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The President

Proclamation 7739 of November 21, 2003

National Family Week, 2003

By the President of the United States of America

A Proclamation

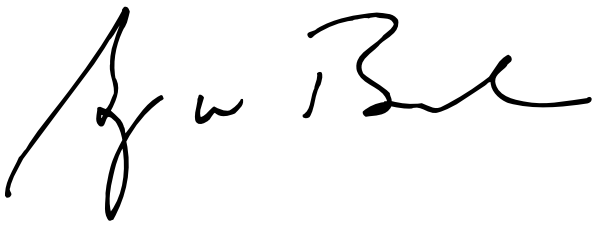
As Americans gather during Thanksgiving week, we honor our families, and we recognize the family as a source of help, hope, and stability for our citizens and for our country.

Strong families make our Nation better. They teach our children values and help them become responsible citizens. We must encourage families to be loving and compassionate, generous and supportive, and to serve and help others.

On this Thanksgiving week, we also pay respect to our brave military families whose loved ones are on active duty, many on the front lines of freedom in Iraq and Afghanistan. These families provide a bond of love and encouragement to our men and women in uniform as they defend liberty and protect our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 23 through November 29, 2003, as National Family Week. I invite the States, communities, and all the people of the United States to join together in observing this week with appropriate ceremonies and activities to honor our Nation's families.

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



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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–159–AD; Amendment 39–13372; AD 2003–24–03]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701) series airplanes, that currently requires a revision to the Airplane Flight Manual (AFM) to prohibit operations into known or forecast icing conditions under certain conditions. That AD also requires an inspection to detect damage of the wing anti-ice (WAI) ducts to determine if the external shrouds of the ducts are open or cracked, and replacement of any damaged duct with a new duct or a duct with the same part number, and an optional terminating action. This amendment requires accomplishment of the previously optional terminating action for the AFM revision and inspection. The actions specified by this AD are intended to prevent the WAI ducts from collapsing, cracking, or rupturing, which could cause leakage of hot air in the under-floor pressurized area of the fuselage when the anti-ice system is turned on. Such leakage of hot air results in insufficient heat for the anti-ice system and consequent aerodynamic degradation. This action is intended to address the identified unsafe condition.

DATES: Effective December 31, 2003.

The incorporation by reference of a certain publication listed in the regulations was approved previously by the Director of the Federal Register as of June 27, 2003 (68 FR 35152, June 12, 2003).

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, 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) 256–7505; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2003–12–06, amendment 39–13191 (68 FR 35152, June 12, 2003), which is applicable to certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701) series airplanes, was published in the **Federal Register** on August 22, 2003 (68 FR 50729). That action proposed to require an inspection to detect damage of the wing anti-ice (WAI) ducts to determine if the external shrouds of the ducts are open or cracked, and replacement of any damaged duct with a new duct or a duct with the same part number, and an optional terminating action for the AFM revision and inspection. That action also proposed to require accomplishment of the previously optional terminating action for the AFM revision and inspection.

Comments

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

Request To Require Replacement Parts With Sufficient Strength

One commenter is concerned that the language of the AD calls for replacement of any damaged duct with a new or undamaged duct of the same part number that was previously installed; and that a replacement duct of the same part number would not be of sufficient strength to withstand the applied differential pressures it will experience. The commenter requests that the FAA mandate the replacement of a damaged wing anti-ice (WAI) duct with a stronger duct with a new part number.

The FAA acknowledges the commenter's concern. The purpose of this AD action is to supersede AD 2003–12–06, amendment 39–13191 (68 FR 35152, June 12, 2003), which provides an interim action that prohibits operations into known or forecast icing conditions when there are indications of a damaged WAI duct. That action also provides for inspections and interim replacements of damaged ducts. This new action terminates the interim actions of AD 2003–12–06 by mandating the replacement of all four WAI ducts with new WAI ducts that have new part numbers. We find that these new ducts are of sufficient strength to withstand the applied differential pressure, as requested by the commenter. We have not changed the final rule regarding this issue.

Conclusion

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

Cost Impact

There are approximately 55 airplanes of U.S. registry that will be affected by this AD.

The AFM revision that is currently required by AD 2003–12–06 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the previously required actions on U.S. operators is estimated to be $3,575, or $65 per airplane.

The inspection that is currently required by AD 2003–12–06 takes approximately 4 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based

on these figures, the cost impact of the currently required inspection on U.S. operators is estimated to be $14,300, or $260 per airplane.

The new action that is required by this new AD will take approximately 48 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the new requirement of this AD on U.S. operators is estimated to be $171,600, or $3,120 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–13191 (68 FR 35152, June 12, 2003), and by adding a new airworthiness directive (AD), amendment 39–13372, to read as follows:

2003–24–03 Bombardier, Inc. (Formerly Canadair): Amendment 39–13372. Docket 2003–NM–159–AD. Supersedes AD 2003–12–06, Amendment 39–13191.

Applicability: Model CL–600–2C10 (Regional Jet Series 700 & 701) series airplanes, serial numbers 10004 through 10119 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the wing anti-ice (WAI) ducts from collapsing, cracking, or rupturing, consequent leakage of hot air in the under-floor pressurized area of the fuselage when the anti-ice system is turned on, insufficient heat for the anti-ice system, and aerodynamic degradation, accomplish the following:

Referenced Service Information

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of CRJ 700/900 Series Regional Jet (Bombardier) Alert Service Bulletin A670BA–30–007, Revision A, dated April 15, 2003, including Appendices A and B, dated March 18, 2003.

Restatement of Requirements of AD 2003–12–06, Amendment 39–13191

Airplane Flight Manual (AFM) Revision

(b) Within 48 hours after June 27, 2003 (the effective date of AD 2003–12–06, amendment 39–13191), revise the Limitations Section of the CRJ 700 AFM to include the following (this may be accomplished by inserting a copy of this AD into the AFM):

1. Anti-Ice Bleed Leak Detection Controller (AILC) Channels (see **Note 1**):

Flight with ''WING A/I FAULT'' status message on the engine indication and crew alerting system (EICAS) is not authorized, except as follows:

One may be inoperative as indicated by ''WING A/I FAULT'' status message on EICAS provided:

(a) Wing Anti-Ice switch is selected OFF, and

(b) Operations are not conducted into known or forecast icing conditions.

2. Wing/Fuselage Anti-Ice Bleed Leak Detection Loops (see **Note 1**):

Flight with Wing/Fuselage Anti-Ice Bleed Leak Detection Loops inoperative is not authorized, except as follows:

One loop (A or B) may be inoperative provided:

(a) Wing Anti-Ice switch is selected OFF, and

(b) Operations are not conducted into known or forecast icing conditions.

Note 1: This limitation supersedes the Master Minimum Equipment List (MMEL).''

Detailed Inspection and Corrective Actions if Necessary

(c) Within 150 flight hours after June 27, 2003, do a detailed inspection to detect damage of the four WAI ducts and to determine if the external shrouds of the WAI ducts are open or cracked, per the alert service bulletin.

(1) If no discrepancy is found, no further action is required by this paragraph.

(2) If any external shroud of a WAI duct is found open or cracked, before further flight, inspect the surrounding equipment and structure per a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

(3) If any damaged WAI duct is found, before further flight, replace the WAI duct with a new duct or a duct with the same part number (P/N) that is free of any dent, crease, or other handling damage, per the alert service bulletin.

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

Reporting Requirement

(d) Submit a report of the results of the inspection required by paragraph (c) of this AD per the alert service bulletin specified in paragraph (a) of this AD. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) If the inspection was done after June 27, 2003: Submit the report within 14 days after the inspection.

(2) If the inspection was accomplished prior to June 27, 2003: Submit the report within 14 days after June 27, 2003.

New Requirements of This AD

Terminating Action

(e) Within 1,500 flight hours after the effective date of this AD, replace all four WAI ducts with new ducts having P/N GG670–80504–5 or –6, or P/N GG670–80312–3 or –4, as applicable, per the alert service bulletin. Replacement of all four WAI ducts terminates the requirements of this AD. After doing the replacement, the AFM revision required by paragraph (b) of this AD may be removed.

Alternative Methods of Compliance

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

Incorporation by Reference

(g) Unless otherwise specified in this AD, the actions shall be done in accordance with CRJ 700/900 Series Regional Jet (Bombardier) Alert Service Bulletin A670BA–30–007, Revision A, dated April 15, 2003, including Appendices A and B, dated March 18, 2003. This incorporation by reference was approved previously by the Director of the Federal Register as of June 27, 2003 (68 FR 35152, June 12, 2003). Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected 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; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in Canadian airworthiness directive CF–2003–07, effective on March 25, 2003.

Effective Date

(h) This amendment becomes effective on December 31, 2003.

Issued in Renton, Washington, on November 20, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–29532 Filed 11–25–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM03–10–000; Order No. 644]

Amendments to Blanket Sales Certificates

November 17, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations regarding the blanket certificates for unbundled gas sales services held by interstate natural gas pipelines and the blanket marketing certificates held by persons making sales for resale of gas at negotiated rates in interstate commerce to require that pipelines and all sellers for resale adhere to a code of conduct with respect to gas sales. The purpose of the revisions to the current regulatory framework is to ensure the integrity of the gas sales market that remains within the Commission's jurisdiction. The rule is another part of the Commission's continuing effort to restore confidence in the nation's energy markets.

EFFECTIVE DATE: The rule will become effective December 26, 2003.

FOR FURTHER INFORMATION CONTACT: Robert D. McLean, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8156.

Frank Karabetsos, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8133.

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Before Commissioners: Pat Wood, III, *Chairman;* William L. Massey, and Nora Mead Brownell.

I. Introduction

1. The Federal Energy Regulatory Commission (Commission) is amending the blanket certificates for unbundled gas sales services held by interstate natural gas pipelines and the blanket marketing certificates held by persons making sales for resale of gas at negotiated rates in interstate commerce to require that pipelines and all sellers for resale adhere to a code of conduct with respect to gas sales. The purpose of the revisions is to ensure the integrity of the gas sales market that remains within the Commission's jurisdiction. This rule is another part of the Commission's continuing effort to restore confidence in the nation's energy markets. Contemporaneously with this rule, the Commission is also issuing a rule to require wholesale sellers of electricity at market-based rates to adhere to certain behavioral rules when making wholesale sales of electricity. In an order dated June 26, 2003,[1] the Commission, acting under the authority of Section 7 of the Natural Gas Act, proposed to revise Section 284.288 of its regulations, which is currently reserved, to require that pipelines providing unbundled sales service adhere to a code of conduct when making gas sales. The Commission also proposed to add a new Section 284.403 to Part 284, Subpart L to require persons holding blanket marketing certificates under Section 284.402 to adhere to a code of conduct when making gas sales.[2]

2. The need for this code of conduct, we stated, was informed by the types of behavior that occurred in the Western markets during 2000 and 2001, by Commission Staff's Final Report concerning these markets,[3] and by our experience in other competitive markets. We stated that in formulating our proposed code of conduct rules, we were required to strike a careful balance among a number of competing interests. We noted, for example, that while customers must be given an effective remedy in the event anticompetitive behavior or other market abuses occur, sellers should be provided rules of the road that are clearly-delineated. We noted that while regulatory certainty was important for individual market participants and the marketplace in general, the Commission must not be impaired in its ability to provide remedies for market abuses whose precise form and nature cannot be envisioned today. We specifically sought comments on whether our proposed code of conduct rules had achieved the appropriate balance among these competing interests.

3. Here, based on the extensive comments received by the entities listed in the Appendix to this order and based on our further consideration of the issues presented, we will adopt the code of conduct rules proposed in the June 26 NOPR subject to certain modifications discussed below. These rules, as revised, are set forth below in, 18 CFR §§ 284.288 and 284.403.

[1] 1103 FERC ¶ 61,350 (2003) (June 26 NOPR).

[2] Section 284.5 of the Commission's regulations also states that ''[t]he Commission may prospectively, by rule or order, impose such further terms and conditions as it deems appropriate on transactions authorized by this part.''

[3] Final Report on Price Manipulation in Western Markets: Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, Docket No. PA02–2–000 (March 2003) (Final Report).

4. Under Sections 284.288 and 284.403 of the new codes of conduct, a pipeline providing unbundled natural gas sales service under Section 284.284, or any person making natural gas sales for resale in interstate commerce pursuant to Section 284.402, is prohibited from engaging in actions without a legitimate business purpose that manipulate or attempt to manipulate market conditions, including wash trades and collusion.

5. New Sections 284.288 and 284.403 also contain various reporting obligations. To the extent a pipeline providing service under Section 284.284, or any person making natural gas sales for resale in interstate commerce pursuant to Section 284.402, engages in reporting of transactions to publishers of gas price indices, the pipeline or blanket marketing certificate holder shall provide complete and accurate information to any such publisher. Further, such entities must retain all relevant data and information upon which they billed the prices they charged for natural gas they sold pursuant to their market based sales certificate or the prices they reported for use in price indices for three years. Moreover, such entities that engage in reporting must do so consistent with the *Policy Statement on Natural Gas and Electric Price Indices*, 104 FERC ¶ 61,121 (2003) (*Policy Statement*), which provides that a data provider should only report each bilateral, arm's-length transaction between non-affiliated companies. Violation of the preceding provisions may result in disgorgement of unjust profits, suspension or revocation of a pipeline's blanket certificate or other appropriate non-monetary remedies. Finally, any person filing a complaint for a violation of the preceding provisions must do so no later than 90 days after the end of the calendar quarter in which the alleged violation occurred unless that person could not have known of the alleged violation, in which case the 90-day time limit will run from the discovery of the alleged violation.

6. This code of conduct is designed to provide market participants adequate opportunities to detect, and the Commission to remedy, market abuses. This code is clearly defined so that it does not create uncertainty, disrupt competitive commodity markets or simply prove ineffective. However, since competitive markets are dynamic, it is important that we periodically evaluate the impact that these regulations have on the energy markets. We direct our office of Market Oversight and Investigation to evaluate the effectiveness and consequences of these regulations on an annual basis and to include this analysis in the State of the Markets Report.

II. Background

A. Changes in Natural Gas Industry

7. A decade ago, as a result of changes in the natural gas industry, Congressional legislation and various Commission rulemaking proceedings restructuring the gas industry, the Commission issued blanket certificates to allow pipelines and other persons selling natural gas to make sales for resale of natural gas at market-based or negotiated rates. These certificates were granted in two final rules issued by the Commission: Order No. 636 [1] and Order No. 547.[2]

8. In Order No. 636, the Commission required all pipelines that provide open-access transportation to offer their sales services on an unbundled basis. To this end, the Commission issued to pipelines holding a blanket transportation certificate under subpart G of part 284 of the Commission's regulations, or performing transportation under subpart B, a blanket certificate authorizing firm and interruptible sales for resale.[3] The Commission required that all firm and interruptible sales services be provided as unbundled services under the blanket sales certificate. The Commission found that this form of regulation would enable the pipelines to compete directly with other gas sellers on the same terms at prices determined in a competitive market. The unbundled sales services were also afforded pregranted abandonment authority.

9. In Order No. 636, the Commission authorized pipelines to make unbundled sales at market-based rates because it concluded that, after unbundling, sellers of short-term or long-term firm gas supplies (whether they be pipelines or other sellers) would not have market power over the sale of natural gas. The Commission's determination was also based on Congress' express finding that a competitive market exists for gas at the wellhead and in the field. The Commission indicated that it was instituting light-handed regulation, relying upon market forces at the wellhead or in the field to constrain unbundled pipeline sales for resale gas prices within the Natural Gas Act's ''just and reasonable'' standard. In addition, the requirement that pipelines provide open access transportation from the wellhead to the market also permitted the Commission to exercise light-handed regulation over jurisdictional gas sales. Finally, the Commission stated that it would be regulating the pipeline sales in the same manner as it had done for sales for resale by marketers.

10. The Commission also determined that a pipeline as a gas merchant would be the functional equivalent of a pipeline's marketing affiliate. The Commission concluded that standards of conduct set forth by Order No. 497 would apply to the relationship between the pipeline transportation function and its merchant function.[4] Accordingly, the regulations issuing pipelines blanket sales certificates included standards of conduct and reporting requirements. The purpose of imposing the requirements set forth in Order No. 497 was to ensure that the pipeline did not favor itself as a merchant over other gas suppliers in performing its transportation function.

11. In Order No. 547, as part of the industry restructuring begun by Order No. 636, the Commission issued blanket certificates to all persons who are not interstate pipelines authorizing them to make jurisdictional gas sales for resale at negotiated rates with pregranted abandonment authority.[5] The blanket certificates were issued by operation of

[1] Order No. 636, Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under part 284 of the Commission's Regulations, and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, FERC. Stats. & Regs. ¶ 30,939 (1992), order on reh'g, Order No. 636–A, FERC. Stats. & Regs. ¶ 30,950 (1992), order on reh'g, Order No. 636–B, 61 FERC. ¶ 61,272 (1992), aff'd in part, rev'd in part, *United Distribution Cos.* v. *FERC*, 88 F.3d 1105 (DC Cir. 1996), cert. denied, 137 L. Ed. 2d 845, 117 S. Ct. 1723, 117 S. Ct. 1724 (1997), on remand, Order No. 636–C, 78 FERC. ¶ 61,186 (1997), order on reh'g, Order No. 636–D, 83 FERC ¶ 61,210 (1998).

[2] Regulations Governing Blanket Marketer Sales Certificates, FERC Stats. & Regs. ¶ 30,957 (1992), order on reh'g and clarification, 62 FERC ¶ 61,239 (1993).

[3] 18 CFR 284.281–287 (2003).

[4] Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines, Order No. 497, 53 FR 22139 (June 14, 1988), FERC Statutes and Regulations, Regulation Preambles 1986–1990 ¶ 30,820 (1988), *order on rehearing*, Order No. 497–A, 54 FR 52781 (Dec. 22, 1989), FERC Statutes and Regulations, Regulation Preambles 1986–1990 ¶ 30,868 (1989), *order extending sunset date*, Order No. 497–B, 55 FR 53291 (Dec. 28, 1990), FERC Statutes and Regulations, Regulation Preambles 1986–1990 ¶ 30,908 (1990), *order extending sunset date and amending final rule*, Order No. 497–C, 57 FR 9 (Jan. 2, 1992), FERC Statutes and Regulations ¶ 30,934 (1991), *reh'g denied*, 57 FR 5815, 58 FERC ¶ 61,139 (1992), *aff'd in part and remanded in part, Tenneco Gas* v. *Federal Energy Regulatory Commission*, 969 F.2d 1187 (DC Cir. 1992), *order on remand*, Order No. 497–D, 57 FR 58978 (Dec. 14, 1992), FERC Statutes and Regulations ¶ 30,958 (1992), *order on reh'g and extending sunset date*, Order No. 497–E, 59 FR 243 (Jan. 4, 1994), FERC Statutes and Regulations ¶ 30,987 (Dec. 23, 1994), *order on reh'g*, Order No. 497–F, 59 FR 15336 (Apr. 1, 1994), 66 FERC ¶ 61,347 (1994).

