part of the President's initiative for small business growth.

For purposes of Executive Order 12988, SBA has drafted this proposed rule, to the extent practicable, in accordance with the standards set forth in section 3 of that Order.

For purposes of Executive Order 13132, SBA has determined that this proposed rule has no federalism implications warranting the preparation of a Federalism Assessment.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this proposed rule imposes no new reporting or recordkeeping requirements.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, requires that SBA publish a final regulatory flexibility analysis. According to the RFA, the analysis must include: (1) A statement of need for and objective of the rule; (2) a summary of significant issues raised by public comments in response to SBA's Initial Regulatory Flexibility Act (IRFA) and an assessment of issues and changes made as a result; (3) a description of and estimate of the number of small entities to which the rule applies; (4) a description of the reporting, recordkeeping and other compliance requirements and an estimate of the classes of small entities subject to the requirements and type of professional skill necessary for the preparation of the report or record; and (5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the objectives of applicable statutes and of the reasons the agency selected the alternative adopted in the rule.

1. Reason for and Objective of the Rule

The objective of this rule is to further the Administration's commitment to create a government strategy for unbundling Federal contracts to increase Federal contracting opportunities for small business. The rule will: (1) Revise the definition of ''bundling'' to apply to orders placed against Federal Supply Schedules, Government-wide Acquisition Contracts, and Multi-agency Contracts when those orders meet the definition; (2) require the SBS to coordinate agency acquisition strategies at specified dollar thresholds and notify the agency Office OSDBU when those strategies include unidentified or unjustified bundling; (3) reduce the threshold and revise the documentation required for ''substantial bundling;'' (4) require contracting officers to provide bundling justification documentation to the agency OSDBU when substantial bundling is involved; and (5) require agency OSDBUs to conduct annual reviews of agency efforts to maximize small business participation in procurements.

2. Summary of Public Comments in Response to IRFA

SBA received no comments on its IRFA.

3. Estimate of the Number of Small Entities To Which Rule Applies

This final rule will apply indirectly to all large and small entities that seek award of Federal contracts. The rule is expected to have a positive economic impact on small prime contractors and subcontractors by providing more Federal contracting opportunities for small businesses. In the SBA's 2001 State of Small Business Report filed with the House and Senate Small Business Committees, SBA identified only four material bundling cases with a total value of $60 million for the first three quarters of Fiscal Year (FY) 2001. This represents 0.0004% of Federal contract dollar activity ($60 million divided by $150 billion for the first three quarters of the fiscal year). Based on FY 2001 data, the final rule will impact approximately $3 billion in orders placed against FSS contracts, government-wide acquisition contracts, and multi-agency contracts. Applying the contract bundling estimate of 0.0004% to these un-reviewed orders, SBA expects approximately $1 million will be identified as bundled. This rule establishes a three-tier dollar threshold of $7 million for DOD, $5 million for NASA, DOE and GSA, and $2 million for all other civilian agencies. The dollar amount is based on a comparative analysis of the number and size of the contracting actions of the major procuring activities and is intended to target reviews of the contracting actions that would most likely involve contract bundling, without undue disruption to the acquisition process.

4. Description of Reporting and Other Compliance Requirements

This rule imposes no new reporting or recordkeeping requirements.

5. Summary of Efforts to Minimize Significant Economic Impact

In the preamble to this rule, SBA addressed the steps the Agency has taken to minimize significant adverse economic impact on small entities consistent with the objectives of applicable statutes and the reasons the Agency selected the alternatives adopted in this rule.

List of Subjects in 13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small business, Technical assistance.

■ For the reasons set forth in the preamble, SBA amends 13 CFR part 125 as follows:

PART 125–GOVERNMENT CONTRACTING PROGRAMS

■ 1. The authority citation for 13 CFR part 125 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 637 and 644; 31 U.S.C. 9701 and 9702.

■ 2. Amend § 125.2 as follows:
■ a. By revising the heading of paragraph (b);
■ b. By revising paragraph (b)(1);
■ c. By redesignating paragraphs (b)(2) through (b)(7) as paragraphs (b)(3) through (b)(8);
■ d. By adding new paragraph (b)(2);
■ e. By revising redesignated paragraph (b)(3), introductory text, (b)(6)(iii), and (b)(8);
■ f. By revising paragraphs (d)(1)(iii), (d)(2)(i) and (ii), (d)(5)(i)(A) and (B) and (d)(7), and adding paragraph (d)(1)(iv); and
■ g. By adding paragraph (e).

The revisions and additions to § 125.2 read as follows:

§ 125.2 Prime contracting assistance.

* * * * *

(b) *Responsibilities in the acquisition planning process.* (1) SBA Procurement Center Representatives (PCRs) are generally located at Federal agencies and buying activities which have major contracting programs. PCRs are responsible for reviewing all acquisitions not set-aside for small businesses to determine whether a set-aside is appropriate and to identify alternative strategies to maximize the participation of small businesses in the procurement.

(2) As early in the acquisition planning process as practicable, but no later than 30 days before the issuance of a solicitation, or prior to placing an order without a solicitation, the procuring activity must coordinate with the procuring activity's Small Business Specialist (SBS) when the acquisition strategy contemplates an acquisition meeting the dollar amounts in paragraph (b)(2)(i) of this section, unless the contract or order is entirely reserved or set-aside for small business concerns as authorized under the Small Business Act. The SBS must notify the agency Office of Small and Disadvantaged Business Utilization (OSDBU) if the strategy or plan includes bundled requirements that the agency has not identified as bundled or includes unnecessary or unjustified bundling of requirements. If the strategy involves substantial bundling, the SBS shall assist in identifying alternative

strategies that would reduce or minimize the scope of the bundling.

(i) The procuring activity must coordinate the acquisition strategy with the cognizant SBS in accordance with paragraph (b)(2) of this section if the estimated acquisition, contract or order value is:

(A) $7 million or more for the Department of Defense;

(B) $5 million or more for the National Aeronautics and Space Administration, the General Services Administration, and the Department of Energy; and

(C) $2 million or more for all other agencies.

(ii) If the strategy contemplates multiple award contracts or multiple award orders under the Federal Supply Schedule or a task or delivery order contract awarded by another agency, the thresholds in paragraph (b)(2)(i) of this section apply to the cumulative estimated value of the multiple award contracts or orders, including options.

(3) A procuring activity must provide a copy of a proposed acquisition strategy (*e.g.*, Department of Defense Form 2579, or equivalent) to the applicable PCR (or to the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located if a PCR is not assigned to the procuring activity) at least 30 days prior to a solicitation's issuance whenever a proposed acquisition strategy:

* * * * *

(6) * * *

(iii) The PCR will also work to ensure that small business participation is maximized through teaming arrangements and subcontracting opportunities. This may include:

(A) Recommending that the solicitation and resultant contract specifically state the small business subcontracting goals, which are expected of the contractor awardee;

(B) Recommending that the small business subcontracting goals be based on total contract dollars instead of subcontract dollars;

(C) Reviewing an agency's oversight of its subcontracting program, including its overall and individual assessment of a contractor's compliance with its small business subcontracting plans. The PCR will furnish a copy of the information to the SBA Commercial Market Representative (CMR) servicing the contractor; and

(D) Recommending that a separate evaluation factor with significant weight is established for the extent to which offerors attained their subcontracting goals on previous contracts.

* * * * *

(8) PCRs will work with the cognizant SBS and agency OSDBU as early in the acquisition process as practicable to identify proposed solicitations that involve bundling, and with the agency acquisition officials to revise the acquisition strategies for such proposed solicitations, where appropriate, to increase the probability of participation by small businesses, including small business contract teams, as prime contractors. If small business participation as prime contractors appears unlikely, the SBS and PCR will facilitate small business participation as subcontractors or suppliers.

* * * * *

(d) * * *

(1) * * *

(iii) Single contract, as used in this definition, includes:

(A) Multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources; and

(B) An order placed against an indefinite quantity contract under a Federal Supply Schedule contract or a task or delivery order contract awarded by another agency (*i.e.*, Government-wide acquisition contract or multi-agency contract).

(iv) Substantial bundling means any bundling that meets the dollar amounts specified in paragraph (b)(2)(i) of this section.

(2) * * *

(i) Structure procurement requirements to facilitate competition by and among small business concerns, including small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women; and

(ii) Avoid unnecessary and unjustified bundling of contract requirements that inhibits or precludes small business participation in procurements as prime contractors.

* * * * *

(5) * * *

(i) * * *

(A) Benefits equivalent to 10 percent of the contract or order value (including options) where the contract or order value is $75 million or less; or

(B) Benefits equivalent to 5 percent of the contract or order value (including options) or $7.5 million, whichever is greater, where the contract or order value exceeds $75 million.

* * * * *

(7) Substantial bundling. (i) Where a proposed procurement strategy involves a substantial bundling of contract requirements, the procuring agency must, in the documentation of that strategy, include a determination that the anticipated benefits of the proposed bundled contract justify its use, and must include, at a minimum:

(A) The analysis for bundled requirements set forth in paragraph (d)(5)(i) of this section;

(B) An assessment of the specific impediments to participation by small business concerns as prime contractors that will result from the substantial bundling;

(C) Actions designed to maximize small business participation as prime contractors, including provisions that encourage small business teaming for the substantially bundled requirement;

(D) Actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract or contracts that may be awarded to meet the requirements; and

(E) The identification of the alternative strategies that would reduce or minimize the scope of the bundling, and the rationale for not choosing those alternatives (*i.e.*, consider the strategies under paragraphs (b)(6) (i) and (d) of this section).

(ii) At least 30 days prior to the solicitation release, the procuring activity shall provide the PCR and the agency OSDBU a copy of the proposed acquisition, including the analysis required by paragraph (d)(7) of this section, the acquisition plan, any bundling information required under paragraph (b)(3) of this section, and any other relevant information. The PCR and agency OSDBU or SBS, as applicable, shall work together to develop alternative acquisition strategies identified in paragraph (b)(6) of this section to enhance small business participation.

* * * * *

(e) *OSDBU Oversight Functions.* The Agency OSDBU must:

(1) Conduct annual reviews to assess the:

(i) Extent to which small businesses are receiving their fair share of Federal procurements, including contract opportunities under programs administered under the Small Business Act;

(ii) Adequacy of the bundling documentation and justification; and

(iii) Adequacy of actions taken to mitigate the effects of necessary and justified contract bundling on small businesses (*e.g.*, review agency oversight

of prime contractor subcontracting plan compliance under the subcontracting program).

(2) Provide a copy of the assessment under paragraph (e)(1) of this section to the Agency Head and SBA Administrator.

Dated: October 3, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–26514 Filed 10–17–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 125

RIN 3245–AF12

Small Business Government Contracting Programs

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the U.S. Small Business Administration (SBA) regulations governing small business subcontracting to address several comments received in response to SBA's proposed rule on contract bundling. Specifically, this proposed rule provides a list of factors to consider in evaluating prime contractor's performance and good-faith efforts to achieve the requirements in its subcontracting plan. The proposed rule also authorizes the use of goals in subcontracting plans, and/or past performance in meeting such goals, as a factor in source selection when placing orders against Federal Supply Schedules, government-wide acquisition contracts, and multi-agency contracts.

In addition, this proposed rule implements statutory provisions and other administrative procedures relating to subcontracting goals and assistance. In particular, the proposed rule lists the various categories of small businesses that must be afforded maximum practicable subcontracting opportunities, and clarifies the responsibilities of prime contractors and SBA's Commercial Market Representatives (CMRs) under the subcontracting assistance program. The proposed rule also supplies guidance on Subcontracting Orientation and Assistance Reviews (SOAR), which CMRs perform to assist prime contractors to understand and comply with the requirements governing the small business subcontracting assistance program.

DATES: Comments must be received on or before December 19, 2003.