[5] 18 CFR § 284.401–402 (2003).

the rule itself and there was no requirement for persons to file applications seeking such authorization. The Commission determined that the competitive gas commodity market would lead all gas suppliers to charge rates that are sensitive to the gas sales market and cognizant of the variety of options available to gas purchasers. The Commission further stated that, in a competitive market, the basis for the rate to be negotiated between a willing buyer and seller is a commercial, not a regulatory, matter. The requirement that pipelines provide open access transportation from the wellhead to the market also permitted the Commission to exercise light-handed regulation over jurisdictional gas sales. The Commission also determined that marketing certificates issued by the final rule are of a limited jurisdiction. The Commission held that the holders of marketing certificates are not subject to any other regulation under the Natural Gas Act jurisdiction of the Commission by virtue of transactions under the certificates.

B. Events in Western Energy Markets

12. In March 2003, in Docket No. PA02–2–000, the Commission Staff concluded its Fact Finding Investigation of Potential Manipulation of Electric and Gas Prices and issued a Final Report on Price Manipulation in Western Markets (Final Report). A key conclusion of the Final Report is that markets for natural gas and electricity in California are inextricably linked, and that dysfunctions in each fed off one another during the California energy crisis. Staff found that spot gas prices rose to extraordinary levels, facilitating the unprecedented price increase in the electricity market. The Final Report found that dysfunctions in the natural gas market appear to stem, at least in part, from efforts to manipulate price indices compiled by trade publications. The Final Report stated that reporting of false data and wash trading are examples of efforts to manipulate published price indices.

13. While the Final Report contained numerous recommendations which will not be discussed here, the Staff did recommend that Sections 284.284 and 284.402 of the Commission's regulations be amended to provide explicit guidelines or prohibitions for trading natural gas under Commission blanket certificates. The specific recommendations include: (1) Conditioning natural gas companies' blanket certificates on providing accurate and honest information to entities that publish price indices; (2) conditioning blanket certificates on retaining all relevant data for three years for reconstruction of price indices; (3) establishing rules banning any form of prearranged wash trading; and (4) prohibiting the reporting of trades between affiliates to industry indices.

III. Comment Analysis

A. Application of Code of Conduct to Jurisdictional Sellers

14. As an initial matter, the Commission will clarify the extent of its jurisdiction over resales of natural gas. As stated above, the Commission's NGA jurisdiction to regulate the prices charged by sellers of natural gas has been substantially narrowed by the Natural Gas Policy Act of 1978 (NGPA) and Congress' subsequent enactment of the Natural Gas Wellhead Decontrol Act of 1989. As a result of these statutory provisions first sales of natural gas were deregulated. Under the NGPA, first sales of natural gas are defined as any sale to an interstate or intrastate pipeline, LDC or retail customer, or any sale in the chain of transactions prior to a sale to an interstate or intrastate pipeline or LDC or retail customer. NGPA Section 2(21)(A) sets forth a general rule stating that all sales in the chain from the producer to the ultimate consumer are first sales until the gas is purchased by an interstate pipeline, intrastate pipeline, or LDC.[4] Once such a sale is executed and the gas is in the possession of a pipeline, LDC, or retail customer, the chain is broken, and no subsequent sale, whether the sale is by the pipeline, or LDC, or by a subsequent purchaser of gas that has passed through the hands of a pipeline or LDC, can qualify under the general rule as a first sale on natural gas. In addition to the general rule, NGPA Section 2(21)(B) expressly excludes from first sale status any sale of natural gas by a pipeline, LDC, or their affiliates, except when the pipeline, LDC, or affiliate is selling its own production.

15. Therefore, the Commission's jurisdiction under the NGA includes all sales for resale by interstate and intrastate pipelines and LDCs and their affiliates, other than their sales of their own production. The Commission's jurisdiction also includes a category of sales by entities that are not affiliated with any pipeline or LDC. Such entities are those making sales for resale of gas that was previously purchased and sold by an interstate or intrastate pipeline or LDC or retail customer.

16. Given that the Commission does not have jurisdiction over the entire natural gas market, several commenters raise concerns regarding the potential adverse effect of imposing the proposed code of conduct only on the portion of the natural gas market under the Commission's jurisdiction.[5] Commenters assert that the proposed rules could tilt capital markets against those subject to the code of conduct because they would be viewed as a riskier proposition than those entities selling gas that do not have the same regulatory risk. Commenters argue that to impose these regulations on a portion of the market causes an uneven playing field and amounts to undue discrimination because those under the rules would be: (1) Subject to sanctions such as loss of certificate authority and disgorgement of profits; (2) hesitant to engage in legitimate transactions due to uncertainty imposed by vague and inconsistent standards developed in different proceedings; (3) subject to the increased risk of private enforcement actions by gas purchasers before the Commission; (4) subject to the shifting of investment to non-jurisdictional marketers, and; (5) subject to increased recordkeeping costs for jurisdictional entities.

17. Commenters argue that the proposed regulations are duplicative because other government agencies such as the Federal Trade Commission, the Department of Justice, and various state agencies already exercise jurisdiction over anticompetitive behavior.[6] Further, commenters argue that in addition to stifling innovation, the proposed regulations will erode regulated marketer participation, and thereby reduce the efficiency of the markets and deprive the customers of the benefits of deregulation. Furthermore, since this code regulates only a small portion of the market,[7] they argue that the rules will be ineffective in achieving uniform compliance.

18. Finally, commenters maintain that before imposing these potentially

[4] NGPA Section 2(21)(A) states: General Rule.—The term ''first sale'' means any sale of any volume of natural gas—(i) To any interstate pipeline or intrastate pipeline; (ii) to any local distribution company; (iii) to any person for use by such person; (iv) which precedes any sale described in clauses (i),(ii), (iii); and (v) which precedes or follows any sale described in clauses (i), (ii), (iii), or (iv) and is defined by the Commission as a first sale in order to prevent circumvention of any maximum lawful price established under this Act.

[5] *See e.g.*, AGA, Peoples, NiSource, Nicor, Cinergy, Sempra, FPL Group, Reliant, Coral, NJR Companies, EPSA, ProLiance, Duke Energy, Questar, Western.

[6] Coral at 5.

[7] *See* NiSource at 9 (stating that the sales for resale by interstate pipelines and off-system sales by LDCs constitute a small portion of the gas sales transactions in the market, in contrast to producers and independent marketers that account for a very substantial portion of gas sold, which are not subject ot the proposed regulations).

burdensome compliance conditions, the Commission should ascertain critical information on its effects, including the percentage of the natural gas sellers that would be required to comply with the proposed rule or the amount of the gas affected. Commenters argue that uncertainty caused by the proposed rules would be particularly damaging in light of the current need for additional supplies and the current need to regain investor confidence.

19. However, several commenters support the Commission's action in imposing a code of conduct.[8] These commenters state that if jurisdictional gas sellers seek to avoid a requirement that they do business honestly by restructuring their business to escape the Commission's jurisdiction, Congress might be interested in broadening the Commission's jurisdiction to prevent such outcomes. Moreover, they assert that the only way that jurisdictional certificate holders could be at a competitive disadvantage is if they are competing against companies that are engaging in the very illegal acts that the Commission's code of conduct is proscribing. Finally, commenters argue that the proposed regulations should not harm any market participant and should not have a negative impact on natural gas prices, but will only require action consistent with a competitive market.

20. The Commission has reviewed the comments setting forth possible problems in placing a code of conduct regulations over the portion of the natural gas marketplace within its jurisdiction. In the Commission's view, implementing these regulations designed to prevent manipulation of market prices and prevent abusive behavior which distorts the competitive marketplace for natural gas will not present an undue burden for gas sellers under the Commission's jurisdiction or disrupt the competitive gas market.

21. As stated above, the Commission retains jurisdiction of sales of domestic gas for resale by pipelines, local distribution companies and affiliated entities, if the seller does not produce the gas it sells. The fact that the Commission does not regulate the entire natural gas market does not compel the Commission to refrain from exercising its authority over that portion of the gas market which is within its jurisdiction to prevent the manipulation of prices. By its action here, the Commission will maintain and protect the competitive marketplace within its jurisdiction. On balance, the Commission finds that its statutory responsibility to ensure just and reasonable rates for the sales over which it does have jurisdiction outweighs concerns that a portion of the market will not be subject to these regulations and the potential resulting market disruptions.[9]

22. This finding is based upon a balancing of factors raised by the commenters against the Commission's duty to maintain the competitive marketplace for natural gas within its jurisdiction. Although all sellers of natural gas will not be under the same set of regulations, this does not by itself place an undue burden, or for that matter, a competitive disadvantage of any consequence upon the sellers of natural gas within the Commission's jurisdiction. This is because the regulations to be placed upon jurisdictional natural gas sellers only prevent such market participants from distorting the competitiveness of the marketplace by engaging in abusive or manipulative acts in the marketplace. For instance, commenters argue that the increased regulatory risk could shift capital markets against those subject to the new regulations. This argument is speculative and it appears to the Commission that it is at least equally likely that investors and gas buyers would gain confidence in the knowledge that the jurisdictional seller of natural gas was required to engage in business practices that do not abuse or manipulate the marketplace.

B. Limited Jurisdiction of Blanket Certificates

23. In its June 26 NOPR, the Commission proposed to delete the last sentence of 18 CFR 284.402(a) (2003) from its regulations. That sentence reads, ''[a] blanket certificate issued under Subpart L is a certificate of limited jurisdiction which will not subject the certificate holder to any other regulation under the Natural Gas Act jurisdiction of the Commission by virtue of the transactions under the certificate.''

24. Several commenters raise concerns regarding this deletion.[10] Commenters argue that the statement of limited jurisdiction for the subject blanket certificates should remain in the regulations in order to relieve blanket holders of market sales certificates from any aspect of the Commission's jurisdiction which does not apply to market based rates such as the filing of tariff rates and various forms. Retaining this statement of limited jurisdiction is of particular concern to LDCs that are comprehensively regulated at the state level.[11] Commenters argue that the Commission should clarify that blanket certificate holders are not subject to any other regulations except as provided in Subpart L of Part 284. Finally, commenters argued that the new rules and burdens are inappropriate for affiliates of small pipelines, particularly where the pipeline is non-major and serves few customers and the affiliated seller is selling supplies for the primary purpose of balancing its purchases with its manufacturing needs.[12] These commenters argue that the Commission should establish a procedure to exempt such affiliates of small pipelines.

25. The Commission has reviewed the comments and has determined that it will not delete the affirmative statement of limited jurisdiction from its regulations; rather, in keeping with the points raised by the comments it will modify the sentence to read, ''[a] blanket certificate issued under Subpart L is a certificate of limited jurisdiction which will not subject the certificate holder to any other regulation under the Natural Gas Act jurisdiction of the Commission, other than that set forth in this Subpart L, by virtue of the transactions under this certificate.'' Because the regulations adopted by the instant rulemaking will be placed in Subpart L, this action will maintain the original intent of the limited market based blanket certificate while allowing for the new conditions found necessary by the Commission.

26. Further, the Commission will not grant a generic exception to these regulations for small entities. In the Commission's view, entities with a small number of customers making few, or low volume, transactions should incur only minimal administrative or financial burden by virtue of these regulations.

C. Code of Conduct

1. General Language Prohibiting Manipulation

27. As revised Section 284.288(a) of the Commission's regulations provides that:

A pipeline that provides unbundled natural gas service under § 284.284 is prohibited from engaging in actions or transactions that are without a legitimate business purpose and that are intended to or foreseeably could manipulate market prices,

[8] *See, e.g.,* BP, EMIT, CPUC, NASUCA.

[9] We note that the Commission also does not have jurisdiction over all sales for resale in electric markets. The Commission nevertheless exercises its authority to prevent manipulation of the market by those sellers over whom it does have jurisdiction.

[10] *See e.g.*, Peoples, TXU, NiSource, USG, AGA, NGSA, NJR Companies, Shell Offshore, BP, Western.

[11] *See* NiSource.

[12] *See* USG.

market conditions, or market rules for natural gas.[13]

28. As discussed above, several commenters raise concerns regarding the general language prohibiting manipulation.[14] Commenters contend that the regulation contains too many ambiguous terms such as ''legitimate business purpose,'' ''manipulation,'' and ''legitimate forces of supply and demand.'' NJR Companies assert that the proposal violates due process requirements, and that parties must receive fair notice before being deprived of their property. NJR Companies suggest that the Commission replace vague language with straightforward requirements.

29. Sempra recommends that the Commission take a cue from the jurisprudence of the CFTC and SEC by adopting a standard for manipulation that includes ability, intent, and effect as required elements of an offence. Reliant, Select, Merrill Lynch and Morgan Stanley assert that the Commission should establish four essential elements to prove manipulation: (1) The ability to move market prices, (2) the specific intent to create an artificial price, (3) the existence of an artificial price, and (4) causation of the artificial price by the accused.

30. Coral contends that adoption of the proposed regulation could have the effect of deterring blanket certificate holders from aggressively or creatively marketing their gas or developing new products that may benefit competitive gas markets. NASUCA argues that the Commission should clarify what types of manipulative behavior is prohibited. It adds that manipulation that results from inadequate planning, inept design, incompetent personnel, or poor supervision should not be exempted from enforceable action.

31. Hess believes that the Commission should not adopt this measure, asserting that, among other things, it has not sufficiently explained how it intends to enforce the standard. EnCana and Mirant question the necessity of the rule since the Commission and other agencies have already shown an ability to police allegedly manipulative behavior.

32. We find that our rules, including specifically the prohibitions set forth relating to market manipulation, are not unduly vague as asserted by some commenters. While constitutional due process requirements mandate that the Commission's rules and regulations be sufficiently specific to give regulated parties adequate notice of the conduct they require or prohibit,[15] this standard is satisfied ''[i]f, by reviewing [our rules] and other public statements issued by the agency, a regulated party acting in good faith would be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform.'' [16] The Commission's rules will be found to satisfy this due process requirement ''so long as they are sufficiently specific that a reasonably prudent person, familiar with the conditions the regulations are meant to address and the objectives the regulations are meant to achieve, would have fair warning of what the regulations require.'' [17]

33. As applied by the courts, this due process standard has been held to allow for flexibility in the wording of an agency's rules and for a reasonable breadth in their construction.[18] The courts have recognized, in this regard, that specific regulations cannot begin to cover all of the infinite variety of cases to which they may apply and that ''[b]y requiring regulations to be too specific, [courts] would be opening up large loopholes allowing conduct which should be regulated to escape regulation.'' [19]

34. The Supreme Court has further noted that the degree of vagueness tolerated by the Constitution, as well as the relative importance of fair notice and fair enforcement, depend in part on the nature of the rules at issue.[20] In *Hoffman*, for example, the Court held that in the case of economic regulation (as opposed to criminal sanctions), the vagueness test must be applied in less strict manner because, among other things, ''the regulated enterprise may have the ability to clarify the meaning of the regulation by its own inquiry, or by resort to an administrative process.'' [21]

35. Applying these standards here, we find that our rules satisfy the requirement of due process. It cannot be said that the prohibitions against market manipulation, as set forth in the rules, are unclear in their intent. For example, our requirement that a seller's actions must have a ''legitimate business purpose'' is clearly intended to give sellers some latitude in determining their business actions, while safeguarding market participants against market manipulation for which there can be no legitimate business purpose. Sellers will not be required to guess at the meaning of the above-referenced term because it can only have meaning with specific reference to seller's own business practices and motives. In other words, if the seller has a legitimate business purpose for its actions, it cannot be sanctioned under this rule.

36. In establishing these rules, we have worked to strike a necessary balance. On the one hand, this prohibition allows the Commission to protect market participants from market abuses that cannot be precisely envisioned at the present time. At the same time, we have attempted to set forth with sufficient specificity the class of behaviors prohibited in a manner that will inform market-based rate sellers of the type of activities that are consistent with just and reasonable rates. This provides the Commission the ability to codify these requirements and provide a regulatory vehicle for their prospective enforcement. Thus, our rules have been designed to meet these twin objectives—to be specific in order to inform sellers as to the type of behavior that is prohibited today, while containing enough breadth and flexibility to address new and unanticipated activities, as they may arise down the road.

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[13] Section 284.403(a) of the Commission's regulation provides that:

Any person making natural gas sales for resale in interstate commerce pursuant to § 284.402 is prohibited from engaging in actions or transactions that are without a legitimate business purpose and are intended to or foreseeably could manipulate market prices, market conditions, or market rules for natural gas.

[14] *See e.g.*, TXU, NGSA, Shell, NJR Companies, NEMA, EMIT, Cinergy, Sempra, Reliant, Select, Merrill Lynch and Morgan Stanley, Coral, Hess, Peoples, EnCana, Mirant, NASUCA.

[15] *See Freeman United Coal Mining Company* v. *Federal Mine Safety and Health Review Commission*, 108 F.3d 358, 362 (DC Cir. 1997) (*Freeman*).

[16] *See General Electric Co.* v. *EPA*, 53 F.3d 1324, 1329–30 (DC Cir. 1995) (holding that the agency's interpretation of its rules was ''so far from a reasonable person's understanding of the regulations that [the regulations] could not have fairly informed GE of the agency's perspective.'').

[17] *See Freeman*, 108 F.3d at 362. *See also Faultless Division, Bliss & Laughlin Industries, Inc.* v. *Secretary of Labor*, 674 F.2d 1177, 1185 (7th Cir. 1982) (''[T]he regulations will pass constitutional muster even though they are not drafted with the utmost precision; all that due process requires is a fair and reasonable warning.'').

[18] *See Grayned* v. *City of Rockford*, 408 U.S. 104, 110 (1971) (holding that an anti-noise ordinance was not vague where the words of the ordinance ''are marked by flexibility and reasonable breadth, rather than meticulous specificity.'').

[19] *See Ray Evers Welding Co.* v. *OSHRC*, 625 F.2d 726, 730 (6th Cir. 1980).

[20] *See Village of Hoffman Estates, et al.* v. *The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498 (1981) (*Hoffman*).

[21] *Id. See also Texas Eastern Products Pipeline Co.* v. *OSHRC*, 827 F.2d 46, 50 (7th Cir. 1987) (''Texas Eastern, as a major pipeline company, in which trenching and excavation are a part of its routine, had ample opportunity to know of the earlier interpretation, should have been able to see the sense of the regulations on their face, and if still in doubt Texas Eastern should have taken the safer position both for its employees and for itself.'').

37. Nonetheless, we are committed to making our rules as specific as possible and thus, we are adopting a number of the revisions proposed by commenters in order to clarify the scope and application of our rules.