ADDRESSES: Send comments to Dean Koppel, Assistant Administrator, Office of Policy and Research, 409 Third St., SW., Mail Code: 6500, Washington, DC 20416, by e-mail to *dean.koppel@sba.gov,* or to *www.regulations.gov,* or by facsimile to (202) 205–6390.

FOR FURTHER INFORMATION CONTACT: Dean Koppel, Assistant Administrator, Office of Policy and Research, (202) 401–8150 or *dean.koppel@sba.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

On January 31, 2003, SBA published a proposed rule in the **Federal Register**, 67 FR 47244, to solicit comments on its proposal to implement several recommendations included in the Office of Management and Budget's October 2002 report, entitled ''Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business.'' Several of the responding commenters identified the need for more guidance on evaluating large prime contractor performance and efforts to achieve subcontracting plans, including examples of what types of conduct constitute ''good-faith'' efforts to comply with subcontracting plans.

Under section 8(d)(4) of the Small Business Act (15 U.S.C. 637(d)(4)), large businesses awarded a Federal prime contract in excess of $500,000, or $1,000,000 for construction of a public facility, must submit a subcontracting plan to the contracting agency. The subcontracting plan must include dollar and percentage goals that reflect the maximum practicable utilization of small businesses in the performance of the contract as subcontractors or suppliers. A prime contractor that fails to make a good-faith effort to achieve the goals in its subcontracting plan can be found in material breach of contract and terminated for default or assessed liquidated damages. SBA and the Defense Contract Management Agency (DCMA) also evaluate good-faith efforts when they perform joint post-award compliance reviews of Department of Defense contractors. Contracting officers also consider a contractor's good-faith efforts to achieve its subcontracting goals as an important factor in determining whether the contractor deserves an acceptable past performance rating.

This proposed rule would provide more detailed guidance on assessing good-faith efforts in performance of subcontracting plans. In particular, the proposed rule provides specific examples of conduct demonstrating that a prime contractor has made a good-faith effort to comply with its subcontracting plan.

This proposed rule would also increase the dollar threshold above which prime contractors must notify unsuccessful offerors from $10,000 to $100,000. The proposed dollar threshold will conform to the Simplified Acquisition Threshold and will be in keeping with the Administration's efforts to make Government regulations more practical and less burdensome.

SBA is also proposing amendments to clarify the subcontracting assistance program and incorporate existing statutory requirements and administrative procedures currently used in administering the program. Further, this proposed rule reorganizes § 125.3 into identifiable substantive areas with new subsection headings for ease of use and clarity. None of these changes impose additional requirements or responsibilities on small or large businesses. The proposed amendments are simply intended to clarify existing responsibilities in carrying out the statutory mandate for small businesses to have the maximum practicable opportunity to participate in Federal contracting.

SBA invites comments on the proposed rule, particularly on the provisions concerning the determination of good-faith efforts.

B. Section-by-Section Analysis

SBA proposes to amend § 125.3(a) to clarify that the purpose of the subcontracting assistance program is to provide maximum practicable subcontracting opportunities to small business concerns. The proposed § 125.3(a) specifies the various categories of small businesses that must be afforded the maximum practicable subcontracting opportunities under section 8(d) of the Small Business Act (15 U.S.C. 637(d)), including small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women. The proposed § 125.3(a) also makes clear that the subcontracting assistance program implements the requirement that large prime contractors provide subcontracting plans.

SBA proposes to amend § 125.3(b) to clarify the responsibilities of all prime contractors, as provided under section 8(d)(3) of the Small Business Act (15 U.S.C. 637(d)(3)). Section 8(d)(3) applies to ''all contracts let by any Federal agency'' that exceed the simplified acquisition threshold, that do not include work that will be performed entirely outside of the United States, and that are for services that are personal in nature. It requires all awardees of such prime contracts to carry out ''the policy of the United States that small business concerns'' have the ''maximum practicable opportunity to participate'' in the performance of contracts, including subcontracts for subsystems, assemblies,

components, and related services for major systems.

In implementing that existing statutory requirement, the proposed § 125.3(b)(1) expressly requires that all prime contractors, including small business prime contractors, that receive the covered Federal contracts ensure that small business concerns have the maximum practicable opportunity to participate in the performance of the contract as subcontractors and suppliers, consistent with the efficient performance of the contract. SBA believes that the responsibility to maximize subcontracting opportunities for small businesses applies equally to all prime contractors that receive contracts above the simplified acquisition threshold. This provision does not, however, extend the requirement for subcontracting plans to small business concerns. As indicated in the proposed § 125.3(c), discussed below, the requirement for subcontracting plans applies only to large businesses that receive a contract or contract modification exceeding $500,000, or $1,000,000 in the case of construction of a public facility.

The proposed § 125.3(b)(2) lists examples of actions prime contractors may take to increase small business subcontracting opportunities. Two comments submitted in response to SBA's proposed bundling rule published in the **Federal Register** on January 31, 2003 (67 FR 47244), requested strategies for maximizing small business subcontracting opportunities. In response to those comments, the proposed § 125.3(b)(2) provides specific guidance to prime contractors on providing the maximum practicable subcontracting opportunities to small businesses.

The proposed guidance in § 125.3(b)(2) is not intended to impose additional burdens or responsibilities on small businesses or to operate as a basis for denying a small business a contract award. Instead, SBA intends that the proposed guidance provide suggested measures for ensuring small business subcontracting opportunities in procurements. As discussed below in connection with the proposed § 125.3(d), documentation that a large business performed the actions and strategies outlined in the proposed § 125.3(b)(2), may serve as evidence that the large business prime contractor made a good-faith effort to comply with its subcontracting plan.

SBA proposes to amend § 125.3(c) to address the additional responsibilities of large prime contractors selected for award of a contract or contract modification that exceeds $500,000, or $1,000,000 in the case of construction of a public facility. These responsibilities include the existing requirements for submitting subcontracting plans, providing timely subcontracting reports and for cooperating in compliance reviews. The proposed § 125.3(c)(1)(v), sets forth the pre-award written notification currently included in the existing § 125.3(a) of SBA's regulations. The current provision requires large prime contractors to provide pre-award written notification to unsuccessful small business offerors on all subcontracts over $10,000 for which a small business concern received a preference. Unlike that provision, the proposed § 125.3(c)(1)(v) requires such pre-award notification on all subcontracts over $100,000. This proposed increase in the dollar threshold from $10,000 to $100,000 conforms to the simplified acquisition threshold. It also is in keeping with the Administration's efforts to make Government regulations more practical and less burdensome on businesses.

The proposed § 125.3(c)(2) addresses commercial plans. This section makes clear that large prime contractors may use commercial plans for services as well as for products, as long as the product or service being procured meets the definition of a commercial item in 48 CFR 2.101.

SBA proposes to amend § 125.3(d) to address good-faith effort with respect to a large prime contractor's compliance with its subcontracting plan. Under section 8(d)(4)(f) of the Small Business Act (15 U.S.C. 637(d)(4)(f)), a contracting officer may assess liquidated damages against a large business that failed to make a good-faith effort to achieve the small business goals in its subcontracting plan. Several commenters on the SBA's January 31, 2003, proposed bundling rule requested guidance on evaluating a large prime contractor's good-faith efforts to achieve its small business goals. The proposed § 125.3(d) indicates that evidence of good-faith efforts includes supporting documentation that the contractor performed the actions described in the proposed § 125.3(b). The proposed § 125.3(d) further provides that evidence of good faith may also include supporting documentation that other contractors awarded contracts of similar scope, size or dollar value did not achieve or exceed the goals stated in their subcontracting plan, despite their good-faith efforts to do so.

SBA proposes to add a new § 125.3(e) to explain the role of SBA's CMRs, who perform a number of different activities to further the objectives of SBA's subcontracting assistance program. In 2002, the General Accounting Office conducted a study (GAO–03–54) on the role of the CMR. The Study, entitled ''The Commercial Marketing Representatives Role Needs To Be Strategically Planned and Assessed'' concluded that SBA should seek ways to strengthen the position of CMRs. One of the most important functions of CMRs is to assist prime contractors to understand and comply with the requirements of the subcontracting assistance program. Over time, SBA has found that it is preferable to familiarize a prime contractor with the requirements at the time it receives its first contract requiring a subcontracting plan, than to wait until the time of the compliance review. This avoids misunderstandings and other problems that may result in marginal and Unsatisfactory ratings.

SBA has developed the Subcontracting Orientation and Assistance Review (SOAR) to implement this concept. This proposal incorporates the SOAR into SBA's regulations. Section 125.3(e) describes the CMRs responsibilities in conducting SOARS to assist prime contractors in understanding and complying with the requirements under the subcontracting assistance program.

SBA also proposes to add a new § 125.3(f) to address SBA's approach to conducting compliance reviews of prime contractors with subcontracting plans. This section provides the procedures for conducting on-site compliance reviews and follow-up reviews and validation of the SF–295, Summary Subcontract Report, and SF–294, Subcontracting Report for Individual Contracts. The proposed § 125.3(f) further describes the existing rating process and the different procedures for conducting compliance reviews of prime contractors under a commercial plan. This section also indicates that SBA is authorized to enter into agreements with other Federal agencies and entities to conduct compliance reviews and otherwise further the objectives of the subcontracting program. SBA has entered into one such agreement with the Defense Contracts Management Agency under a Memorandum of Understanding dated May 9, 2003.

Finally, in response to comments to SBA's proposed bundling rule published on January 31, 2003 (68 FR 5134), SBA proposes to add a new § 125.3(g) to address the use of subcontracting plans as an evaluation factor. Several commenters urged that SBA explore incentives that would reward large prime contractors for their subcontracting opportunities and

achievements. In response to those comments, the proposed § 125.3(g) authorizes contracting officials to use subcontracting plans as an evaluation factor in the award of task orders and delivery orders under Federal Supply Schedules, Government-wide acquisition contracts, and multi-agency contracts. Specifically, the section allows contracting officers to consider the proposed subcontracting goals for the specific requirement and the contractor's past performance in meeting its subcontracting goals in previous contracts.

C. Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act

OMB has determined that this rule is a significant regulatory action under Executive Order 12866. The proposed rule revises the SBA regulation governing small business subcontracting assistance to define good-faith effort. For purposes of Executive Order 12988, SBA has drafted this proposed rule, to the extent practicable, in accordance with the standards set forth in section 3 of that Order. For purposes of Executive Order 13132, SBA has determined that this proposed rule has no federalism implications warranting the preparation of a Federalism Assessment. For purposes of the Paperwork Reduction Act, 44 U.S.C. ch. 35, SBA determines that this proposed rule imposes no new reporting or recordkeeping requirements.

SBA certifies that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposed rule does not impose any new substantive responsibilities, nor does it require any new reporting or recordkeeping requirements. Instead, this proposed rule clarifies the existing statutory responsibilities under the subcontracting assistance program, including the responsibilities of prime contractors to maximize small business subcontracting opportunities. It also provides guidance to government officials in monitoring and determining the achievements of subcontracting goals. Accordingly, the proposed rule is primarily procedural in nature and therefore would not have a significant economic impact on small entities. As a result, no initial regulatory flexibility analysis is required under 5 U.S.C. 605(b).

List of Subjects in 13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, and Technical assistance.

For the reasons set forth in the preamble, SBA proposes to amend 13 CFR part 125 as follows:

PART 125—GOVERNMENT CONTRACTING PROGRAMS

1. The authority citation for 13 CFR part 125 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 637 and 644; 31 U.S.C. 9701 and 9702.

2. Revise § 125.3 to read as follows:

§ 125.3 Subcontracting assistance.

(a) *General.* The purpose of the subcontracting assistance program is to provide the maximum practicable subcontracting opportunities for small business concerns, including small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women. The subcontracting assistance program implements section 8(d) of the Small Business Act, which includes the requirement that other-than-small firms awarded contracts that offer subcontracting possibilities by the Federal Government in excess of $500,000, or in excess of $1,000,000 for construction of a public facility, must submit a subcontracting plan to the contracting agency. The Federal Acquisition Regulation sets forth the requirements for subcontracting plans in 48 CFR 19.7, and the clause at 48 CFR 52.219–9.