38. We clarify that we are focusing on behavior undertaken without an appropriate commercial underpinning for the purpose of distorting prices from those that would otherwise occur in the competitive market. However, the proposed term that would have characterized as manipulative behavior an act resulting in ''market prices which do not reflect the legitimate forces of supply and demand'' has resulted in confusion. While we do not believe that our use of this term was inappropriate or unjustified (as we intended it), many commenters appear to have misunderstood its purpose, suggesting that causes other than manipulation may explain a given dysfunction in the interplay between supply and demand. To avoid confusion on this point, then, and because our objectives with respect to this rule can be satisfied under the surviving clause, discussed above, we have eliminated this term from our rule. We clarify that this rule is not meant to say that we will identify prices that properly reflect supply and demand and then take action against sellers whose prices (however they may be established) differ. Rather, our rule is designed to prohibit market-based rate sellers from taking actions without a legitimate business purpose that are intended to or foreseeably could interfere with the prices that would be set by competitive forces.[22] One such action would be a wash trade. As discussed below, wash trades have no economic risk or substance, and create a false price for use in indices or in the market in general.

39. Commenters have also raised questions regarding how the Commission will determine whether this rule has been violated. In determining whether an activity is in violation of our rule, we will examine all relevant facts and circumstances surrounding the activity to evaluate whether there is a legitimate business purpose attributable to the behavior. We will evaluate whether the activity was designed to lead to (or could foreseeably lead to) a distorted price that is not reflective of a competitive market. Our approach will be to consider the facts and circumstances of the activity to determine its purpose and its intended or foreseeable result. However, the Commission recognizes that manipulation of energy markets does not happen by accident. We also recognize that intent often must be inferred from the facts and circumstances presented. Therefore, a violation of the instant rule must involve conduct which is intended to, or would foreseeably distort prices.[23]

40. Some ambiguity necessarily arises from the fact that we cannot expressly identify all behaviors that are precluded by the instant rule. However, in the Commission's view, the rule and its implementation provide sufficient clarity for market-based rates sellers to understand the scope of precluded behaviors. The rule clearly prohibits behaviors that are undertaken without a legitimate business purpose which are designed to, or foreseeably would, distort prices for jurisdictional natural gas sales.

41. Many commenters have raised concerns with the Commission's inclusion of the phrase ''legitimate business purpose.'' The Commission's inclusion of the phrase is to assure sellers that transactions with economic substance in which a seller offers or provides service to a willing buyer where value is exchanged for value will not be considered prohibited by our rule. While several commenting sellers have raised concerns regarding the inclusion of the phrase ''legitimate business purpose'' in the rule, we believe that not only is the inclusion of the phrase necessary, it acts to ensure that such sellers acting in a pro-competitive manner will be able to show that their actions were not designed to distort prices or otherwise manipulate the market. Behaviors and transactions with economic substance in which a seller offers or provides service to a willing buyer where value is exchanged for value will be recognized as reflecting a legitimate business purpose consistent with just and reasonable rates. However, an action or transaction which is anticompetitive (even though it may be undertaken to maximize seller's profits), could not have a legitimate business purpose attributed to it under our rule.[24]

42. Prices for transactions undertaken in the competitive marketplace where value is exchanged for value should be disciplined by market forces. On the other hand, all gas transactions may not be constrained by market forces. For example, if a gas merchant bought natural gas at a location typically used as an index reference point in a manner that drives prices higher (and promptly thereafter sold such gas at the market prevailing price at a loss) while also possessing a derivative position at a notional quantity significantly in excess of its physical gas position, that benefits from the increase in the market price of natural gas at this index reference point, these physical purchases may be interpreted as a component of a broader manipulative scheme and the cash market transactions may be found to be without a legitimate business purpose.[25]

43. We recognize that we are establishing a general rule that will become more clear and concrete after we have had the opportunity to consider actual cases. As with all new requirements of this nature, with caselaw comes further clarity. This reflects the fact that we oversee a dynamic and evolving market where addressing yesterday's concerns may not address tomorrow's. Nevertheless, experience in applying this rule should be instructive to both the Commission and market-based rates sellers. As we apply the rule, we will be mindful of the fact that we are not only taking steps to assure just and reasonable rates for a specific transaction but also providing guidance to sellers in general. As such, in determining the appropriate remedy for violations of this rule, we will take into account factors such as how self evident the violation is and whether such violation is part of a pattern of manipulative behavior.

44. The Commission rejects arguments that it should identify and prohibit only expressly-defined acts of manipulation. For all the reasons discussed above, it is essential and appropriate that we have a prohibition designed to prohibit all forms of manipulative conduct. In sum, we believe our rules, as modified, explained and adopted herein, put sellers and all market participants on fair notice regarding the conduct we seek to encourage and the conduct we seek to prohibit. Stripped to their essentials, these guidelines amount to the following: (i) Act consistently

[22] Our rules are designed to cover actions that are intended to manipulate prices regardless of whether such actions actually resulted in distorted prices. We note, however, that in most such cases there will be no unjust profits to disgorge.

[23] When deciding how best to allocate our enforcement resources, we intend to focus our efforts primarily on those actions or transactions that have, in fact, caused distorted market prices.

[24] *See* Enron Power Marketing, Inc., 103 FERC ¶ 61,343 (2003) (revoking Enron's blanket marketing certificate authorization based on Enron's participation in wash trades having ''no legitimate business purpose'').

[25] Although the instant example focused upon gas market prices manipulated upward in order to benefit the merchant derivative position, the transactions implementing any manipulation of the natural gas market will not be considered legitimate. For further discussion of several manipulative strategies *see* the Commission Staff's Final Report on Price Manipulation in Western Markets, Chapter IX, p. IX–9 through IX–24.

within the Commission's established rules; (ii) do not manipulate or attempt to manipulate natural gas markets; (iii) be honest and forthright with the Commission and the institutions it has established to implement open-access transportation and entities publishing indices for the purpose of price transparency; and (iv) retain associated records. Viewed in this context, there can be no reasonable uncertainty over the underlying objectives embodied in our rules or their requirements going forward.

45. Our code of conduct rules would not supercede or replace parties' rights under Section 5 of the NGA to file a complaint contending that a contract should be revised by the Commission (pursuant to either the ''just and reasonable'' or ''public interest'' test as required by the contract). Rather, any party seeking contract reformation or abrogation based on a violation of one or more of these regulations would be required to demonstrate that such a violation had a direct nexus to contract formation and tainted contract formation itself. If a jurisdictional seller enters into a contract without engaging in behavior that violates these regulations with respect to the formation of such contract, we do not intend to entertain contract abrogation complaints predicated on our instant code of conduct rules.

2. Wash Trades

46. Proposed Section 284.288(a)(1) provides that:

> Prohibited actions and transactions include but are not limited to pre-arranged offsetting trades of the same product among the same parties, which involve no economic risk, and no net change in beneficial ownership (sometimes called ''wash trades'').[26]

47. TXU comments that wash trades should be more precisely defined, contending that the present definition does not explicitly limit the applicable transaction to one involving the same location, price, quantity, and term, and can be interpreted to prohibit legitimate exchange transactions that occur through displacement or backhauls.

48. Merrill Lynch and Morgan Stanley request that the Commission modify the definition of wash trades to clarify that it applies to parties who intended to enter into simultaneous offsetting trades to effectuate a wash trade. They request that the Commission further clarify its definition by specifying that wash trades must involve: (1) A deliberately pre-arranged pair of trades, (2) trades made at the same time, at the same price, and at the same delivery points, and (3) trades made between the same legal entities. NGSA submits that the proposed ban on wash trades should be narrowed to encompass only simultaneous offsetting trades that are intended to manipulate market prices or rules. It explains that parties may enter into legitimate business arrangements that may appear as wash trades, for example, trades made to correct a scheduling or nomination error, or to liquidate a position at a pricing point based on subsequent changes in market conditions. NGSA suggests that the proposed regulation regarding wash trades be rewritten as: ''knowingly pre-arranged simultaneous offsetting trades of the same product among the same parties, which involve no economic risk, and no net change in beneficial ownership (sometimes called 'wash trades').''

49. Reliant recommends the definition of wash trades be refined to eliminate the possibility that multiple traders within the same company who are trading with multiple traders in another company do not stand accused of engaging in wash trades by the mere coincidence that their trades offset one another. Reliant suggests that the regulation be re-written as: ''trades of the same product among the same parties, which trades are pre-arranged to be offsetting and involve no economic risk, and no net change in beneficial ownership (sometimes called 'wash trades').

50. The Oversight Board asserts that the definition of wash trade is unduly narrow, because it limits wash trades to transactions involving the same parties, the same quantity, and no economic risk whatsoever. The Oversight Board joins NASCUA in contending the proposed definition would permit a party to evade the wash trade prescription by engaging in transactions that result in the net financial position near to, but not equal to, zero. The Oversight Board contends that the Commission should qualify its wash trade definition to ensure that the codes of conduct can effectively react to unforeseen, novel attempts to circumvent the regulatory process. The Oversight Board requests that the Commission clarify that it will define wash trades as those necessarily affecting market prices or modify the definition to include pre-arranged multi-party transactions.

51. Commenters such as Select, Duke and NEMA suggest that the Commission's definition of a ''wash trade'' is too broad and may encompass transactions not intended to be wash trades such as ''sleeving'' and ''bookout'' transactions. Select explains that ''sleeving'' is a commonly performed trading practice in which a creditworthy party agrees to act as an intermediary in transactions between two parties who do not have a credit relationship. Duke recommends that legitimate trades may include the so-called ''bookout'' transactions, in which companies with offsetting delivery obligations resulting from heavy trading activity agree not to deliver to one another the offsetting amounts of energy. In the same vein, NEMA submits that there may be instances where legitimate business purposes appear to be wash trades (*e.g.,* when traders ''book out'' or ''test the waters''), and that the Commission should not deem such trade to be illegal. Sempra request that the wash trade prohibition to only apply to trades that affect the market and asks that the Commission clarify the definition accordingly.

52. Other commenters such as Shell Offshore, NEMA, and Coral question whether the Commission has provided adequate definitions for the terms used in its regulations. For example, Shell Offshore questions what the regulations mean by a ''pre-arranged'' trade, and how it differs from any other negotiation leading to a trade. It also questions how to define an ''offsetting trade,'' and how the value is measured. It also asks what constitutes the ''same product'' (*i.e.*, does an exchange of gas among the same parties constitute the same product, and thus qualify as an illegal wash trade). It also notes that there are legitimate transactions that involve ''no economic risk,'' such as a transaction providing a guaranteed supply at a guaranteed price. NEMA also requests additional clarification of the terms ''wash trades'' and ''pre-arranged deals'' and requests that the Commission investigate the meanings of the terms ''intentional manipulation'' and ''wash trades'' as they apply to securities and commodity futures trading.

53. The Commission will adopt Section 284.288(a)(1) as proposed. Thus, the regulation will state that:

> Prohibited actions and transactions include but are not limited to pre-arranged offsetting trades of the same product among the same parties, which involve no economic risk and no net change in beneficial ownership (sometimes called ''wash trades'').[27]

54. The Commission disagrees with the comments that its definition of wash trades is ill conceived or vague. The

[26] Proposed Section 284.403(a)(1) applies these same prohibited actions and transactions to ''[a]ny person making natural gas sales for resale in interstate commerce pursuant to § 284.402 * * * .''

[27] The Commission also adopts Section 284.403(a)(1) as proposed, which will apply the same prohibited actions and transactions to ''[a]ny person making natural gas sales for resale in interstate commerce pursuant to § 284.402 * * * .''

definition of wash trades states the two key elements that the Commission sees as the fundamentally manipulative aspects of wash trading: (1) that the transaction or transactions are prearranged to cancel each other out; and (2) that they involve no economic risk. As such, the prohibition against wash trades is illustrative of the Commission's prohibition against the manipulation of market conditions.

55. Transactions such as ''sleeving'' or ''bookouts'' as described by the commenters do not fall with the key elements of the Commission's definition and therefore would not be prohibited by the regulation. Further, trades made to correct scheduling or nomination errors, or trades that do not result from an attempt to manipulate the market would not be prohibited by the Commission's regulation. Moreover, displacement or backhauls are not wash trades as they are transportation services obtained from a pipeline if operationally feasible and simply do not meet the definition of wash trades as set forth herein. A sleeve is not an off-setting trade but rather a mechanism to accomplish a gas sale among parties that have not established a credit relationship by including a third party seller that has acceptable credit in the transaction chain. The two resulting sales (which are only offsetting to the ''sleeving'' seller) are each with economic risk with a change in beneficial ownership and, usually at slightly different prices to reflect the use of the ''sleeving'' seller's credit. A ''bookout'' is not a pre-arranged trade but rather a subsequent arrangement to financially close out trades that were not prearranged and executed (and, in fact, closed out) with economic risk.

56. Commenters argue that the Commission should impose an ''intent'' standard relating to wash trading. The language, as proposed and finalized in this order, does include the element of intent. We recognize that buyers and sellers trade the same products with the same counterparties over the course of a trading day. Entering into a set of trades that happen to offset each other is not market manipulation. Wash trades are by their nature manipulative. By definition, parties must purposefully create prearranged off-setting trades with no economic risk to engage in a wash trade. We know of no legitimate business purpose to such behavior and no commenter has suggested one. Accordingly, as opposed to many other behaviors which would not, standing alone, violate Sections 284.288(a) or 284.403(a), wash trades will constitute a *per se* violation.

57. The Commission finds that its definition of wash trading, as explained here, satisfies the requirements that parties will generally know what is expected of them and what actions are prohibited. Therefore, the Commission will not further define its regulations at this point.

3. Collusion

58. As revised Section 284.288(a)(2) of the Commission's regulations provides that prohibited actions and transactions include but are not limited to:

> collusion with another party for the purpose of manipulating market prices, market conditions, or market rules for natural gas.[28]

59. Several commenters argue that the Commission should better define the term collusion.[29] For instance, TXU recommends that the Commission and market participants rely on federal and state antitrust laws specifically defining collusion in order to ensure certainty concerning the conduct that is prescribed. Sempra argues that the Commission's prohibition of collusion is unconstitutionally vague, as well as unnecessary since such conduct is already proscribed under other statutory and regulatory schemes administered by other federal agencies with specialized expertise in those areas of law.

60. NEMA argues that for conduct to constitute collusion, there must be an element of intent to manipulate prices in the marketplace as well as an actual impact on commodity prices. Shell asks what standard the Commission would rely upon to determine whether or not there was collusion to ''create'' prices at levels that differ from those set by market forces.

61. While commenters such as Sempra are correct in their observation that the prohibition set forth in Sections 284.288(a)(1) and 284.403(a)(1) may be similar, in certain respects, to the prohibitions set forth in federal antitrust laws, our authority, as it relates to Sections 284.288(a)(1) and 284.403(a)(1), is not derived from federal antitrust law. Rather, our authority comes from the NGA itself and its requirement that all rates and charges made, demanded, or received by any natural gas company selling natural gas subject to the jurisdiction of the Commission and all rules and regulations affecting or pertaining to such rates and charges be just and reasonable.[30] Although our regulatory approach includes elements of anti-trust law, it is not limited to the structure of those laws. For example, our regulatory approach encompasses ''partnerships'' whose existence does not implicate anti-trust concerns that may, nonetheless, undertake manipulative behavior. Therefore, these regulations will be interpreted and enforced by the Commission consistent with our own policies and precedents. As such, we need not be concerned here whether, or to what extent, federal antitrust law may be broader in scope or more narrow in scope.[31] These regulations are expressly tailored to our statutory duties and our competitive goals with respect to the natural gas market.[32]

62. To avoid possible confusion regarding the interpretation and scope from our originally proposed language which prohibited collusion for the purpose of creating market prices differing from those set by market forces, we have replaced this term with language consistent with our prohibition against manipulation set forth above. Therefore, the instant regulation prohibits collusion with another party for the purpose of manipulating market prices, market conditions or market rules for natural gas. We find such collusive acts to be illustrative of our prohibition against the manipulation of market prices and clarify that Sections 284.288(a)(2) and 284.403(a)(2) merely expand our general manipulation standard set forth in subparagraphs (a) of these rules to include acts taken in concert with another party. In other words, these regulations prohibit market manipulation undertaken by one market participant acting alone and market manipulation undertaken collectively by more than one market participant.

4. Reporting to Gas Index Publishers

63. Proposed Regulation Section 284.288(b) states that:

> To the extent a pipeline that provides unbundled natural gas sales service under § 284.284 engages in reporting of transactions to publishers of gas price indices, the pipeline shall provide complete, accurate and factual information to such publisher. The pipeline shall notify the Commission of whether it engages in such reporting for all sales. In addition, the pipeline shall adhere

[28] Section 284.403(a)(2) of the Commission's regulations contains an identical prohibition.

[29] *See e.g.*, Merrill Lynch and Morgan Stanley, Duke, TXU, Sempra, NGSA, NEMA, Shell, EnCana, Hess, Mirant.

[30] Section 4(a) of the NGA, 15 U.S.C. 717c.

[31] Similarly, we need not revise our rule so that violations of the antitrust laws are also prohibited by our rule. Federal antitrust law will continue to apply where it is found to apply, with or without our rule.

[32] *See Pennsylvania Water & Power Co.* v. *FPC,* 193 F.2d 230, 236 (D.C. Cir. 1951) (''A rate is not necessarily illegal because it is the result of a conspiracy in restraint of trade in violation of the Anti-Trust Act. What rates are legal is determined by the regulatory statute.'' [cit. omit.]).

to such other standards and requirements for price reporting as the Commission may order.[33]

64. Commenters argue that the Commission should not prescribe reporting requirements that might prevent innovation of better long-term solutions to the industry's evolving future needs for price information.[34] Others argue that the proposed penalties may discourage market participants from voluntarily reporting price data.

65. Commenters also argue that the confidential treatment of reported data, as required by the *Policy Statement,* is critical to the voluntary reporting process.[35] Moreover, several commenters recommend that the Commission articulate specific reporting requirements, consistent with the *Policy Statement.* Commenters submit that many aspects of the reporting process remain unclear. For instance, they argue that it is unclear what data must be reported, the format for the data, the policy for confirming the accuracy of the data, and to which entities the seller must report. BP seeks clarification of this rule, contending that it does not mandate reporting, but simply requires that any information reported be ''complete.'' Specifically, BP asks the Commission to clarify that where an entity voluntarily reports, that entity should not be required to report all sales at all locations. Coral suggests that general reviews followed by spot checks should be all that is required to assure a reasonable level of accuracy in reported trade price information.[36] Other commenters argue that the Policy Statement obviates the need for a reporting rule.[37]

66. Several other commenters assert that the rule does not go far enough.[38] They recommend that the Commission require that all entities holding blanket certificates report all of their trades to the data collectors. They assert that only reporting occasional bits of information could lead to inaccuracies.

67. Moreover, several commenters request clarification as to whether the Commission notification requirement is a one-time or ongoing obligation.[39] BP argues that the Commission should clarify that it is only necessary to indicate to the Commission that the entity engages in reporting. Merrill Lynch and Morgan Stanley requests that the Commission clarify that if new entrants or entities that currently do not report to indices subsequently initiate reporting, such entities must notify the Commission within 30 days from the first date they initiated reports.