(b) *Responsibilities of prime contractors.* (1) Prime contractors (including small business prime contractors) selected to receive a Federal contract that exceeds the simplified acquisition threshold, that will not be performed entirely outside of any state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, and that is not for services which are personal in nature, are responsible for ensuring that small business concerns have the maximum practicable opportunity to participate in the performance of the contract, including subcontracts for subsystems, assemblies, components, and related services for major systems, consistent with the efficient performance of the contract;

(2) Efforts to provide the maximum practicable subcontracting opportunities for small business concerns include:

(i) Breaking out contract work items into economically feasible units, as appropriate, to facilitate small business participation;

(ii) Conducting market research to identify small business subcontractors and suppliers through all reasonable means, such as performing on-line searches on SBA's PRO-Net, posting Notices of Sources Sought and/or Requests for Proposal on SBA's SUB-Net, and attending pre-bid conferences;

(iii) Soliciting small business concerns as early in the acquisition process as practicable to allow them sufficient time to submit a timely offer for the subcontract;

(iv) Providing interested small businesses with adequate and timely information about the plans, specifications, and requirements for performance of the prime contract to assist them in submitting a timely offer for the subcontract;

(v) Negotiating in good faith with interested small businesses;

(vi) Directing small businesses that need additional assistance to SBA;

(vii) Assisting interested small businesses in obtaining bonding, lines of credit, required insurance, necessary equipment, supplies, materials, or services; and

(viii) Utilizing the available services of small business associations; local, state, and Federal small business assistance offices; and other organizations.

(c) *Additional responsibilities of large prime contractors.* (1) In addition to the responsibilities provided in paragraph (b) of this section, a prime contractor selected for award of a contract or contract modification that exceeds $500,000, or $1,000,000 in the case of construction of a public facility, is responsible for:

(i) Submitting and negotiating before award an acceptable subcontracting plan that reflects maximum practicable utilization of small businesses in the performance of the contract as subcontractors or suppliers. A prime contractor may submit a commercial plan, described in paragraph (c)(2) of this section, instead of an individual subcontracting plan, when the product or service being furnished to the Government meets the definition of a commercial item under 48 CFR 2.101;

(ii) Making a good-faith effort to achieve the dollar and percentage goals and other elements in its subcontracting plan;

(iii) Submitting a timely, accurate, and complete SF–294, Subcontracting Report for Individual Contract, and SF–295, Summary Subcontract Report; or entering the same information into an electronic database approved by SBA;

(iv) Cooperating in the reviews of subcontracting plan compliance, including providing requested information and supporting documentation reflecting actual achievements and good-faith efforts to meet the goals and other elements in the subcontracting plan; and

(v) Providing pre-award written notification to unsuccessful small business offerors on all subcontracts over $100,000 for which a small business concern received a preference. The written notification must include the name and location of the apparent successful offeror and if the successful offeror is a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business.

(2) A commercial plan, also referred to as an annual plan or company-wide plan, is the preferred type of subcontracting plan for contractors furnishing commercial items. A commercial plan covers the offeror's fiscal year and applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line). Once approved, the plan remains in effect during the contractor's fiscal year for all Government contracts in effect during that period. The contracting officer of the agency that originally approved the commercial plan will exercise the functions of the contracting officer on behalf of all agencies that award contracts covered by the plan.

(3) The additional prime contractor responsibilities described in paragraph (c)(1) of this section do not apply if:

(i) The prime contractor is a small business concern;

(ii) The prime contract or contract modification is a personal services contract;

(iii) The prime contract or contract modification will be performed entirely outside of any state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or

(iv) The modification is to a contract that did not originally contain the clause at 48 CFR 52.219–8, Utilization of Small Business Concerns (or equivalent prior clauses).

(d) *Determination of good-faith efforts.* Evidence that a large business prime contractor has made a good-faith effort to comply with its subcontracting plan or other subcontracting responsibilities includes supporting documentation that:

(1) The contractor performed the actions described in paragraph (b) of this section; or

(2) Other contractors awarded contracts of similar scope, size or dollar value have not achieved or exceeded the goals stated in their subcontracting plans, despite other evidence of their good-faith efforts to comply. The determination of the subcontracting plan compliance of other contractors may be based on available subcontracting past performance records and other information.

(e) *CMR Responsibilities.* Commercial Market Representatives (CMRs) are SBA's subcontracting specialists. CMRs are responsible for:

(1) Facilitating the matching of large prime contractors with small business concerns;

(2) Counseling large prime contractors on their responsibilities to maximize subcontracting opportunities for small business concerns;

(3) Instructing large prime contractors on identifying small business concerns by means of SBA's PRO-Net, SUB-Net, and other resources and tools;

(4) Counseling small business concerns on how to market themselves to large prime contractors;

(5) Maintaining a portfolio of large prime contractors and conducting Subcontracting Orientation and Assistance Reviews (SOAR). SOARs are conducted for the purpose of assisting prime contractors in understanding and complying with their small business subcontracting responsibilities, including developing subcontracting goals that reflect maximum practicable opportunity for small business; maintaining acceptable books and records; and periodically submitting reports to the Government; and

(6) Conducting periodic reviews, including compliance reviews in accordance with paragraph (f) of this section.

(f) *Compliance reviews.* (1) A prime contractor's performance under its subcontracting plan is evaluated by means of on-site compliance reviews and follow-up reviews. A compliance review is a surveillance review that determines a contractor's achievements in meeting the goals and other elements in its subcontracting plan for both open contracts and contracts completed during the previous twelve months. A follow-up review is done after a compliance review, generally within six to eight months, to determine if the contractor has implemented SBA's recommendations.

(2) All compliance reviews begin with a validation of the contractor's most recent SF–295, Summary Subcontract Report, and SF–294, Subcontracting Report for Individual Contracts, if applicable. The validation includes a review of the contractor's methodology for completing these reports and a sampling of specific documentation to substantiate small business status.

(3) Upon completion of the review and evaluation of a contractor's performance and efforts to achieve the requirements in its subcontracting plans, the contractor's performance will be assigned one of the following ratings: Outstanding, Highly Successful, Acceptable, Marginal, or Unsatisfactory. The factors listed in paragraph (c) of this section will be taken into consideration, where applicable, in determining the contractor's rating. However, a contractor may be found Unsatisfactory, regardless of other factors, if it cannot substantiate the claimed achievements under its subcontracting plan.

(4) Reviews and evaluations of contractors with commercial plans are identical to reviews and evaluations of other contractors, except that contractors with commercial subcontracting plans do not submit the SF–294, Subcontracting Report for Individual Contracts. Instead, goal achievement is determined by comparing the goals in the approved commercial subcontracting plan against the cumulative achievements on the SF–295, Summary Subcontract Report, for the same period. The same ratings criteria set forth in paragraph (f)(3) of this section apply to contractors with commercial plans.

(5) SBA is authorized to enter into agreements with other Federal agencies or entities to conduct compliance reviews and otherwise further the objectives of the subcontracting program. Copies of these agreements will be published on *www.sba.gov/GC.* SBA is the lead agency on all joint compliance reviews with other agencies.

(g) *Subcontracting consideration in source selection.* When an ordering agency anticipates placing an order or entering into a blanket purchase agreement against a Federal Supply Schedule, government-wide acquisition contract (GWAC), or multi-agency contract (MAC), the ordering agency may evaluate subcontracting as an important factor in its source selection process. This evaluation may include any of the following:

(1) The subcontracting to be performed on the specific requirement;

(2) The goals negotiated in the commercial plan, if applicable; and

(3) The contractor's past performance in meeting subcontracting goals in previous contracts.

Dated: October 8, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–26515 Filed 10–17–03; 8:45 am]

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Federal Register

Monday,
October 20, 2003

Part III

The President

Notice of October 16, 2003—Continuation of the National Emergency With Respect to Significant Narcotics Traffickers Centered in Colombia

Federal Register
Vol. 68, No. 202
Monday, October 20, 2003

Presidential Documents

Title 3—

The President

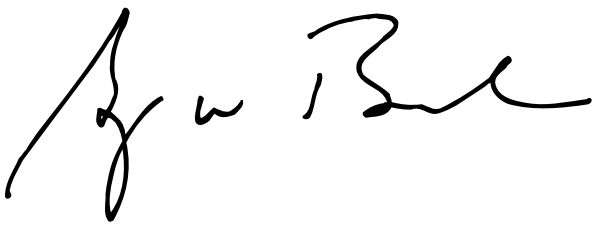
Notice of October 16, 2003

Continuation of the National Emergency With Respect to Significant Narcotics Traffickers Centered in Colombia

On October 21, 1995, by Executive Order 12978, the President declared a national emergency consistent with to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of significant narcotics traffickers centered in Colombia, and the extreme level of violence, corruption, and harm such actions cause in the United States and abroad.

The order blocks all property and interests in property that are in the United States or within the possession or control of United States persons or foreign persons listed in an annex to the order, as well as of foreign persons determined to play a significant role in international narcotics trafficking centered in Colombia. The order similarly blocks all property and interests in property of foreign persons determined to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the order, or persons determined to be owned or controlled by, or to act for or on behalf of, persons designated in or pursuant to the order. The order also prohibits any transaction or dealing by United States persons or within the United States in such property or interests in property.

Because the actions of significant narcotics traffickers centered in Colombia continue to threaten the national security, foreign policy, and economy of the United States and to cause an extreme level of violence, corruption, and harm in the United States and abroad, the national emergency declared on October 21, 1995, and the measures adopted pursuant thereto to deal with that emergency, must continue in effect beyond October 21, 2003. Therefore, consistent with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to significant narcotics traffickers centered in Colombia. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
October 16, 2003.

[FR Doc. 03–26631
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Vol. 68, No. 202

Monday, October 20, 2003

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To amend the Immigration and Nationality Act to extend for an additional 5 years the special immigrant religious worker program. (Oct. 15, 2003; 117 Stat. 1176)