68. As part of the reporting provisions, numerous parties recommend that the Commission incorporate a safe harbor provision into its proposal so that an industry participant who, in good faith, provides trade data to index developers, will not be subject to penalties for inadvertent mistakes in reporting the information. Several commenters ask that the safe harbor provisions mirror the one adopted in the Commission's *Policy Statement.*[40] Commenters submit that incorporation of a safe harbor provision will encourage the voluntary reporting of information. Commenters also request the Commission to clarify the proposed false reporting prohibition so that it only applies to information that is known to be false at the time it is reported, as opposed to false reports based on inadvertent mistakes or human error.[41] Nicor and NGSA add that the Commission should expressly state that the safe harbor protections in the *Policy Statement* are not eliminated or negated by the subject reporting requirements.

69. Calpine contends that any safe harbor provision must be adopted into the proposed code without the burden on industry participants to self-audit and self-correct errors not otherwise discovered in the ordinary course of business. Given the volumes of data to be reported, Calpine believes it a certainty that inadvertent errors that do no harm to the overall integrity of the indices will be made. NEMA urges that the safe harbor be extended to index prices published by parties that meet the Commission's protocols.

70. The Commission proposed this regulation to assure that to the degree that a market-based rates seller reports its transactions to publishers of natural gas price indices, such seller must do so honestly and accurately. The Commission also proposed to require sellers to inform it if they undertook such reporting. Based upon the comments received, we have modified Sections 284.288(b) and 284.403(b) to read as follows:

> To the extent Seller engages in reporting of transactions to publishers of electricity or natural gas indices, Seller shall provide accurate and factual information and not knowingly submit false or misleading information or omit material information to any such publisher, by reporting its transactions in a manner consistent with the procedures set forth in the *Policy Statement on Natural Gas and Electric Price Indices,* issued by the Commission in Docket No. PL03–3–000 and any clarifications thereto. Seller shall notify the Commission within 15 days of the effective date of this tariff provision of whether it engages in such reporting of its transactions and update the Commission within 15 days of any subsequent change to its transaction reporting status. In addition, Seller shall adhere to such other standards and requirements for price reporting as the Commission may order.

71. In our June 26 NOPR, we referred to our on-going proceeding investigating price index formation. As many commenters have pointed out, since our proposal regarding these rules was issued we have also issued a *Policy Statement* addressing standards we believe appropriate for the formation of price indices that will be robust and accurate in the context of a voluntary reporting regime.[42] Included in the *Policy Statement* is a ''Safe Harbor'' under which reporting errors will not be subject to Commission sanction. Here, we explicitly adopt the standards set forth in the *Policy Statement* for transaction reporting. Further, we also adopt the ''Safe Harbor'' set forth therein as a component of our enforcement policy with respect to this rule.

72. The Commission clarifies that the requirement that entities notify the Commission of any change in status with regard to price reporting to indices is an ongoing obligation. As such, the entities must, upon the implementation of these regulations, inform the Commission of whether they report to the index publishers. As shown above, the Commission will modify the text of Sections 284.288(b) and 284.403(b) of its proposed regulations to provide that the blanket marketing certificate holder shall, after the initial notification to the Commission, inform the Commission of

[33] Proposed regulation Section 284.403(b) provides a similar requirement stating:

> To the extent that blanket marketing certificate holder engages in reporting of transactions to publishers of gas price indices, the blanket certificate holder shall provide complete, accurate and factual information to any such publisher. The blanket marketing certificate holder shall notify the Commission of whether it engages in such reporting for all sales. In addition, the blanket marketing certificate holder shall adhere to such other standards and requirements for price reporting as the Commission may order.

[34] *See e.g.,* Western.

[35] *See e.g.,* PSCNY, NEMA, NGSA, Reliant, TXU.

[36] *See* Coral at 7.

[37] *See e.g.,* Mirant, Hess, Coral.

[38] *See e.g.,* EMIT, Platts, NASUCA.

[39] *See e.g.,* AGA, BP (recommending a one-time obligation), Peoples.

[40] *See e.g.,* Select; *see also* AGA (recommending that rather than incorporating a safe harbor provision into the subject proceeding, the Commission should clarify that the safe harbor announced in the *Policy Statement* applies specifically to a blanket marketing certificate holder's obligation, to the extent it engages in reporting of transactions to publishers of gas price indices, to provide complete, accurate, and factual information to any publisher).

[41] *See e.g.,* Merril Lynch and Morgan Stanley, Select, Mirant.

[42] *Policy Statement,* 104 FERC ¶ 61,121 (2003).

its reporting status within 15 days of the effective date of these regulations and within 15 days of any subsequent change in reporting status.

73. Finally, some commenters have asked that we require mandatory reporting while others contend that we have created requirements that will have a chilling effect on reporting. We believe that we have struck an appropriate balance in these rules. For the moment, we are attempting to work within the framework of voluntary reporting. We are awaiting our staff's review of the comprehensiveness of reporting in the wake of our *Policy Statement.* At this time, we are not mandating reporting. However, we have engaged in a comprehensive investigation of transaction reporting and related issues and believe that the practices set forth in our *Policy Statement* represent the necessary minimum for those entities that choose to report. Accordingly, we will not require reporting, but will seek to learn which sellers are reporting and set forth standards for those that do.

5. Three-Year Data and Information Retention Requirement

74. Proposed Section 284.288(c) of the Commission's regulations provides that:

> A pipeline that provides unbundled natural gas sales service under § 284.284 shall retain all relevant data and information necessary for the reconstruction of price indices for three years.[43]

75. Several entities comment on the Commission's proposed three-year data and information retention requirement.[44] Other commenters request clarification as to what constitutes ''relevant data'', and suggest that the Commission specify what types of data and information must be retained, and in what format (*e.g.*, paper or electronic).[45] Commenters are concerned that the required documentation will prove too burdensome due to both the time and the money required to store and retrieve information. NJR Companies argues that the proposal may create a new set of business records that could lead to decreased market activity, and a slow-down or elimination of certain transactions.

76. BP asserts that relevant data should be limited to accounting data that records the details of each reported transaction, along with a record of the data transmitted to the index developer, if applicable. BP adds that requiring data maintained in the accounting records would be consistent with the Commission's proposed requirement for price reporting in its recent *Policy Statement,* which requires that price, volume, buy/sell indicator, delivery/receipt point, transaction date and time, term, and any counterparty name be maintained. It argues that negotiation materials and other ancillary data should not be required to be maintained.

77. Several commenters argue that the three-year retention period is too long, and that the burden may dissuade blanket marketing certificate holders from reporting data.[46] Other commenters argue that the three-year retention period is too short, and that with current computer technology, a longer retention period should not result in additional costs to market participants.[47] Finally, some commenters argue that the three-year record retention period is consistent with the commercial practices of many natural gas sellers.[48]

78. Several commenters argue that the record retention requirement will only be meaningful if the Commission makes reporting of all trade data mandatory.[49] At the same time, other commenters argue that if an entity does not report, then documentation is not necessary to verify the accuracy of price indices.[50] Other commenters submit that only relevant data should be retained and not peripheral documents that may have been generated in association with a transaction, but which have no bearing on the data reported to index publishers.[51]

79. This proposed rule requires that sellers maintain relevant records regarding their sales for three years. After review of the comments received, we revise Section 284.288(c) to read:

> A pipeline that provides unbundled natural gas sales service under 284.284 must retain, for a period of three years, all data and information upon which it billed the prices it charged for the natural gas it sold pursuant to this certificate or the prices it reported for use in price indices for a period of three years.[52]

80. In revising the proposed rule, we clarify that we are not seeking retention ''cost-of service'' or analytical data related to sellers' sales as some commenters perceived from our suggestion that entities retain all relevant data ''necessary for the reconstruction of price indices'' in our original proposal. Rather, we are requiring that sellers retain the complete set of contractual and related documentation upon which such entities billed their customers for sales. The Commission is indifferent as to whether this material is retained in paper form or in an electronic medium as long as the data can be made accessible in a reasonable fashion if its review is required. In addition, commenters raise several issues in regard to the three-year retention period. On balance, the Commission does not believe that requiring sellers to retain records for a three-year period constitutes an undue burden given the fact that the Commission is prepared to allow the records to be kept in electronic or paper form. To permit a shorter retention period may not allow sufficient time for the investigations into possible violations.

6. Prohibition on Reporting Transactions With Affiliates

81. Proposed section 284.288(d) of the Commission's regulations provides that:

> A pipeline that provides unbundled natural gas sales transactions under § 284.284 is prohibited from reporting any natural gas sales transactions between the pipeline and its affiliates to industry indices.[53]

82. Commenters generally agree with this restriction.[54] NASUCA agrees to the prohibition of affiliate transactions from price indices calculations, but contends that other non-price information, such as the number of trades and the volumes associated with each trade, is important information that will help determine the liquidity at various hubs for which prices are calculated. It recommends that the regulation be modified to state that pipelines and certificate holders should separately report other non-price

[43] Similarly, proposed Section 284.403(c) provides:

> A blanket marketing certificate holder shall retain all relevant data and information necessary for the reconstruction of price indices for three years.

[44] *See e.g.*, BP, NJR Companies, NEMA, NGSA, EMIT, Western, Sempra, Reliant, Coral, Hess, Peoples, Mirant, EnCana, NASUCA, ProLiance, Merrill Lynch and Morgan Stanley, PG&E, Duke.

[45] *See e.g.*, BP, NJR Companies, NEMA, Coral, Peoples, Mirant, EnCana, ProLiance, Merrill Lynch and Morgan Stanley, PG&E.

[46] *See e.g.*, ProLiance (requesting a 2-year retention period), NEMA (requesting a 1-year retention period), Coral.

[47] *See e.g.*, NASUCA (requesting a 6-year retention period).

[48] *See e.g.*, Western.

[49] *See e.g.*, EMIT.

[50] *See e.g.*, Sempra.

[51] *See e.g.*, BP, Hess, Mirant, Merrill Lynch and Morgan Stanley.

[52] The Commission will modify Section 284.403(c), applying to blanket marketing certificate holders, in a like manner.

[53] Proposed Section 284.403(d) of the Commission's regulations provides that:

> A blanket marketing certificate holder is prohibited from reporting any natural gas sales transactions between the blanket market certificate holder and its affiliates to industry indices.

[54] *See* ProLiance, NASUCA, EnCana, Hess, NEMA.

data associated with affiliate transactions.

83. Although the separate reporting of other non-price data associated with affiliate transactions may provide additional information regarding liquidity at certain points, the Commission finds that this information is not necessary for the purposes of these rules.

84. Although commenters generally agree with reporting restrictions on transactions between affiliates in the June 26 NOPR, new Sections 284.288(b) and 284.403(b) of the Final Rule provide that to the extent a Seller engages in the reporting of transactions to publishers of price indices, the Seller shall do so in a manner consistent with the procedures set forth in the *Policy Statement*. The *Policy Statement* states that ''a data provider should report each bilateral, arm's length transaction between non-affiliated companies in the physical (cash) markets at all trading locations.'' [55] Therefore, an entity filing consistent with the *Policy Statement* will not include sales to affiliates in its report. Accordingly, the Commission believes the addition of these two regulations (Sections 284.288(d) and 284.403(d) of the June 26 NOPR) is redundant, and shall be deleted.

D. Remedies

1. General Issues

85. Several commenters responded to the Commission's proposal that the violations of its code of conduct may result in various remedial actions by the Commission including the disgorgement of unjust profits, suspension or revocation of the blanket sales certificates or other appropriate remedies.

86. In regard to the Commission's inclusion of disgorgement as a potential remedy various commenters argue that the Commission does not have authority to condition NGA Section 7 certificates with such a retroactive refund obligation.[56] Commenters argue that the courts have held that the Commission's power to condition certificates cannot be permitted to diminish an entity's rights under NGA Sections 4 and 5.[57] These commenters argue the proposed disgorgement remedy is a refund condition that is not permitted under Section 5 of the NGA and that such disgorgement of unjust profits from a just and reasonable rate is tantamount to retroactive ratemaking because NGA Section 5 provides only for prospective relief.[58] The commentors argue the Commission is attempting to expand its authority to order retroactive refunds, or, change retroactively the filed rate. They argue that courts have been clear that the Commission cannot (i) use its conditioning authority to circumvent other provisions of the NGA and (ii) do indirectly what it may not do directly and therefore the Commission cannot condition rates as it proposes to do so here, and subject them to retroactive refunds because Congress did not include such authority in the NGA.

87. Several commenters express concern that the term ''unjust profits'' is vague and subjective, the calculation of which would necessitate a review of all market conditions.[59] AGA recommends that the Commission limit the disgorgement of unjust profits to all illegal activity and not impose penalties for violation of those regulatory provisions associated with reporting activities.[60] NJR Companies object to the disgorgement remedy when the violation is inadvertent.[61]

88. Several commenters argue that the Commission should consider additional remedies such as a remedy that would require the offending entity to make the market whole for losses incurred because of its actions.[62] They argue that if an entity must simply disgorge unjust profits, even if is caught for every infraction of the code, it is no worse off than if it had followed the rules in the first place. Therefore, they argue that disgorgement of unjust profits does not serve as a penalty or deterrent to future, similar actions. In sum, they argue that the failure to comply with the filed rate by engaging in prohibited manipulative behavior should include a potential remedy that is greater than disgorgement, such as a make the market whole remedy.

89. Regarding the issue of appropriate non-monetary penalties, PSCNY states that all violations of the regulations should be publicly disclosed in a public file that may be accessed by buyers and the public. A list of bad actors and dates could be maintained on the Commission's Web site. Such public disclosure, PSCNY argues, would provide an additional deterrent for companies to avoid the stigma associated with engaging in anticompetitive behavior. PSCNY states that in the event of a particularly blatant and serious violation, or multiple violations, the Commission should place parties on notice that appropriate remedies could include revocation of market-based rate authority. NASUCA recommends that the Commission clarify that revocation of market-based rate authority will be for a specified minimum period of time that depends on the severity of the violation.

90. In Order No. 636, the Commission determined that after gas services were unbundled, sellers of gas supplies would not have market power over the sale of natural gas. This determination was based in large part upon Congress' finding that a competitive market exists for gas at the wellhead and in the gas field. The Commission determined that it would institute light-handed regulation and would rely on market forces at the wellhead to constrain sales for resale of natural gas within the just and reasonable standard set forth by the NGA. In implementing its findings in Order No. 636 and Order No. 547, the Commission issued blanket certificates to all persons who are not interstate pipelines which authorized such persons to make jurisdictional gas sales for resale at negotiated rates with pre-granted abandonment.[63] In issuing these certificates the Commission determined that the competitive natural gas market would lead all gas suppliers to charge rates that are sensitive to the gas sales market.

91. The Commission has determined that in order to protect and maintain the competitive natural gas market and to continue its light-handed regulation of the gas sales within its jurisdiction, it is necessary to place additional conditions on its grant of market-based sales certificates. In formulating such conditions to the market based rate certificates the Commission is fulfilling its obligation to appropriately monitor markets and to ensure that market-based

[55] *See Policy Statement*, 104 FERC ¶ 61,121 at P 34 (2003).

[56] *See e.g.*, Comments of AGA, the FPL Group, NGSA, Duke, NGSA and Cinergy.

[57] *Citing Panhandle Eastern Pipe Line Co.* v. *FERC*, 613 F.2d 1120 (D.C. Cir. 1979): *Cf. Northern Natural Gas Co.* v. *FERC*, 827 F.2d 779 (D.C. Cir. 1987).

[58] Several commenters such as EnCana, Hess and Mirant argue that the term ''unjust profits'' is vague and subjective and therefore difficult to calculate. Hess requests that that the Commission either adopt a more workable formula for calculating monetary remedies or clarify how the unjust profits standard will be applied. Mirant and EnCana suggest that the Commission adopt a presumption that unjust profits will be defined as the difference between a reported transaction's fixed price and a then-existing published index price for the market and time period in question. Mirant asserts that it would oppose any Commission proposal to recreate or somehow adjust previously reported index prices based on an after-the-fact review of reported data.

[59] *See e.g.*, Mirant, Cinergy, EnCana, Hess.

[60] *See* AGA at 10.

[61] NJR Companies at 19.

[62] *See e.g.*, CPUC, NASUCA, EMIT, PG&E, PSCNY and the Oversight Board.

[63] *See* 18 CFR 284.401–402 (2003).

rates remain within the zone of reasonableness required by the NGA.[64]

92. In order to find the market based sales service to be in the public convenience and necessity the Commission finds that the conditions herein must be met. Once the sales service is so conditioned, in the Commission's view adequate safeguards are in place so that the Commission may grant market based sales authority to jurisdictional sellers of natural gas. In so conditioning this service, the Commission is not prohibiting a jurisdictional seller of natural gas from requesting a certificate for a different form of service or filing pursuant to Section 4 of the NGA for a different rate or conditions of service. Neither does the Commission prohibit a customer of such a seller from raising objections under Section 5 of the NGA.

93. Moreover, if the conditions of service are not met, the Commission has the authority to impose the appropriate remedy for the violation.[65] In particular, the Commission does not agree with the comments that a violation of an existing condition of service may not be remedied by the Commission from the time the violation occurred. The Commission has the authority to remedy violations of certificate conditions.[66] Moreover, the courts have held that the Commission has a great deal of discretion when imposing remedies devised to arrive at maximum reinforcement of Congressional objectives in the NGA.[67] In devising its remedy the Commission is required to exercise its discretion to arrive at an appropriate remedy,[68] and to explore all the equitable considerations, and practical consequences of its action and the purposes of the NGA.[69]

94. This action of remedying a violation of a certificate condition is not the same as the Commission's action in finding an existing rate unjust and unreasonable after hearing under Section 5 of the NGA. At the initiation of an NGA Section 5 proceeding the existing condition has not yet been found to be unjust and unreasonable. In contrast, in a remedial proceeding the issue is whether the entity has violated an existing condition of the tariff or the regulations. Therefore, in a remedial proceeding, unlike an NGA section 5 proceeding, the regulated entity has notice of the conditions required for service at the time of the implementation of the service condition and the Commission may, at its discretion, fashion an appropriate remedy.

95. In appropriate circumstances these remedies may include disgorgement of unjust profits, suspension or revocation of the blanket sales provision or other appropriate non-monetary remedies. Which of these remedies is appropriate will depend on the circumstances of the case before it and the Commission will not determine here which remedy or remedies it will utilize.[70]

2. 90-Day Time Limit on Complaints

96. Several commenters raise concerns about the 60-day time limit on complaints proposed in the June 26 NOPR.[71] Most of the commenters argue that the 60-day time period is unreasonably too short. Some commenters suggest a limit of six months.[72] Many commenters suggest modification of the provision's discovery exception, by adopting a ''reasonableness'' standard, *i.e.*, a reasonable person exercising due diligence could not have known of the wrongful conduct.