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140–199	(869–050–00040–7)	28.00	Jan. 1, 2003
200–1199	(869–050–00041–5)	47.00	Jan. 1, 2003
1200–End	(869–050–00042–3)	43.00	Jan. 1, 2003
15 Parts:			
0–299	(869–050–00043–1)	37.00	Jan. 1, 2003
300–799	(869–050–00044–0)	57.00	Jan. 1, 2003
800–End	(869–050–00045–8)	40.00	Jan. 1, 2003
16 Parts:			
0–999	(869–050–00046–6)	47.00	Jan. 1, 2003
1000–End	(869–050–00047–4)	57.00	Jan. 1, 2003
17 Parts:			
1–199	(869–050–00049–1)	50.00	Apr. 1, 2003
200–239	(869–050–00050–4)	58.00	Apr. 1, 2003
240–End	(869–050–00051–2)	62.00	Apr. 1, 2003
18 Parts:			
1–399	(869–050–00052–1)	62.00	Apr. 1, 2003
400–End	(869–050–00053–9)	25.00	Apr. 1, 2003
19 Parts:			
1–140	(869–050–00054–7)	60.00	Apr. 1, 2003
141–199	(869–050–00055–5)	58.00	Apr. 1, 2003
200–End	(869–050–00056–3)	30.00	Apr. 1, 2003
20 Parts:			
1–399	(869–050–00057–1)	50.00	Apr. 1, 2003
400–499	(869–050–00058–0)	63.00	Apr. 1, 2003
500–End	(869–050–00059–8)	63.00	Apr. 1, 2003
21 Parts:			
1–99	(869–050–00060–1)	40.00	Apr. 1, 2003
100–169	(869–050–00061–0)	47.00	Apr. 1, 2003
170–199	(869–050–00062–8)	50.00	Apr. 1, 2003
200–299	(869–050–00063–6)	17.00	Apr. 1, 2003
300–499	(869–050–00064–4)	29.00	Apr. 1, 2003
500–599	(869–050–00065–2)	47.00	Apr. 1, 2003
600–799	(869–050–00066–1)	15.00	Apr. 1, 2003
800–1299	(869–050–00067–9)	58.00	Apr. 1, 2003
1300–End	(869–050–00068–7)	22.00	Apr. 1, 2003
22 Parts:			
1–299	(869–050–00069–5)	62.00	Apr. 1, 2003
300–End	(869–050–00070–9)	44.00	Apr. 1, 2003
23	(869–050–00071–7)	44.00	Apr. 1, 2003
24 Parts:			
0–199	(869–050–00072–5)	58.00	Apr. 1, 2003
200–499	(869–050–00073–3)	50.00	Apr. 1, 2003
500–699	(869–050–00074–1)	30.00	Apr. 1, 2003
700–1699	(869–050–00075–0)	61.00	Apr. 1, 2003
1700–End	(869–050–00076–8)	30.00	Apr. 1, 2003
25	(869–050–00077–6)	63.00	Apr. 1, 2003
26 Parts:			
§§ 1.0–1–1.60	(869–050–00078–4)	49.00	Apr. 1, 2003
§§ 1.61–1.169	(869–050–00079–2)	63.00	Apr. 1, 2003
§§ 1.170–1.300	(869–050–00080–6)	57.00	Apr. 1, 2003
§§ 1.301–1.400	(869–050–00081–4)	46.00	Apr. 1, 2003
§§ 1.401–1.440	(869–050–00082–2)	61.00	Apr. 1, 2003
§§ 1.441–1.500	(869–050–00083–1)	50.00	Apr. 1, 2003
§§ 1.501–1.640	(869–050–00084–9)	49.00	Apr. 1, 2003
§§ 1.641–1.850	(869–050–00085–7)	60.00	Apr. 1, 2003
§§ 1.851–1.907	(869–050–00086–5)	60.00	Apr. 1, 2003
§§ 1.908–1.1000	(869–050–00087–3)	60.00	Apr. 1, 2003
§§ 1.1001–1.1400	(869–050–00088–1)	61.00	Apr. 1, 2003
§§ 1.1401–1.1503–2A	(869–050–00089–0)	50.00	Apr. 1, 2003
§§ 1.1551–End	(869–050–00090–3)	50.00	Apr. 1, 2003
2–29	(869–050–00091–1)	60.00	Apr. 1, 2003
30–39	(869–050–00092–0)	41.00	Apr. 1, 2003
40–49	(869–050–00093–8)	26.00	Apr. 1, 2003
50–299	(869–050–00094–6)	41.00	Apr. 1, 2003
300–499	(869–050–00095–4)	61.00	Apr. 1, 2003
500–599	(869–050–00096–2)	12.00	[5]Apr. 1, 2003
600–End	(869–050–00097–1)	17.00	Apr. 1, 2003