97. Several commenters argue that the Commission errs in not applying the 60-day deadline to itself. They argue that if the Commission is allowed to initiate unlimited retroactive investigations, this vitiates any time constraints the rule otherwise places on private complainants. Commenters recommend that the scope of any investigation that might stem from a complaint, or the Commission's own motion, be narrowly defined, and require the demonstration and quantification of the individual harm resulting from the prohibited conduct.[73] These commenters are concerned about the lack of finality for transactions under the proposed discovery exception to the 60-day requirement. Merrill Lynch and Morgan Stanley suggest either a hard and fast deadline of 60 days from the event with no exceptions or a rebuttable presumption the complainant knew about the alleged violation within the 60-day time period.

98. Upon consideration of the comments received concerning our 60-day proposal, in the Commission's view the 60-day time period may be insufficient time for parties to discover and act upon violations of these regulations. Accordingly, the Commission will modify its original proposal to allow 90 days from the end of the quarter from which a violation occurred for a party to bring a complaint based on these regulations. A 90-day time period provides a reasonable balance between encouraging due diligence in protecting one's rights, discouraging stale claims, and encouraging finality in transactions. Furthermore, the Commission clarifies that the language in Sections 284.288(e) and 284.403(e), ''unless that person could not have known of the alleged violation'', incorporates a reasonableness standard, *i.e.*, the 90-day time period to file a complaint does not begin to run until a reasonable person exercising due diligence should have known of the alleged wrongful conduct. Rather than being impermissibly vague, this safeguard ensures a sufficient time-period for complainants to discover hidden wrongful conduct and submit a claim.

99. We will also place a time limitation on Commission enforcement action for potential violations of these regulations. The Commission, unlike the market participants who may be buyers or otherwise directly affected by a transaction, may not be aware of actions or transactions that potentially may violate our rules. Thus, the Commission will act within 90 days from the date it knew of an alleged violation of these

[64] The Court of Appeals for the D.C. Circuit has held that, while the Commission ''enjoys substantial discretion in ratemaking determinations * * * by the same token, this discretion must be bridled in accordance with the statutory mandate that the resulting rates be 'just and reasonable.'" *Farmers Union Cent. Exch. Inc.* v. *FERC*, 734 F.2d 1486 at 1501 (D.C. Cir. 1984). In addition, the regulatory regime itself must contain some form of monitoring to ensure that rates remain within a zone of reasonableness and to check rates that depart from this zone. *Id.* at 1509. *See also Louisiana Energy and Power Authority* v. *FERC*, 141 F.3d 364 (D.C. Cir. 1998); *Elizabethtown Gas Co.* v. *FERC*, 10 F.3d 866 (D.C. Cir. 1993).

[65] *See e.g.*, *Coastal Oil & Gas Corp.* v. *FERC*, 782 F.2d 1249 (1986).

[66] Consolidated Gas Transmission Corp., *et al.*, 771 F.2d 1536 (D.C. Cir. 1985) (holding that the Commission has the authority under section 16 of the Natural Gas Act to order retroactive refunds to enforce conditions in certificates).

[67] The courts have held that ''the breadth of agency discretion is, if anything, at its zenith when the action assailed relates * * * to the fashioning of policies, remedies and sanctions.'' *Columbia Gas Transmission Corp.*, v. *FERC*, 750 F.2d 105, 109 (D.C. Cir. 1984), *quoting, Niagara Mohawk Power Corp.* v. *FPC*, 379 F.2d 153, 159 (D.C. Cir.1967).

[68] *Gulf Oil Corp.* v. *FPC*, 536 F.2d 588 (3rd. Cir. 1977), *cert. denied*, 4344 U.S. 1062 (1978), *reh'g denied*, 435 U.S. 981 (1978).

[69] *See Continental Oil Co.* v. *FPC*, 378 F.2d 510 (5th Cir. 1967) and *FPC* v. *Tennessee Gas Transmission Co.*, 371 U.S. 145 (1962).

[70] Moreover, if Congress grants the Commission additional remedial power, including the authority to levy civil penalties, the Commission will, in addition to the remedies set forth herein, implement such authority and utilize it when appropriate for violations of these code of conduct regulations.

[71] The Oversight Board, Mirant, NiSource, Cinergy, Sempra, Reliant, EMIT, EnCana, Hess, Coral, NGSA, CPUC, NASUCA, PG&E, Merrill Lynch and Morgan Stanley, ProLiance.

[72] *See* the Oversight Board, EMIT, Coral, NASUCA (suggesting 6 months), and ProLiance (suggesting a two-year limit).

[73] *See also* EPSA (arguing that the Commission should clarify that it will act quickly to review and discourage frivolous complaints).

code of conduct regulations or knew of the potentially manipulative character of an action or transaction. Commission action in this context means a Commission order or the initiation of a preliminary investigation by Commission Staff pursuant to 18 CFR section 1b. If the Commission does not act within this time period, the seller will not be exposed to potential liability regarding the subject action or transaction. Knowledge on the part of the Commission will take the form of a call to our Hotline alleging inappropriate behavior or communication with our enforcement Staff.

100. We also clarify that in this context the Commission's action will have reference to a Commission order or to the initiation to a preliminary investigation by Commission Staff. If the Commission does not act within this period, the Seller will not be exposed to potential liability regarding the subject transaction. In such a proceeding, knowledge on the part of the Commission must take the form of a call to our Hotline alleging inappropriate behavior or communication with our enforcement staff.

VI. Administrative Finding and Notices

A. Information Collection Statement

101. The code of conduct rules adopted herein would require jurisdictional gas sellers to retain certain records for three years and also require them to notify the Commission whether or not they engage in the reporting of natural gas sales transactions to publishers of gas indices.[74]

102. The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rule.[75] This final rule does not make any substantive or material changes to the information collection requirements specified in the NOPR, which was previously submitted to OMB for approval on July 14, 2003. OMB has elected to take no action on the NOPR. Thus, the information collection requirements in this rule are pending OMB approval. Comments were solicited and received on the need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The Commission addressed these issues in sections III(C)(4)–(5) of this order. The burden estimates for complying with this proposed rule are as follows:

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–549:				
(Reporting)	222	222	1	222
(Recordkeeping)	222	222	2	444
Totals	.....	.....	3	666

Total annual hours for Collection (reporting + recordkeeping) = 666.

Information Collection Costs: The Commission seeks comments on the cost to comply with these requirements. It has projected the average annualized cost of all respondents to be: Annualized Capital Startup Costs: 666 ÷ 2080 × $117,041 = $37,475. This is a one time cost for the implementation of the proposed requirements.

103. OMB's regulations require it to approve certain information collection requirements imposed by agency rule. The Commission is submitting a copy of this order to OMB.

104. *Title:* FERC–549, Gas Pipeline Rates: Natural Gas Policy Act, Section 311.

105. *Action:* Proposed Data Collection.

106. *OMB Control No.:* 1902–0086.

107. *Respondents:* Businesses or other for profit.

108. *Frequency of Responses:* On occasion.

109. *Necessity of Information:* The code of conduct rules approved herein would revise the Commission's regulations to require that pipelines that provide unbundled sales service or persons holding blanket marketing certificates adhere to a code of conduct when making gas sales. In addition, the Commission will require blanket sales certificate holders to maintain certain data for a period of three years. The addition of the codes of conduct, retention of data and standards for accuracy are efforts by the Commission to ensure the integrity of the natural gas market that remains within its jurisdiction.

110. *Internal review:* The Commission has reviewed the requirements pertaining to blanket sales certificates and has determined the proposed revisions are necessary to ensure the integrity of the gas sales market that remains within its jurisdiction. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

111. Interested persons may obtain information on the information requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone: (202) 502–8415, fax: (202) 273–0873, e-mail: *Michael.Miller@ferc.gov*.]

112. For submitting comments concerning the collection of information(s) and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–7856, fax: (202) 395–7285].

B. Environmental Analysis

113. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[76] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human

[74] *See* Sections 284.288(b)–(c), and 284.403(b)–(c).

[75] 5 CFR 1320 (2003).

[76] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

environment.[77] The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[78] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

C. Regulatory Flexibility Act Certification

114. The Regulatory Flexibility Act of 1980 (RFA)[79] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect.[80]

115. The Commission does not believe that this rule would have such an impact on small entities. Most of the entities required to comply with the proposed regulations would be pipelines, LDCs or their affiliates who do not meet the RFA's definition of a small entity whether or not they are under the Commission's jurisdiction. It is likely that any small entities selling natural gas would be making gas sales that are no longer subject to the Commission's jurisdiction. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

D. Document Availability

116. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426

117. From FERC's Home Page on the Internet, this information is available using the eLibrary link. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

118. User assistance is available for eLibrary and the FERC's Web site during normal business hours at *FERCOnLineSupport@ferc.gov* or by calling (866) 208–3676 or for TTY, contact (202) 502–8659.

E. Effective Date and Congressional Review

119. These regulations are effective December 26, 2003. The Commission has determined, with the concurrence of the administrator of the Office of Information and Regulatory Affairs of OMB, that this Final Rule is not a ''major rule'' as defined in Section 351of the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission will submit the Final Rule to both houses of Congress and the General Accounting Office.

List of Subjects in 18 CFR Part 284

Continental Shelf; Incorporation by reference; Natural gas; Reporting and recordkeeping requirements.

By the Commission. Commissioners Massey and Brownell concurring in part with separate statements attached.

Linda Mitry,

Acting Secretary.

■ In consideration of the foregoing, the Commission is amending part 284, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

■ 1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

■ 2. Section 284.288 is added to read as follows:

§ 284.288 Code of conduct for unbundled sales service.

(a) A pipeline that provides unbundled natural gas sales service under § 284.284 is prohibited from engaging in actions or transactions that are without a legitimate business purpose and that are intended to or foreseeably could manipulate market prices, market conditions, or market rules for natural gas. Prohibited actions and transactions include but are not limited to:

(1) Pre-arranged offsetting trades of the same product among the same parties, which involve no economic risk and no net change in beneficial ownership (sometimes called ''wash trades''); and

(2) collusion with another party for the purpose of manipulating market prices, market conditions, or market rules for natural gas.

(b) To the extent Seller engages in reporting of transactions to publishers of electricity or natural gas indices, Seller shall provide accurate and factual information, and not knowingly submit false or misleading information or omit material information to any such publisher, by reporting its transactions in a manner consistent with the procedures set forth in the *Policy Statement on Natural Gas and Electric Price Indices,* issued by the Commission in Docket No. PL03–3–000 and any clarifications thereto. Seller shall notify the Commission within 15 days of the effective date of this regulation of whether it engages in such reporting of its transactions and update the Commission within 15 days of any subsequent change to its transaction reporting status. In addition, Seller shall adhere to such other standards and requirements for price reporting as the Commission may order.

(c) A pipeline that provides unbundled natural gas sales service under § 284.284 shall retain, for a period of three years, all data and information upon which it billed the prices it charged for natural gas it sold pursuant to its market based sales certificate or the prices it reported for use in price indices.

(d) Any violation of the preceding paragraphs may subject Seller to disgorgement of unjust profits from the date when the violation occurred. Seller may also be subject to suspension or revocation of its blanket certificate under § 284.284 or other appropriate non-monetary remedies.

(e) Any person filing a complaint against a pipeline for violation of paragraphs (a) through (c) must do so no later than 90 days after the end of the calendar quarter in which the alleged violation occurred unless that person could not have known of the alleged violation, in which case the 90-day time limit will run from the discovery of the alleged violation. The Commission will act within 90 days from the date it knew of an alleged violation of these code of conduct regulations or knew of the potentially manipulative character of an action or transaction. Commission action in this context means a Commission order or the initiation of a preliminary investigation by Commission Staff pursuant to 18 CFR section 1b. If the Commission does not act within this time period, the seller will not be exposed to potential liability regarding the subject action or transaction. Knowledge on the part of

[77] 18 CFR 380.4 (2003).

[78] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27) (2003).

[79] 5 U.S.C. 601–612.

[80] 5 U.S.C. 605(b).

the Commission will take the form of a call to our Hotline alleging inappropriate behavior or communication with our enforcement Staff.

■ 3. In § 284.402, the second sentence of paragraph (a) is revised to read as follows:

§ 284.402 Blanket Marketing Certificates.

* * * A blanket certificate issued under Subpart L is a certificate of limited jurisdiction which will not subject the certificate holder to any other regulation under the Natural Gas Act jurisdiction of the Commission, other than that set forth in this Subpart L, by virtue of the transactions under this certificate.

■ 4. Section 284.403 is added to read as follows:

§ 284.403 Code of conduct for persons holding blanket marketing certificates.

(a) Any person making natural gas sales for resale in interstate commerce pursuant to § 284.402 is prohibited from engaging in actions or transactions that are without a legitimate business purpose and that are intended to or foreseeably could manipulate market prices, market conditions, or market rules for natural gas. Prohibited actions and transactions include but are not limited to:

(1) Pre-arranged offsetting trades of the same product among the same parties, which involve no economic risk and no net change in beneficial ownership (sometimes called ''wash trades''); and

(2) Collusion with another party for the purpose of manipulating market prices, market conditions, or market rules for natural gas.

(b) To the extent Seller engages in reporting of transactions to publishers of electricity or natural gas indices, Seller shall provide accurate and factual information, and not knowingly submit false or misleading information or omit material information to any such publisher, by reporting its transactions in a manner consistent with the procedures set forth in the *Policy Statement on Natural Gas and Electric Price Indices,* issued by the Commission in Docket No. PL03–3–000 and any clarifications thereto. Seller shall notify the Commission within 15 days of the effective date of this regulation of whether it engages in such reporting of its transactions and update the Commission within 15 days of any subsequent change to its transaction reporting status. In addition, Seller shall adhere to such other standards and requirements for price reporting as the Commission may order.

(c) A blanket marketing certificate holder shall retain, for a period of three years, all data and information upon which it billed the prices it charged for the natural gas sold pursuant to its market based sales certificate or the prices it reported for use in price indices.

(d) Any violation of the preceding paragraphs may subject Seller to disgorgement of unjust profits from the date when the violation occurred. Seller may also be subject to suspension or revocation of its blanket certificate under § 284.284 or other appropriate non-monetary remedies.

(e) Any person filing a complaint against a blanket marketing certificate holder for violation of paragraphs (a) through (c) must do so no later than 90 days after the end of the calendar quarter in which the alleged violation occurred unless that person could not have known of the alleged violation, in which case the 90-day time limit will run from the discovery of the alleged violation. The Commission will act within 90 days from the date it knew of an alleged violation of these code of conduct regulations or knew of the potentially manipulative character of an action or transaction. Commission action in this context means a Commission order or the initiation of a preliminary investigation by Commission Staff pursuant to 18 CFR Section 1b. If the Commission does not act within this time period, the seller will not be exposed to potential liability regarding the subject action or transaction. Knowledge on the part of the Commission will take the form of a call to our Hotline alleging inappropriate behavior or communication with our enforcement Staff.

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix

List of Commenters

Amerada Hess Corporation (Hess)
American Gas Association (AGA) *
Atmos Energy Corp.
BP America Production Company and BP Energy Company (BP)
California Electricity Oversight Board (Oversight Board)
Calpine Corporation
Cinergy Marketing & Trading, LP (Cinergy) *
Coalition for Energy Market Integrity and Transparency (EMIT)
Coral Energy Resources, L.P. (Coral)
Duke Energy Corporation (Duke)
Electric Power Supply Association (EPSA)
EnCana Marketing (USA) Inc. (EnCana)
FPL Group, Inc. (FPL Group)
Intercontinental Exchange, Inc. (ICE)
Merrill Lynch Capital Services, Inc. and Morgan Stanley Capital Group, Inc. (Merill Lynch and Morgan Stanley) *
Mirant Americas Energy Marketing, LP (Mirant)
Missouri Public Service Commission (Missouri PSC)
National Association of State Utility Consumer Advocates (NASUCA)
National Energy Marketers Association (NEMA)
Natural Gas Supply Association (NGSA)
New Jersey Resources Corporation (NJR Companies)
Nicor Gas (Nicor)
NiSource, Inc. (NiSource)
Pacific Gas and Electric Company (PG&E)
Peoples Gas Light and Coke Company, North Shore Gas Company, and Peoples Energy Resources Corp. (Peoples)
Piedmont Natural Gas Co., Inc.
Platts
ProLiance Energy, LLC (ProLiance)
Public Service Electric and Gas Co., PSEG Power LLC and PSEG Energy Resources & Trade LLC (collectively, PSEG Companies)
Public Service Commission of the State of New York (PSCNY)
Public Utilities Commission of the State of California (CPUC)
Questar Energy Trading Company (Questar)
Reliant Energy Power Generation, Inc. and Reliant Energy Services, Inc. (Reliant)
Select Energy, Inc. (Select)
Sempra Energy (Sempra)
Shell Offshore Inc. (Shell Offshore)
TXU Portfolio Management Company LP (TXU)
USG Pipeline Company, B–R Pipeline Company, and United States Gypsum Company (USG)
Virginia Industrial Gas Users' Association (VIGUA)
Virginia Natural Gas, Inc.**
Western Gas Resources, Inc. (Western)

* Entities filing reply comments in addition to initial comments.
** Entity filing reply comments only.

Massey, Commissioner, *concurring in part:*

The tariff conditions that the Commission approves today send a clear message to market-based rate sellers: Don't lie, don't manipulate market conditions, don't violate market rules and don't collude with others. For sellers who choose to behave otherwise, the Commission now has the tools to sanction such bad behavior and we give notice of what some of those sanctions could be. This action should help to restore the faith in energy markets that has been lost in the last few years.

There is one aspect of today's order, however, that I would have written differently. I would not limit the monetary penalty for tariff violations to disgorgement of unjust profits. Market manipulation can raise the market prices paid by all market participants and collected by all sellers. In such a case, the appropriate remedy may be that the manipulating seller makes the market whole. I would prefer to not take this or any monetary remedy off of the table, but instead to allow the Commission the flexibility to tailor the remedy to the circumstances of each case.

This one concern with today's order should not be interpreted, however, as diminishing in any way my enthusiastic support for this otherwise excellent order. I commend my colleagues for taking this important and much needed step.

For these reasons, I concur in part with today's order.

William L. Massey,
Commissioner.

Brownell, Commissioner, *concurring:*

1. We are adopting behavioral rules for market participants in the electric and natural gas markets. No one can question the good intention behind these behavioral rules. As I have stated before, if there are violations of our rules, regulations or policies, we must be willing to punish and correct. Concurrently, if there is misconduct by market participants that is intended to be anticompetitive, we must have the ability to remedy those market abuses.

2. Conversely, when we originally proposed behavioral rules, I had a number of concerns. I was concerned that the use of vague terms would create uncertainty and, thereby, undermine the good intentions of the rules. I feared that subsequent applications of the proposed behavior rules to real world actions could result in overly proscriptive ''rules of the road'' that will dampen business innovation and creative market strategies. The net effect would be less competition and the associated higher costs to consumers. I was concerned that we may be proposing a model that simply does not fit with the larger lessons we have learned in fostering competition over the past two decades, particularly in the gas market.

3. It is difficult to strike the right balance. I have carefully weighed the comments and believe the revisions and clarifications to the proposed behavioral rules achieve the appropriate balance. We clarify that these rules do not impose a ''must offer'' requirement. We revise the definition of manipulation to relate to actions that are ''intended to or foreseeably could'' manipulate markets. We add the exclusion that action taken at the direction of an RTO or ISO does not constitute manipulation.

4. Commenters also challenge the sufficiency of the term ''legitimate business purpose'' in distinguishing between prohibited and non-prohibited behavior. We clarify that transactions with economic substance, in which a seller offers or provides a service to a buyer where value is exchanged for value, are not prohibited behavior. Behavior driven by legitimate profit maximization or that serves important market functions is not manipulation. Moreover, I think it is important to recognize that scarcity pricing is the market response to a supply/demand imbalance that appropriately signals the need for infrastructure. For example, the high prices of 2000–2001 that reflected supply/demand fundamentals resulted in the first new power plants being constructed in California in ten years; price risk being hedged through the use of long-term contracting; and renewed efforts to correct a flawed market design.

5. We have also adopted measures that require accountability. A complaint must be brought to the Commission within 90 days after the calendar quarter that the manipulative action was alleged to have occurred. The 90-day time limit strikes an appropriate balance between providing sufficient opportunity to detect violations and the market's need for finality. The Order also places a similar time limit on Commission action. As a matter of prosecutorial policy, the Commission will only initiate a proceeding or investigation within 90 days from when we obtained notice of a potential violation through either a hotline call or communications with our enforcement staff.

6. While these rules are designed to provide adequate opportunity to detect, and the Commission to remedy, market abuses and are clearly defined so that they do not create uncertainty, disrupt competitive commodity markets or prove simply ineffective, competitive markets are dynamic. We need to periodically evaluate the impact of these rules on the electric and gas markets. We have directed our Office of Market Oversight and Investigation to evaluate the effectiveness and consequences of these behavioral rules on an annual basis and include their analysis in the State of the Market Report.

Nora Mead Brownell.

[FR Doc. 03–29300 Filed 11–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

23 CFR Part 476

RIN 2125–AF00

Interstate Highway System

AGENCIES: Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), DOT.

ACTION: Final rule.

SUMMARY: This final rule removes regulations that prescribed policies and procedures for implementation of section 103(e)(4) of title 23, United States Code, which permitted the withdrawal of Interstate System segments and the substitution of public mass transit or highway projects or both. The Congress recognized the expiration of this program by eliminating the underlying statutory authority for this regulation. Therefore, the Federal Highway Administration and the Federal Transit Administration remove the regulations.

EFFECTIVE DATE: November 26, 2003.

FOR FURTHER INFORMATION CONTACT: For FHWA: Donald J. West, Office of Program Administration, HIPA–10, (202) 366–4652, or Steve Rochlis, Office of the Chief Counsel, (202) 366–1395, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. For FTA: Rhoda Shorter, Office of Program Management, TPM–10, (202) 366–0206, and Scott Biehl, Office of the Chief Counsel, (202) 366–4063, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours for the FTA are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Background

In 1973, the Interstate System was about 83 percent complete; however, due to changed social, economic, and environmental conditions, many States realized it would be impracticable or unnecessary to construct some uncompleted segments of the Interstate, particularly in urbanized areas. But these States were reluctant to give up these segments for fear of losing substantial amounts of Federal-aid funds. Therefore, the Federal-Aid Highway Act of 1973 (Pub. L. 93–87, 87 Stat. 250, August 13, 1973), amended title 23, United States Code, by adding section 103(e)(4) to allow uncompleted or planned highways on the Interstate System in urbanized areas to be withdrawn and their funding entitlements be transferred to mass transit projects. This became known as the ''Interstate withdrawal and substitution program'' (also known as the ''Interstate Transfer program'') and it provided States with the opportunity to request withdrawal of a non-essential segment of the Interstate System, and the substitution of transit projects to serve the area that would have been served by the withdrawn segment. As a result of this Act, the Federal Highway Administration together with the Federal Transit Administration (known as the Urban Mass Transit Administration at that time) promulgated 23 CFR Part 476, Interstate Highway System.[1] Subpart D of this

[1] *See* final rule published on June 12, 1974, at 39 FR 20658.

regulation outlined the procedures for the withdrawal of Interstate System segments and the substitution of public mass transit or highway projects.

In 1976, the Congress expanded the Interstate withdrawal and substitution program to allow substitution projects to include highway projects as well as transit projects (*see* Federal-Aid Highway Act of 1976 (Pub. L. 94–280, 90 Stat. 425, May 5, 1976)). The Federal-Aid Highway Act of 1978 (Pub. L. 95–599, 92 Stat. 2689, November 6, 1978) further amended 23 U.S.C. 103(e)(4) by establishing time limits for withdrawals and substitute project approvals. Nonessential Interstate System segments passing through and connecting urbanized areas within a State could also be withdrawn. Withdrawals were to receive approval by September 30, 1983, unless the route was under judicial injunction prohibiting construction at the time of enactment of the 1978 Highway Act. All substitute projects were to be approved no later than September 30, 1983. Furthermore, all substitute projects were to be under construction or under contract for construction no later than September 30, 1986, provided sufficient funds were available. Therefore in 1980, the FHWA and the FTA amended 23 CFR part 476 to comply with these changes.[2]

In 1987, Congress again modified the Interstate withdrawal and substitution program in a number of ways (*see* Surface Transportation and Uniform Relocation Assistance Act of 1987 ((Pub. L. 100–17, 101 Stat. 132, April 2, 1987)). A cost adjustment provision was enacted to assure that the ''buying power'' of the value of the withdrawals was maintained over time. A portion of the annual funding authorized for highway and transit substitute projects each year was set aside to be allocated on a discretionary basis. Open to traffic Interstate segments could no longer be withdrawn. The regulations were not revised to reflect these provisions. Instead, the FHWA and FTA administered the program under the 1980 regulations and the modifications made in the 1987 legislation.

In 1998, the Congress enacted the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 107, June 9, 1998) and recognized the expiration of the Interstate withdrawal and substitution program by removing 23 U.S.C. 103(e)(4).[3] Therefore, since the time limits for the Interstate withdrawal and substitution program have long expired, the underlying statutory authority for 23 CFR part 476 has been eliminated, and the Interstate withdrawal and substitution program no longer exists, it is appropriate to remove 23 CFR part 476 from the Code of Federal Regulations.

The removal of 23 CFR part 476 does not affect prior obligations under the Interstate withdrawal and substitution program, nor does it affect Interstate withdrawal and substitution funds that are still available. Rather, section 1045(b)(2) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) specifies that Interstate withdrawal and substitution funds remain available until expended. Moreover, States that still have Interstate withdrawal and substitution funds available to them can elect to deobligate those funds from a particular project and reobligate them to another eligible project. Any State interested in deobligating and reobligating Interstate withdrawal and substitution funds can contact its FHWA Division Office or FTA Regional Office to explore that possibility.

Rulemaking Analyses and Notices

Under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. The issuance of this rule without prior notice and opportunity for public comment is based on the good cause exceptions in 5 U.S.C. 553 (b)(3)(B). Seeking public comment is unnecessary and contrary to the public interest. This action is merely a ministerial action to remove an obsolete part from the CFR and the removal of this part will have no substantive impact. Therefore, the agencies would not anticipate receiving meaningful comments on a proposal to eliminate 23 CFR part 476. Prior notice is therefore unnecessary, and it would be contrary to the public interest to delay unnecessarily this effort to eliminate an outdated rule. Furthermore, the FHWA and the FTA believe that because the underlying statutory authority for 23 CFR part 476 no longer exists, we are eliminating any confusion that may be caused from the existence of 23 CFR part 476.

The APA also allows agencies, upon a finding of good cause, to make a rule effective immediately upon publication (5 U.S.C. 533(d)(3)). For the same reasons discussed above, the agencies also believe good cause exists for making this action effective immediately upon publication.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA and the FTA have determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal. The obsolete provision in law to withdraw Interstate System segments under part 476 was eliminated on June 9, 1998, by TEA–21. Substitute projects are essentially all complete and related funding fully utilized.

This final rule will not adversely affect, in a material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) the agencies have evaluated the effects of this action on small entities and have determined that the action will not have a significant economic impact on a substantial number of small entities.

This rule eliminates an obsolete part of title 23 of the Code of Federal Regulation. This will simply eliminate any confusion that could be generated by retaining these obsolete regulatory provisions. For these reasons, the FHWA and the FTA certify that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. This rule simply deletes an obsolete regulatory provision.

Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the agencies have determined that this action does not have sufficient federalism implications to warrant the preparation of a

[2] *See* final rule published on October 20, 1980, at 45 FR 69396.

[3] *See* section 1106(b) of TEA–21.

federalism assessment. The FHWA and the FTA have also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

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.

Paperwork Reduction Act

This action does not contain a collection of information requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agencies have analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and have determined that this action will not have any effect on the quality of the environment.

Executive Order 13175 (Tribal Consultation)

The FHWA and the FTA have analyzed this final action under Executive Order 13175, dated November 6, 2000, and believe that this action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Regulation Identification Number

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

List of Subjects in 23 CFR Part 476

Grant programs—transportation, Highways and roads, Mass transportation.

■ In consideration of the foregoing and under the authority of 23 U.S.C. 315, sec. 1106(b) of Public Law 105–178, 112 Stat. 107, 136 (1998), and 49 CFR 1.48, the FHWA and FTA are amending title 23, Code of Federal Regulations, by removing part 476, as follows:

PART 476—[REMOVED]

Issued on: November 20, 2003.

Mary E. Peters,

Federal Highway Administrator.

Jennifer L. Dorn,

Federal Transit Administrator.

[FR Doc. 03–29596 Filed 11–25–03; 8:45 am]

BILLING CODE 4910–22–P

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL

28 CFR Part 902

[NCPPC 106]

Dispute Adjudication Procedures

AGENCY: National Crime Prevention and Privacy Compact Council.

ACTION: Final rule.

SUMMARY: The Compact Council established pursuant to the National Crime Prevention and Privacy Compact (Compact) is publishing this rule to establish Dispute Adjudication Procedures. These procedures support Article XI of the Compact.

EFFECTIVE DATE: This final rule is effective on December 26, 2003.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Jeffrey D. Harmon, Compact Council Chairman, Maine State Police, 36 Hospital Street, Augusta, Maine 04333–0042, telephone number (207) 624–7060.

SUPPLEMENTARY INFORMATION: This document finalizes the Compact Council rule proposed in the **Federal Register** on November 25, 2002, (67 FR 70567). The Compact Council accepted comments on the proposed rule from interested parties until December 26, 2002, and is finalizing the rule with certain changes in response to the comments.

Significant Comments or Changes

Two comments from the same party questioned the Council's reference in the Supplementary Information that ''the Compact eliminates barriers to the sharing of criminal history record information among Compact parties for noncriminal justice purposes'', asking if the Compact encompassed all noncriminal justice purposes or only those criminal history record information requests supported by fingerprint submissions. The Council's response was that the Compact encompasses all noncriminal justice purposes. The second comment asked for verification of the quoted statement in the Supplementary Information that ''Article VI of the Compact provides for a Compact Council that has the authority to promulgate rules and procedures governing the use of the Interstate Identification Index (III) System for noncriminal justice purposes, not to conflict with the FBI administration of the III System for criminal justice purposes.'' The Council's response was that this is a direct quote from the Compact, 28 CFR 14616, Article VI.

Nine comments referencing particular subsections of the proposed rule were received from a second party. The first comment referenced the use of and subsequent referral to the term ''directly aggrieved'' (§ 902.2, paragraphs (a) and (b)). To eliminate what was interpreted as a ''circular'' reference, the Council is revising paragraph (a) to state,

''Cognizable disputes may be based upon:

* * * * *'',

while paragraph (b) is left unchanged.

A second comment asked the following questions about section 902.3(a): What if the dispute also poses a conflict of interest for the Chair? Could a deputy name the substitute member? The Council's original intent was that *any* Committee member with a conflict of interest would excuse him/herself from the hearing on that topic. Clarifying language is being added to 902.3 paragraph (a):

> In the case when the Compact Council Chair is the committee member with the conflict, the Chair shall take appropriate steps to appoint a replacement that resolves the conflict.

Comment 3, on section 902.3(c), labeled the use of the phrase ''lean toward'' as vague. The Council is modifying paragraph (c) to indicate that the dispute resolution committee shall recommend hearings to all disputants who raise issues that are not clearly frivolous or without merit, and that the committee will give written explanation

when a hearing is not recommended. Section 902.3(c) is being amended accordingly.

Another comment expressed a concern that subsection 902.4(b) seemed to allow only the Federal Bureau of Investigation or a Party State to appeal to the U.S. Attorney General when a hearing was denied. The Council modified this subsection to allow any disputant to appeal to the Attorney General and provide that the Attorney General has the discretion to consider the appeal and grant a hearing.

Comment 5 referred to 902.5, Hearing Procedures, asking if disputants would be allowed to cross-examine witnesses and introduce evidence at a hearing, if there was any way to compel the attendance of witnesses or production of documents, and if there are any restrictions on a disputant acting as his/her own attorney? The Council agreed to modify subsection (c)(4) to state, ''Call and cross-examine witnesses.'' Council discussion acknowledged there is no way to compel the attendance of witnesses or production of documents or to restrict a disputant acting as his/her own attorney.

Comment 6 referenced 902.5(e), asking if the intent of the Council was to allow a Council member who raised a dispute to participate fully in the hearing and vote on the final Council decision, as this could be construed as a conflict of interest. Based on input from the Department of Justice, the Council decided to leave the original language intact.

When Congress passed the National Crime Prevention and Privacy Compact Act of 1998, it set forth specific language regarding the composition of the Compact Council, with a particular number of members representing the states, federal agencies, and criminal/noncriminal justice constituencies, each seat representing a vote on issues—including the adjudication of disputes. Requiring a member to recuse himself from a dispute hearing might result in removing a particular constituency's vote, contravening the intent of Congress.

Another comment questioned the language in section 902.5(h), asking if recording and transcription of a hearing might not always be necessary. The Council agreed to modify the language as follows:

> The proceedings of the hearing will be recorded and, as necessary, transcribed. A transcript of the hearing shall be made and forwarded to the Attorney General if an appeal is filed pursuant to section (c) of Article XI of the Compact.

The next comment asked what defined a majority vote of Council members. According to Compact Article VI and the Council's Bylaws, section 8.8, a quorum of Council members or any Committee of the Council is defined as a simple majority. No vote shall be taken without a quorum. The Council is revising 902.5(i) to add the references to Article VI and the Bylaws.

A final comment questioned if the rule was modeled after any existing precedents. The Council responded that the rule was structured according to current administrative procedures, but was not modeled after an existing precedent.

Administrative Procedures and Executive Orders

Administrative Procedures Act

This rule is published by the Compact Council as authorized by the National Crime Prevention and Privacy Compact (Compact), an interstate/federal state compact which was approved and enacted into legislation by Congress pursuant to Pub. L. 105–251. The Compact Council is composed of 15 members (with 11 state and local governmental representatives), and is authorized by the Compact to promulgate rules and procedures for the effective and proper use of the Interstate Identification Index (III) System for noncriminal justice purposes. The Compact specifically provides that the Council shall prescribe rules and procedures for the effective and proper use of the III System for noncriminal justice purposes, and mandates that such rules, procedures, or standards established by the Council shall be published in the **Federal Register**. *See* U.S. 42 .*C.*16, Articles II(4), VI(a)(1) and VI(e). This publication complies with those requirements.

Executive Order 12866

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. 3502; accordingly, Executive Order 12866 in not applicable.

Executive Order 13132

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. 3502; accordingly, Executive Order 13132 is not applicable. Nonetheless, this Rule fully complies with the intent that the national government should be deferential to the States when taking action that affects the policymaking discretion of the States.

Executive Order 12988

The Compact Council is not an executive agency or independent establishment as defined in 5 U.S.C. 105; accordingly, Executive Order 12988 is not applicable.

Unfunded Mandates Reform Act

Approximately 75 percent of the Compact Council members are representatives of state and local governments; accordingly, rules prescribed by the Compact Council are not Federal mandates. Accordingly, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

The Small Business Regulatory Enforcement Fairness Act (Title 5, U.S.C. 801–804) is not applicable to the Council's rule because the Compact Council is not a ''Federal agency'' as defined by 5 U.S.C. 804(1). Likewise, the reporting requirement of the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act) does not apply. See 5 U.S.C. 804.

List of Subjects in 28 CFR Part 902

Administrative Practice and Procedure.

■ Accordingly, Chapter IX of Title 28 Code of Federal Regulations is amended by adding Part 902 to read as follows:

PART 902—DISPUTE ADJUDICATION PROCEDURES

Sec.

902.1 Purpose and authority.
902.2 Raising disputes.
902.3 Referral to Dispute Resolution Committee.
902.4 Action by Council Chairman.
902.5 Hearing procedures.
902.6 Appeal to the Attorney General.
902.7 Court action.

Authority: 42 U.S.C. 14616.

§ 902.1 Purpose and authority.

The purpose of Part 902 is to establish protocols and procedures for the adjudication of disputes by the Compact Council. The Compact Council is established pursuant to the National Crime Prevention and Privacy Compact (Compact), Title 42, U.S.C., Chapter 140, Subchapter II, Section 14616.

§ 902.2 Raising disputes.

(a) Cognizable disputes may be based upon:

(1) A claim that the Council has misinterpreted the Compact or one of the Council's rules or standards established under Article VI of the Compact;

(2) A claim that the Council has exceeded its authority under the Compact;

(3) A claim that in establishing a rule or standard or in taking other action, the Council has failed to comply with its bylaws or other applicable procedures established by the Council; or the rule, standard or action is not otherwise in accordance with applicable law; or

(4) A claim by a Compact Party that another Compact Party has failed to comply with a provision of the Compact or with any rule or standard established by the Council.

(b) Only a Party State, the FBI, or a person, organization, or government entity directly aggrieved by the Council's interpretation of the Compact or any rule or standard established by the Council pursuant to the Compact, or in connection with a matter covered under Section 902.2(a)(4), may raise a cognizable dispute. Such disputants may request a hearing on a dispute by contacting the Compact Council Chairman in writing at the Compact Council Office, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306.

(c) The Chairman may ask the requester for more particulars, supporting documentation or materials as the circumstances warrant.

(d) A dispute may not be based solely upon a disagreement with the merits (substantive wisdom or advisability) of a rule or standard validly established by the Council within the scope of its authority under the Compact. However, nothing in this rule prohibits further discussion of the merits of a rule or standard at any regularly scheduled Council meeting.

§ 902.3 Referral to Dispute Resolution Committee.

(a) The five person Dispute Resolution Committee membership shall be determined according to Compact Article VI (g). Should a dispute arise with an apparent conflict of interest between the disputant and a Committee member, the Committee member shall recuse himself/herself and the Compact Council Chairman shall determine an appropriate substitute for that particular dispute. In the case when the Compact Council Chairman is the committee member with the conflict, the Chairman shall take appropriate steps to appoint a replacement that resolves the conflict.