Title	Stock Number	Price	Revision Date
27 Parts:			
1–199	(869–050–00098–9)	63.00	Apr. 1, 2003
200–End	(869–050–00099–7)	25.00	Apr. 1, 2003
28 Parts:			
0–42	(869–050–00100–4)	61.00	July 1, 2003
43–End	(869–050–00101–2)	58.00	July 1, 2003
29 Parts:			
0–99	(869–050–00102–1)	50.00	July 1, 2003
100–499	(869–050–00103–9)	22.00	July 1, 2003
500–899	(869–050–00104–7)	61.00	July 1, 2003
900–1899	(869–050–00105–5)	35.00	July 1, 2003
1900–1910 (§§ 1900 to 1910.999)	(869–048–00104–2)	58.00	July 1, 2002
1910 (§§ 1910.1000 to end)	(869–050–00107–1)	46.00	July 1, 2003
1911–1925	(869–050–00108–0)	30.00	July 1, 2003
1926	(869–050–00109–8)	50.00	July 1, 2003
1927–End	(869–050–00110–1)	62.00	July 1, 2003
30 Parts:			
1–199	(869–048–00109–3)	56.00	July 1, 2002
200–699	(869–050–00112–8)	50.00	July 1, 2003
700–End	(869–050–00113–6)	57.00	July 1, 2003
31 Parts:			
0–199	(869–050–00114–4)	40.00	July 1, 2003
200–End	(869–050–00115–2)	64.00	July 1, 2003
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–050–00116–1)	60.00	July 1, 2003
191–399	(869–050–00117–9)	63.00	July 1, 2003
*400–629	(869–050–00118–7)	50.00	July 1, 2003
630–699	(869–050–00119–5)	37.00	[7] July 1, 2003
700–799	(869–050–00120–9)	46.00	July 1, 2003
800–End	(869–050–00121–7)	47.00	July 1, 2003
33 Parts:			
*1–124	(869–050–00122–5)	55.00	July 1, 2003
125–199	(869–048–00121–2)	60.00	July 1, 2002
200–End	(869–050–00124–1)	50.00	July 1, 2003
34 Parts:			
1–299	(869–050–00125–0)	49.00	July 1, 2003
300–399	(869–050–00126–8)	43.00	[7] July 1, 2003
400–End	(869–050–00127–6)	61.00	July 1, 2003
35	(869–050–00128–4)	10.00	[6] July 1, 2003
36 Parts			
1–199	(869–050–00129–2)	37.00	July 1, 2003
200–299	(869–050–00130–6)	37.00	July 1, 2003
300–End	(869–050–00131–4)	61.00	July 1, 2003
37	(869–048–00130–1)	47.00	July 1, 2002
38 Parts:			
0–17	(869–050–00133–1)	58.00	July 1, 2003
18–End	(869–050–00134–9)	62.00	July 1, 2003
39	(869–050–00135–7)	41.00	July 1, 2003
40 Parts:			
1–49	(869–050–00136–5)	60.00	July 1, 2003
50–51	(869–048–00135–2)	40.00	July 1, 2002
52 (52.01–52.1018)	(869–048–00136–1)	55.00	July 1, 2002
52 (52.1019–End)	(869–048–00137–9)	58.00	July 1, 2002
53–59	(869–050–00140–3)	31.00	July 1, 2003
60 (60.1–End)	(869–050–00141–1)	58.00	July 1, 2003
60 (Apps)	(869–050–00142–0)	51.00	[8] July 1, 2003
61–62	(869–050–00143–8)	43.00	July 1, 2003
63 (63.1–63.599)	(869–048–00142–5)	56.00	July 1, 2002
*63 (63.600–63.1199)	(869–050–00145–4)	50.00	July 1, 2003
63 (63.1200–End)	(869–048–00144–1)	61.00	July 1, 2002
64–71	(869–050–00148–9)	29.00	July 1, 2003
*72–80	(869–050–00149–7)	61.00	July 1, 2003
81–85	(869–048–00147–6)	47.00	July 1, 2002
86 (86.1–86.599–99)	(869–048–00148–4)	52.00	[8] July 1, 2002
86 (86.600–1–End)	(869–048–00149–2)	47.00	July 1, 2002
87–99	(869–048–00150–6)	57.00	July 1, 2002
100–135	(869–050–00154–3)	43.00	July 1, 2003
136–149	(869–048–00152–2)	58.00	July 1, 2002
150–189	(869–048–00153–1)	47.00	July 1, 2002
190–259	(869–050–00157–8)	39.00	July 1, 2003
260–265	(869–050–00158–6)	50.00	July 1, 2003
266–299	(869–048–00156–5)	47.00	July 1, 2002
300–399	(869–050–00160–8)	42.00	July 1, 2003
400–424	(869–050–00161–6)	56.00	July 1, 2003
425–699	(869–050–00162–4)	61.00	July 1, 2003
700–789	(869–050–00163–2)	61.00	July 1, 2003
790–End	(869–050–00164–1)	58.00	July 1, 2003
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–048–00162–0)	23.00	July 1, 2002
101	(869–050–00166–7)	24.00	July 1, 2003
102–200	(869–048–00164–6)	41.00	July 1, 2002
201–End	(869–048–00165–4)	24.00	July 1, 2002
42 Parts:			
1–399	(869–048–00166–2)	56.00	Oct. 1, 2002
400–429	(869–048–00167–1)	59.00	Oct. 1, 2002
430–End	(869–048–00168–9)	61.00	Oct. 1, 2002
43 Parts:			
1–999	(869–048–00169–7)	47.00	Oct. 1, 2002
1000–end	(869–048–00170–1)	59.00	Oct. 1, 2002
44	(869–048–00171–9)	47.00	Oct. 1, 2002
45 Parts:			
1–199	(869–048–00172–7)	57.00	Oct. 1, 2002
200–499	(869–048–00173–5)	31.00	[9] Oct. 1, 2002
500–1199	(869–048–00174–3)	47.00	Oct. 1, 2002
1200–End	(869–048–00175–1)	57.00	Oct. 1, 2002
46 Parts:			
1–40	(869–048–00176–0)	44.00	Oct. 1, 2002
41–69	(869–048–00177–8)	37.00	Oct. 1, 2002
70–89	(869–048–00178–6)	14.00	Oct. 1, 2002
90–139	(869–048–00179–4)	42.00	Oct. 1, 2002
140–155	(869–048–00180–8)	24.00	[9] Oct. 1, 2002
156–165	(869–048–00181–6)	31.00	[9] Oct. 1, 2002
166–199	(869–048–00182–4)	44.00	Oct. 1, 2002
200–499	(869–048–00183–2)	37.00	Oct. 1, 2002
500–End	(869–048–00184–1)	24.00	Oct. 1, 2002
47 Parts:			
0–19	(869–048–00185–9)	57.00	Oct. 1, 2002
20–39	(869–048–00186–7)	45.00	Oct. 1, 2002
40–69	(869–048–00187–5)	36.00	Oct. 1, 2002
70–79	(869–048–00188–3)	58.00	Oct. 1, 2002
80–End	(869–048–00189–1)	57.00	Oct. 1, 2002
48 Chapters:			
1 (Parts 1–51)	(869–048–00190–5)	59.00	Oct. 1, 2002
1 (Parts 52–99)	(869–048–00191–3)	47.00	Oct. 1, 2002
2 (Parts 201–299)	(869–048–00192–1)	53.00	Oct. 1, 2002
3–6	(869–048–00193–0)	30.00	Oct. 1, 2002
7–14	(869–048–00194–8)	47.00	Oct. 1, 2002
15–28	(869–048–00195–6)	55.00	Oct. 1, 2002
29–End	(869–048–00196–4)	38.00	[9] Oct. 1, 2002
49 Parts:			
1–99	(869–048–00197–2)	56.00	Oct. 1, 2002
100–185	(869–048–00198–1)	60.00	Oct. 1, 2002
186–199	(869–048–00199–9)	18.00	Oct. 1, 2002
200–399	(869–048–00200–6)	61.00	Oct. 1, 2002

Title	Stock Number	Price	Revision Date
400–999	(869–048–00201–4)	61.00	Oct. 1, 2002
1000–1199	(869–048–00202–2)	25.00	Oct. 1, 2002
1200–End	(869–048–00203–1)	30.00	Oct. 1, 2002
50 Parts:			
1–17	(869–048–00204–9)	60.00	Oct. 1, 2002
18–199	(869–048–00205–7)	40.00	Oct. 1, 2002
200–599	(869–048–00206–5)	38.00	Oct. 1, 2002
600–End	(869–048–00207–3)	58.00	Oct. 1, 2002
CFR Index and Findings Aids	(869–050–00048–2)	59.00	Jan. 1, 2003
Complete 2003 CFR set		1,195.00	2003
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Subscription (mailed as issued)		298.00	2003
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Complete set (one-time mailing)		290.00	2001

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2003. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.