(b) The Compact Council Chairman shall refer the dispute, together with all supporting documents and materials, to the Council's Dispute Resolution Committee.

(c) The Dispute Resolution Committee shall recommend hearings to all disputants who raise issues that are not clearly frivolous or without merit. If the Committee recommends denying a hearing, it must articulate its reason or reasons for doing so in writing.

(d) The Dispute Resolution Committee shall consider the matter and:

(1) Refer it to the Council for a hearing;

(2) Recommend that the Council deny a hearing if the Committee concludes that the matter does not constitute a cognizable dispute under § 902.2(a); or

(3) Request more information from the person or organization raising the dispute or from other persons or organizations.

§ 902.4 Action by Council Chairman.

(a) The Chairman shall communicate the decision of the Dispute Resolution Committee to the person or organization that raised the dispute.

(b) If a hearing is not granted, the disputant may appeal this decision to the Attorney General. If the Attorney General believes the disputant has raised an issue that is not frivolous or without merit, the Attorney General may order the Compact Council Chairman to grant a hearing.

(c) If a hearing is granted, the Chairman shall:

(1) Include the dispute on the agenda of a scheduled meeting of the Council or, at the Chairman's discretion, schedule a special Council meeting;

(2) Notify the person or organization raising the dispute as to the date of the hearing and the rights of disputants under § 902.5 (Hearing Procedures); and

(3) Include the matter of the dispute in the prior public notice of the Council meeting required by Article VI (d)(1) of the Compact.

§ 902.5 Hearing procedures.

(a) The hearing shall be open to the public pursuant to Article VI (d)(1) of the Compact.

(b) The Council Chairman or his/her designee shall preside over the hearing and may limit the number of, and the length of time allowed to, presenters or witnesses.

(c) The person or organization raising the dispute or a Compact Party charged under the provisions of § 902.2(a)(4) shall be entitled to:

(1) File additional written materials with the Council at least ten days prior to the hearing;

(2) Appear at the hearing, in person and/or by counsel;

(3) Make an oral presentation; and

(4) Call and cross-examine witnesses.

(d) Subject to the discretion of the Chairman, other persons and organizations may be permitted to appear and make oral presentations at the hearing or provide written materials to the Council concerning the dispute.

(e) All Council members, including a member or members who raised the dispute that is the subject of the hearing shall be entitled to participate fully in the hearing and vote on the final Council decision concerning the dispute.

(f) The Council shall, if necessary, continue the hearing to a subsequent Council meeting.

(g) Summary minutes of the hearing shall be made and transcribed and shall be available for inspection by any person at the Council office within the Federal Bureau of Investigation.

(h) The proceedings of the hearing shall be recorded and, as necessary, transcribed. A transcript of the hearing will be made and forwarded to the Attorney General if an appeal is filed pursuant to Section (c) of Article XI of the Compact.

(i) The Council's decision on the dispute shall be based upon a majority vote of Council members or their proxies present (as per Compact Article VI and Council Bylaws) and voting at the hearing. The Council's decision on the dispute shall be published in the **Federal Register** as provided by Section (a)(2) of Article XI and Section (e) of Article VI.

(j) The Council Chairman shall advise Council members and hearing participants of the right of appeal provided by Section (c) of Article XI of the Compact.

§ 902.6 Appeal to the Attorney General.

(a) The Federal Bureau of Investigation or a Compact Party State may appeal the decision of the Council to the U.S. Attorney General pursuant to Section (c) of Article XI of the Compact.

(b) Appeals shall be filed and conducted pursuant to rules and procedures that may be established by the Attorney General.

(c) Appropriate notice of an appeal shall be communicated to the Council Chairman by the appealing party.

§ 902.7 Court action.

Pursuant to Section (c) of Article XI of the Compact, a decision by the Attorney General on an appeal under § 902.6 may be appealed by filing a suit seeking to have the decision reversed in the appropriate district court of the United States.

Dated: November 5, 2003.

Jeffrey D. Harmon,

Compact Council Chairman.

[FR Doc. 03–29568 Filed 11–25–03; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–046]

Drawbridge Operation Regulations; Buffalo Bayou, Houston, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Union Pacific Railroad Swing Span Bridge across Buffalo Bayou, mile 0.1, at Houston, Harris County, Texas. This deviation allows the bridge to remain closed to navigation from December 10, 2003, through December 21, 2003. The deviation is necessary to allow for replacement of the diesel motor that operates the bridge.

DATES: This deviation is effective from 6 a.m. on December 10, 2003, through 6 p.m. on December 21, 2003.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad has requested a temporary deviation in order to replace a motor on the swing span bridge across Buffalo Bayou at mile 0.1 at Houston, Harris County, Texas. This maintenance is essential for the continued safe operation of the bridge. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 6 a.m. on Wednesday, December 10, 2003, until 6 p.m. on Sunday, December 21, 2003. The bridge will not be able to open for emergencies during this time and no alternate routes are available. The vertical clearance of the bridge in the closed-to-navigation position is approximately 34 feet above mean low water, elevation 0.0.

Requests to open the bridge are infrequent with the most recent request on April 14, 2003. Waterway users consist mainly of small tows. Based upon coordination with waterway users and Vessel Traffic Service Houston/Galveston, it has been determined that this closure will not have a significant effect on these vessels.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 18, 2003.

Marcus Redford,

Bridge Administrator.

[FR Doc. 03–29593 Filed 11–25–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–047]

Drawbridge Operation Regulations; Amite River, Clio, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the SR 22 Swing Span Bridge across the Amite River, mile 6.0, at Clio, Livingston Parish, Louisiana. This deviation allows the bridge to remain closed to navigation from December 15, 2003, through December 19, 2003. The deviation is necessary to allow for replacement of a hydraulic cylinder on the bridge.

DATES: This deviation is effective from 6 a.m. on December 15, 2003, through 6 p.m. on December 19, 2003.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The State of Louisiana, Department of Transportation and Development (LDOTD), has requested a temporary deviation from the requirements of 33 CFR 117.422(a) in order to replace a hydraulic cylinder on the swing span bridge across the Amite River, mile 6.0, at Clio, Livingston Parish, Louisiana. This maintenance is essential for the continued safe operation of the bridge. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 6 a.m. on Monday, December 15, 2003, until 6 p.m. on Friday, December 19, 2003. The bridge will open for emergencies during this time with delays for the mobilization of equipment to swing the bridge. No alternate routes are available. The vertical clearance of the bridge in the closed-to-navigation position is approximately 4 feet above mean high water.

Presently, the draw of the S22 bridge opens on signal if at least four hours advanced notice is given. Records indicate that requests for the bridge to open are infrequent with only two vessels requesting openings last December. Waterway users consist mainly of small recreational vessel. It has been determined that this closure will not have a significant effect on these vessels.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 18, 2003.

Marcus Redford,

Bridge Administrator.

[FR Doc. 03–29592 Filed 11–25–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE059–1038a; FRL–7590–9]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Revisions to Delaware's Motor Vehicle Emissions Inspection Program and Low Enhanced Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Delaware State Implementation Plan (SIP). The revisions effect Delaware's Motor Vehicle Emissions Inspection Program and Low Enhanced Inspection and Maintenance Program. These revisions include a five-model-year vehicle exemption, the incorporation of a New Model Year Clean Screen provision, and the addition of an on-board diagnostic (OBD) systems check. EPA is approving these revisions to Delaware's SIP in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on January 26, 2004, without further notice, unless EPA receives adverse written comment by December 26, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in part III of the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, (215) 814–2174, or by e-mail at *magliocchetti.catherine@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 30, 2001, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted SIP revisions to Delaware Regulation 26: Motor Vehicle Emissions Inspection Program and Delaware Regulation 31: Low Enhanced Inspection and Maintenance (LEIM) Program. The revisions to Regulation 26 include a provision to exempt the five newest model year vehicles from inspection and an amendment to the program's waiver requirements. The revisions to Regulation 31 create a new car clean screen provision in the LEIM program. On September 24, 2001, DNREC submitted another SIP revision to Regulation 31 that incorporates an on-board diagnostics (OBD) systems check as part of the LEIM Program.

This rulemaking pertains to both the January 30, 2001 and September 24, 2001 SIP revisions submitted by DNREC to amend Regulations 26 and 31.

II. Summary of SIP Revision and EPA's Evaluation

On January 30, 2001, DNREC officially submitted a revision to EPA pertaining to SIP-approved Delaware Regulation 31. Regulation 31 for the LEIM program applies in Kent and New Castle Counties. The revision includes a new model year clean screen provision whereby newer model year vehicles may be exempt from exhaust and evaporative emissions testing when waiting lines at inspection stations are too long. The previous version of Regulation 31 called for the use of a low emitter profile (LEP) model to clean screen vehicles at the lanes during peak inspection periods. However, this LEP model clean screen provision of the previous version of Regulation 31 was not implemented, and long lines continued to be a problem during certain times. The main reason for not implementing the LEP clean screen program was the complexity of integrating the LEP program into the existing information systems. The revision to Regulation 31 replaces the LEP model clean screen provision with a new model year clean screen exemption to exempt vehicles that are less than eight model years old. The DNREC provided a modeling analysis that demonstrates that with this new model year clean screen provision, its LEIM program still meets the applicable performance standard required under the Federal I/M rule. Furthermore, DNREC's analysis demonstrates that with this revision to Regulation 31, its LEIM program provides more emission reductions that the previous version calling for the use of an LEP model to clean screen. For a more detailed evaluation of the modeling analysis, please see the Technical Support Document (TSD) prepared in support of this rulemaking action. Copies of that TSD are available from the EPA Regional Office listed in the **ADDRESSES** section of this document. EPA has determined that these revisions to Regulation 31 are consistent with the applicable requirements of the Federal I/M rule.

The DNREC's January 30, 2001 SIP revision submittal also included amendments to Delaware Regulation 26: Motor Vehicle Emissions Inspection Program, which only applies in Sussex County. The revisions to Regulation 26 include a provision to exempt the five newest model year vehicles from inspection and an amendment to the program's waiver requirements. EPA has determined that the five-year-model exemption and revised waiver provisions are consistent with the applicable requirements of the Federal I/M rule.

On September 24, 2001, DNREC submitted to EPA further revisions to Regulation 31 to incorporate an OBD systems check as part of the LEIM Program. This revision addresses the key components for making an OBD systems check part of a LEIM program such as implementation deadlines, model year coverage, test standards and procedures, waivers, and test reports. The September 24, 2001 submittal also revises Regulation 31 to clarify the test procedures for the Evaporative System Integrity Test (pressure test). EPA has determined that these revisions to Regulation 31 are consistent with the applicable requirements of the Federal I/M rule.

III. Final Action

EPA is approving the SIP revisions submitted by DNREC on January 30, 2001 pertaining to Regulations 26 and 31 and on September 24, 2001 pertaining to Regulation 31 as described in Section II of this document.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on January 26, 2004, without further notice unless EPA receives adverse comment by December 26, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number DE059–1038a in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

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

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *morris.makeba@epa.gov,* attention DE059–1038. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

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

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

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

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

Submittal of CBI Comments

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

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

Considerations When Preparing Comments to EPA

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

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

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

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

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

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

IV. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 26, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving revisions to Delaware Regulations 26 and 31 pertaining to vehicle inspection and maintenance programs may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: November 13, 2003.

Maria Parisi Vickers,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart I—Delaware

■ 2. In Section 52.420, the table in paragraph (c) is amended:

■ a. Under Regulation 26 by revising the entries for Section 1, Section 2, Section 4, Section 6, Section 9, and Technical Memorandum #1.

■ b. Under Regulation 31 by revising the entries for Section 1, Section 2, Section 3, Section 5, Section 6, Section 7, Section 8, Section 9, Section 13, Appendix 5(f), Appendix 6(a), Appendix 6(a)(8), and Appendix 9(a); and by adding an entry for Appendix 6(a)(9) after the existing entry for Appendix 6(a)(8).

The revisions and additions read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State Citation	Title/Subject	State effective date	EPA approval date	Additional explanation
*	* * * *	*	*	*
	Regulation 26 Motor Vehicle Emissions Inspection Program			
Section 1	Applicability and General Provisions	2/12/01	[11/26/03, Federal Register page citation]	
Section 2	Definitions	2/12/01	[11/26/03, Federal Register page citation]	
*	* * * *	*	*	*
Section 4	Exemptions	2/12/01	[11/26/03, Federal Register page citation]	
*	* * * *	*	*	*
Section 6	Compliance, Waivers and Extensions of Time	2/12/01	[11/26/03, Federal Register page citation]	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State Citation	Title/Subject	State effective date	EPA approval date	Additional explanation
*	* * * *	*	*	*
Section 9	Calibration and Test Procedures and Approved Equipment	2/12/01	[11/26/03, Federal Register page citation]	
Technical Memoranum #1.	Delaware Division of Motor Vehicles Vehicle Exhaust Emissions Test.	2/12/01	[11/26/03, Federal Register page citation]	Formally referred to as Technical Memorandum 1: Motor Vehicle Inspection and Maintenance Program Vehicle Test Procecure and Machine Calibration
*	* * * *	*	*	*
	Regulation 31 Low Enhanced Inspection and Maintenance Program			
Section 1	Applicability	10/11/01	[11/26/03, Federal Register page citation]	
Section 2	Low Enhanced I/M Performance Standard	10/11/01	[11/26/03, Federal Register page citation]	
Section 3	Network Type and Program Evaluation	10/11/01	[11/26/03, Federal Register page citation]	
*	* * * *	*	*	*
Section 5	Vehicle Coverage	10/11/01	[11/26/03, Federal Register page citation]	
Section 6	Test Procedures and Standards	10/11/01	[11/26/03, Federal Register page citation]	
Section 7	Waivers and Compliance Via Diagnostic Inspection	10/11/01	[11/26/03, Federal Register page citation]	
Section 8	Motorist Compliance Enforcement	10/11/01	[11/26/03, Federal Register page citation]	
Section 9	Enforcement Against Operators and Motor Vehicle Technicians.	10/11/01	[11/26/03, Federal Register page citation]	
*	* * * *	*	*	*
Section 13	Implementation Deadlines	10/11/01	[11/26/03, Federal Register page citation]	
*	* * * *	*	*	*
Appendix 5(f)	New Model Year Clean Screen	.....	[11/26/03, Federal Register page citation]	
Appendix 6(a)	Idle Test Procedure	10/11/01	[11/26/03, Federal Register page citation]	
*	* * * *	*	*	*
Appendix 6(a)(8) ..	Evaporative System Integrity (pressure) Test	10/11/01	[11/26/03, Federal Register page citation]	
Appendix 6(a)(9) ..	On-board Diagnostic Test Procedure	10/11/01	[11/26/03, Federal Register page citation]	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State Citation	Title/Subject	State effective date	EPA approval date	Additional explanation
*	* * * *	*	*	*
Appendix 9(a)	Enforcement Against Operators and Inspectors	10/11/01	[11/26/03, Federal Register page citation]	
*	* * * *	*	*	*

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[FR Doc. 03–29427 Filed 11–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 198–1198a; FRL–7591–4]

Approval and Promulgation of State Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves revisions in the Missouri state rules with regard to conformity requirements in Kansas City and St. Louis. These changes are made to incorporate amendments in the Federal transportation conformity rule effective on August 6, 2002. Approval of these revised rules will ensure consistency between the state and Federally-approved rules.

DATES: This direct final rule will be effective January 26, 2004, unless EPA receives adverse comments by December 26, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be submitted to Heather Hamilton, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Electronic comments should be sent either to *hamilton.heather@epa.gov,* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in ''What action is EPA taking'' in the **SUPPLEMENTARY INFORMATION** section.

Copies of documents relative to this action are available for public inspection during normal business hours at the EPA Region 7 location listed in the previous paragraph. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by E-mail at *hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this action?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

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

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Action?

The Missouri Department of Natural Resources (MDNR) has requested that

EPA approve changes to the transportation conformity rules; 10 CSR 10–2.390 for the Kansas City area, and 10 CSR 10–5.480 for the St. Louis area. The changes were adopted by the Missouri Air Conservation Commission on May 29, 2003, and became effective on September 30, 2003.

This revision will accomplish the implementation of the one-year grace period before conformity is required in areas that are designated non-attainment for a given air quality standard for the first time and will require that conformity be determined within 18 months of EPA's affirmative finding that the SIP's motor vehicle emissions budgets are adequate. The revision is consistent with the EPA regulation promulgated on August 6, 2002 (67 FR 50808).

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are taking direct final action to approve this revision. The revisions make changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number, MO 198–1198, in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified time 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. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

a. *Electronic mail.* Comments may be sent by e-mail to Heather Hamilton at *hamilton.heather@epa.gov.* Please include identification number, MO 198–1198, in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

b. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov,* click on ''To Search for Regulations,'' then select Environmental Protection Agency and use the ''go'' button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

2. *By Mail.* Written comments should be sent to the name and address listed in the **ADDRESSES** section of this document.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 26, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 13, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

■ 2. In § 52.1320 the table in paragraph (c) is amended by:

■ a. Revising the entry for 10–2.390 under Chapter 2.

■ b. Revising the entry for 10–5.480 under Chapter 5.

The revisions read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources Chapter 2—Air Quality Standards and Air Pollution Control Regulations for the Kansas City Metropolitan Area				
*	* * * * *	*	*	
10–2.390	Conformity to State Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. of the Federal Transit Act.	9/30/03	[*11/26/03, and FR page citation*]	
*	* * * * *	*	*	
Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area				
*	* * * * *	*	*	
10–5.480	Conformity to State Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. of the Federal Transit Act.	9/30/03	[*11/26/03, and FR page citation*]	
*	* * * * *	*	*	

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[FR Doc. 03–29425 Filed 11–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC–106–20336(w); FRL–7588–6]

Approval and Promulgation of Implementation Plans for North Carolina: Partial Removal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial removal of direct final rule.

SUMMARY: Due to comments received, EPA is publishing a partial removal of the direct final approval of revisions to the North Carolina State Implementation Plan (SIP) that was published on September 17, 2003 (68 FR 54362). EPA stated in the direct final rule that if EPA received comments by October 17, 2003, the rule would be withdrawn and not take effect, or if

comments were received on an amendment, paragraph, or section of this rule we may adopt as final those provisions of the rules that are not the subject of comments.

DATES: This rule is effective November 26, 2003.

FOR FURTHER INFORMATION CONTACT: Rosymar De La Torre Colón, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Phone number: 404/562–8965; E-mail: *delatorre.rosymar@epa.gov.*

SUPPLEMENTARY INFORMATION: On September 17, 2003 (68 FR 54406), EPA proposed to approve the following rules into the North Carolina State Implementation Plan: Sections 2D.0105, 2D.0507, 2D.0509, 2D.0515, 2D.0516, 2D.0521, 2D.0912, 2D.0927, 2D.0932, 2D.0952, 2D.0954 and 2D.0959. On the same day (68 FR 54362), EPA also published a direct final rule approving these rules into the SIP, and providing a 30-day public comment period and explained that if we received comments, we would withdraw the relevant direct final action.

We received comments, and are therefore removing the direct final approval of North Carolina's rule 2D.0952 ''Petition for Alternative Controls For RACT'' and 2D.0959 ''Petition for Superior Alternative Controls''. We are not opening an additional comment period. At a later date, we intend to respond to comments and finalize action on this rule based on the September 17, 2003 proposal. The other rules listed above are not affected by this withdrawal and are incorporated into the SIP as of November 17, 2003.

List of Subjects in 40 CFR Part 52

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

Dated: November 10, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

PART 52—[AMENDED]

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

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

Subpart II—North Carolina

■ 2. In § 52.1770(c), table 1 is amended under subchapter 2D by revising entries for: ''.0952'' and ''.0959'' to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED NORTH CAROLINA REGULATIONS

State Citation	Title/subject	State effective date	EPA approval date	Explanation
Subchapter 2D—Air Pollution Control Requirements				
Section .0900—Volatile Organic Compounds				
* * *	* * *	*	*	
Section .0952	Petition for Alternative Controls	05/01/95	02/01/96 62 FR 3589.	
* * *	* * *	*	*	
Section .0959	reserved.			
* * *	* * *	*	*	

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[FR Doc. 03–29429 Filed 11–25–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3556; MB Docket No.03–58; RM–10608]

Radio Broadcasting Services; Meigs and Pelham, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial.

SUMMARY: This document denies a Petition for Reconsideration filed by Mitchell County Television of action in the Report and Order in MB Docket 03–58. *See* 68 FR 40186, July 7, 2003. The Report and Order in this proceeding reallotted Channel 222A from Pelham, Georgia, to Meigs, Georgia, modifying the license for Station WQLI, in response to a petition filed by Mitchell County Television. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MB Docket No. 03–58, adopted November 12, 2003, and released November 14, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–29519 Filed 11–25–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 021209300–3048–02; I.D. 111903C]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Trip Limit Adjustments; Corrections

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

ACTION: Inseason adjustments to trip limits and rockfish conservation areas; partial closures of recreational fisheries; corrections; request for comments.

SUMMARY: NMFS announces changes to commercial fisheries trip limits and rockfish conservation areas (RCAs), as well as recreational fisheries closures and prohibitions for the Pacific Coast groundfish fishery. Trip limit adjustments include changes to the limited entry trawl Dover sole, thornyhead, and sablefish (DTS) limits north of 40°10′ N. lat. This action also expands the commercial trawl and non-trawl RCAs as well as the areas closed to recreational fishing to provide more protection for overfished continental shelf species, particularly canary rockfish and lingcod. These changes will be effective for the trawl ''A'' platoon, as well as the trawl ''B'' platoon, on November 21, 2003. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), will allow fisheries access to more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: Changes to management measures are effective November 21, 2003, until the 2004 annual specifications and management measures are effective, unless modified, superseded, or rescinded through a publication in the **Federal Register**. Comments on this rule will be accepted through December 26, 2003.

ADDRESSES: Submit comments to D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070; or Rod McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen or Jamie Goen (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736; and e-mail: *carrie.nordeen@noaa.gov* or *jamie.goen@noaa.gov.*

SUPPLEMENTARY INFORMATION

Electronic Access

This **Federal Register** document is available on the Government Printing Office's Web site at: *http://www.access.gpo.gov/su_docs/ca/docs/aces/aces140.html.* Background information and documents are available at the NMFS Northwest Region Web site at: *http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm* and at the Pacific Fishery Management Council's Web site at: *http://www.pcouncil.org.*

Background

The Pacific Coast Groundfish FMP and its implementing regulations at 50 CFR part 660, subpart G, regulate fishing for over 80 species of groundfish off the coasts of Washington, Oregon, and California. Annual groundfish specifications and management measures are initially developed by the Pacific Fishery Management Council (Pacific Council), and are implemented by NMFS. The groundfish specifications include acceptable biological catches (ABCs) and optimum yields (OYs) for groundfish species and species groups. The OYs are the annual harvest targets and management measures are implemented at the start of the season, and adjusted inseason, to allow the fishery to achieve, but not exceed, the OYs for groundfish. The ABCs are the maximum total mortality levels for species or species groups under sustainable management. Should catch levels approach the ABC, total mortality of that species or species group will be minimized in order to prevent exceeding the ABC and overfishing that species or species group. The specifications and management measures for the 2003 fishing year (January 1–December 31, 2003) were initially published in the **Federal Register** as an emergency rule for January 1–February 28, 2003 (68 FR 908, January 7, 2003) and as a proposed rule for March 1–December 31, 2003 (68 FR 936, January 7, 2003). The emergency rule was amended at 68 FR 4719, January 30, 2003, and the final rule for March 1–December 31, 2003 was published in the **Federal Register** on March 7, 2003 (68 FR 11182). The final rule has been subsequently amended at 68 FR 18166 (April 15, 2003), at 68 FR 23901 (May 6, 2003), at 68 FR 23924 (May 6, 2003), at 68 FR 32680 (June 2, 2003), at 68 FR 35575 (June 16, 2003), at 68 FR 40187 (July 7, 2003), at 68 FR 43473 (July 23, 2003), at 68 FR 52703 (September 5, 2003), and at 68 FR 60865 (October 24, 2003).

The following changes to current groundfish management measures were recommended by the Pacific Council, in consultation with Pacific Coast Treaty Tribes and the States of Washington, Oregon, and California, at its November 3–7, 2003, meeting in Del Mar, CA.

At the Pacific Council's November 3–7, 2003, meeting, the most recent commercial and recreational catch data were reviewed by the Pacific Council's Groundfish Management Team (GMT) in preparation for recommending inseason adjustments to the Pacific Council. These data included: Commercial landed catch data through the middle of October available in the Pacific Fishery Information Network (PacFIN); estimated discard in the commercial groundfish fisheries; recreational catch estimates through the end of August available in the Recreational Fishery Information Network (RecFIN); as well as estimated recreational catch through the end of October and projected recreational catch through the end of the year compiled by state agency personnel and GMT members. When the GMT reviewed these data, it became apparent that the RecFIN catch estimates for California, specifically nearshore rockfish, canary rockfish, and lingcod, during the months of July and August were significantly higher than the GMT had initially predicted for those months. RecFIN catch estimates for the State of California during July and August are as follows: shallow nearshore rockfish 88.2 mt (88,200 kg), deeper nearshore rockfish 748 mt (748,000 kg), lingcod 509 mt (509,000 kg), and canary rockfish 14 mt (14,000 kg).

While catch rate and the weight of individual fish were above average during this period, the principle factor contributing to the significantly higher than predicted RecFIN catch estimates is the exceptionally high estimates of effort (angler days) for the private and rental boat participants in northern California (north of 34°27′ N. lat.). This higher than expected influx of effort is estimated to have occurred during the first two months (July and August) of the fishery. It may be due, in part, to a NMFS and State of California prohibition on fishing between 40°10′ N. lat. and the U.S./Mexico border for the first six months of 2003.

Combining RecFin catch estimates from California with catch estimates from other recreational and commercial fisheries coastwide produces total mortality estimates that exceed harvest targets for groundfish species and/or

species groups. Specifically, the total mortality estimate for canary rockfish, an overfished species, through October is 52 mt (52,000 kg), as compared to its 2003 OY of 44 mt (44,000 kg) and ABC of 272 mt (272,000 kg); and the total mortality estimate for lingcod, another overfished species, through October is 956.4 mt (956,400 kg), as compared to its 2003 OY of 651 mt (651,000 kg) and ABC of 841 mt (841,000 kg). Additionally, the California state harvest guidelines for shallow nearshore rockfish (105 mt (105,000 kg)) and deeper nearshore rockfish (54 mt (54,000 kg)) are also predicted to be exceeded by the end of October.

Because of the magnitude of RecFIN catch estimates for the California recreational groundfish fisheries during July and August and its implications for other Pacific Coast groundfish fisheries for the remainder of the year, the California Department of Fish and Game (CDFG) staff thought these catch estimates warranted evaluation. Therefore, CDFG staff explored these data by stratifying RecFIN catch estimates by area (Area One is between 42°00′ N. lat. (Oregon/California border) and 40°10′ N. lat. and Area Two is between 40°10′ N. lat. and the 34°27′ N. lat.) as well as applying a historical effort estimate to replace the exceptionally high RecFIN effort estimate for July and August 2003. The historical estimate used was the next highest effort estimate from the July and August period which occurred during 1985. When RecFIN catch estimates were stratified by applying the effort and catch per unit effort (CPUE) for the two areas, the total mortality estimates for canary rockfish (48.3 mt (48,300 kg)) and lingcod (928.2 mt (928,200 kg)) were slightly lower than those estimated by unadjusted RecFIN data. When the unusually high RecFIN effort estimate for July and August was treated as an anomaly and replaced with the historical estimate described above, the estimated total mortality for canary rockfish was similar to the stratified estimate (47.8 mt (47,800 kg)). However, this technique of adjusting the RecFIN effort estimate reduced the total mortality estimate for lingcod to 821.2 mt (821,200 kg), a harvest level that still exceeds the lingcod OY but is about 20 mt (20,000 kg) below the lingcod ABC.

The Pacific Council reviewed RecFIN catch estimates, data presented by CDFG, statements on inseason adjustments prepared by the GMT and Groundfish Advisory Panel (GAP), as well as public testimony before recommending inseason adjustments to groundfish management measures for the remainder of 2003. In order to keep the harvest of canary rockfish and lingcod within levels that allow continued rebuilding, as well as minimizing the mortality of California nearshore rockfish species, the Pacific Council was faced with the need to recommend drastic inseason adjustments. In an effort to continue sustainable groundfish management while recognizing the economic importance of allowing fishery access to more abundant groundfish stocks, the Pacific Council recommended a series of inseason adjustments to groundfish management measures that would provide some fishery opportunities with minimal mortality of canary rockfish and lingcod.

Trawl Rockfish Conservation Area (RCA) Coastwide

In order to provide some year-end fishing opportunity for the trawl fleet while protecting canary rockfish and lingcod, the trawl RCA (the area closed to fishing for groundfish with trawl gear) is expanded in size for the remainder of the year to extend from the shoreline to specific latitude and longitude coordinates that approximate the 200-fm (366-m) depth contour and are modified to allow fishing for petrale sole. This increase in the size of the trawl RCA results in a change from the previously scheduled eastern trawl RCA boundary. That previously scheduled eastern trawl RCA boundary consisted of specific latitude and longitude coordinates approximating the 50-fm (91-m) depth contour between the U.S./Canada border and 40°10′ N. lat., coordinates approximating the 60-fm (110-m) depth contour between 40°10′ N. lat. and 34°27′ N. lat., and coordinates approximating the 100-fm (183-m) depth contour between 34°27′ N. lat. and the U.S./Mexico border. Expanding this closed area is intended to protect canary rockfish and lingcod by prohibiting trawling over the continental shelf, where canary rockfish and lingcod are found.

Year-end fishery access to deepwater, slope species, specifically petrale sole, is economically important to the limited entry trawl groundfish fleet. According to PacFIN, the coastwide exvessel price for petrale sole is currently averaging about one dollar per pound and last year's exvessel revenue generated by petrale sole landed with trawl gear was over three and a half million dollars. During winter months (November—February), petrale sole aggregate in certain areas along the coast to spawn. Within these ''petrale sole areas'', petrale sole can be harvested with a lower bycatch rate than in other areas. Because canary rockfish are typically found at depths shallower than 150-fm (274-m), allowing the petrale sole fishery to continue as previously scheduled is not predicted to result in additional mortality of canary rockfish. Using NMFS West Coast Groundfish Observer data, the effects of allowing the slope/petrale sole fishery to continue as previously scheduled is predicted to result in about 1 mt (1,000 kg) of additional lingcod take by the end of 2003.

In the inseason adjustment to Pacific Coast annual specifications and management measures for October—December (68 FR 60865, October 24, 2003), NMFS announced a western trawl RCA boundary with specific latitude and longitude coordinates approximating the 200-fm (366-m) depth contour which was modified to allow for petrale sole fishing. That boundary contained several errors, specifically it omitted boundary modifications to allow for fishing in the petrale sole areas off the states of Oregon and California. Therefore, this inseason action corrects that 200-fm (366-m) trawl RCA boundary by modifying it to allow for petrale fishing in areas where petrale sole aggregate.

Non-Trawl Rockfish Conservation Area (RCA) Coastwide

In 2003, the Pacific Coast non-trawl fleet has been severely constrained by low trip limits as well as limited nearshore fishing opportunities. Throughout the year, the non-trawl RCA (the area closed to fishing for groundfish with non-trawl gear) has extended from an eastern boundary ranging between the shoreline and specific latitude and longitude coordinates approximating the 30-fm (55-m) depth contour out to a western boundary ranging between specific latitude and longitude coordinates approximating the 100-fm (183-m) and 150-fm (274-m) depth contours. These management measures were designed to limit the incidental take of overfished groundfish species.

Much like inseason adjustments to the trawl RCA, the non-trawl RCA is similarly expanded to prevent further mortality of canary rockfish, lingcod, and California's nearshore rockfish species. In an effort to protect these species while still allowing access to more abundant deepwater groundfish stocks, the non-trawl RCA is expanded for the remainder of the year to extend from the shoreline to specific latitude and longitude coordinates that approximate the 200-fm (366-m) depth contour, modified to allow fishing for petrale sole, between the U.S./Canada border and 46°16′ N. lat. and from the shoreline to specific latitude and

longitude coordinates that approximate the 150-fm (274-m) depth contour between 46°16′ N. lat. and the U.S./Mexico border. This increase in the size of the non-trawl RCA results in a change from the previously scheduled non-trawl RCA. The previously scheduled non-trawl RCA boundary extended from the shoreline to specific latitude and longitude coordinates approximating the 100-fm (183-m) depth contour between the U.S./Canada border and 46°16′ N. lat., from specific latitude and longitude coordinates approximating the 27-fm (49-m) to the 100-fm (183-m) depth contours between the 46°16′ N. lat. and 40°10′ N. lat., from specific latitude and longitude coordinates approximating the 20-fm (37-m) to the 150-fm (274-m) depth contours between 40°10′ N. lat. and 34°27′ N. lat., and from the 30-fm (55-m) to the 150-fm (274-m) depth contours between 34°27′ N. lat. and the U.S./Mexico border.

The GMT predicted that allowing fishing to continue seaward of the expanded non-trawl RCA for the remainder of the year would result in no additional mortality of canary rockfish or California nearshore rockfish species and only minimal additional mortality of lingcod. No additional mortality of canary rockfish or the California nearshore rockfish species is predicted because these species are typically found at depths shallower than 150-fm (274-m). The GMT predicted that additional mortality of lingcod from the remaining non-trawl fishery would be minimal. According to NMFS shelf and slope survey data from the summers of 1984 to the present, 1 percent of lingcod catches occurred at depths greater than 150-fm (274-m) between the U.S./Canada border and 40°10′ N. lat. and 34 percent of lingcod catches occurred at depths greater than 150-fm (274-m) between 40°10′ N. lat. and the U.S./Mexico border. Because this adjustment to the non-trawl RCA is occurring from November 21, 2003, through December 31, 2003 the GMT has predicted that impacts on lingcod would be further reduced because lingcod typically move into shallower waters (less than 100-fm (183-m)) to spawn during winter months.

Limited Entry DTS Trawl Limits North of 40°10′ N. lat

Throughout 2003, differential trip limits, or trip limits that vary with gear type, have been in place for DTS (Dover sole, thornyheads, sablefish) species in the area between the U.S./Canada border and 40°10′ N. lat. Specifically, vessels that use large footrope or midwater trawl gear are offered higher DTS trip limits than those vessels that use small footrope gear. Because RCA regulations specify that small footrope and midwater trawl gear are the only limited entry trawl gears permitted shoreward of the trawl RCA while all limited entry trawl gears (large and small footrope, midwater) are permitted seaward of the RCA, the intent of the differential trip limits is to encourage fishing seaward of the trawl RCA rather than shoreward of the trawl RCA.

As discussed earlier, this inseason action is expanding the eastern boundary of the trawl RCA to the shoreline. Thus, there is no trawling opportunity shoreward of the trawl RCA from November 21, 2003, through December 31, 2003, and no need for differential trip limits. Therefore, the Pacific Council recommended that the differential DTS trip limits between the U.S./Canada border and 40°10′ N. lat. be removed for November and December. The previously scheduled DTS trip limits associated with the use of large footrope or midwater trawl gear (i.e., 7,000 lb (3,175 kg) per 2 months of sablefish, 4,500 lb (2,041 kg) per 2 months of longspine thornyhead, 900 lb (408 kg) per 2 months of shortspine thornyhead, and 30,000 lb (13,608 kg) per 2 months of Dover sole) will be available to vessels using all limited entry trawl gear types. This change is not expected to negatively affect continental shelf overfished species, because those waters are protected by the trawl RCA. Additionally, because this change does not increase overall limits for deepwater species, NMFS does not expect this action to increase the impact of the fishery on continental slope overfished species.

Recreational Groundfish Fisheries Coastwide

Much like the Pacific Coast commercial fisheries, the Pacific Coast recreational fisheries have been restricted in recent years to rebuild overfished groundfish species. Management measures intended to reduce the incidental take of overfished species in recreational fisheries include such things as decreased bag limits, reduced season length, and closed areas. An example of these restrictive management measures was evident this year in the California recreational fishery that occurs between 40°10′ N. lat. and the U.S./Mexico border. Historically, this recreational fishery has had year-round fishing opportunities. In an effort to keep this fishery's harvest levels within 2003 OYs for overfished species and within California harvest guidelines for target species, the season length for this fishery was reduced to six months and scheduled to extend from July through December. Despite this restricted season length, RecFIN catch estimates for California, specifically nearshore rockfish, canary rockfish, and lingcod, during the months of July and August were significantly higher than predicted. As discussed previously, combining RecFIN catch estimates from California with catch estimates from other recreational and commercial fisheries coastwide produces total mortality estimates which exceed harvest targets for some groundfish species and/or species groups. Therefore, the Pacific Council recommended inseason adjustments to recreational groundfish fisheries coastwide. From November 21, 2003, through December 31, 2003, recreational groundfish fisheries off the State of Washington will be prohibited seaward of the Federal/State three mile boundary. Effective November 13, 2003, the state of Washington took action to prohibit the retention of canary rockfish shoreward of the three mile boundary. Because inclement weather curtails recreational groundfish fisheries off Washington during winter months, the additional mortality of either canary rockfish or lingcod associated with this fishery occurring in State waters is predicted to be near zero. Additionally, recreational fishing for lingcod off Washington closed on October 16, 2003. Off the State of Oregon, recreational groundfish fisheries from November 21, 2003, through December 31, 2003, will be prohibited seaward of specific latitude and longitude coordinates approximating the 27-fm (49-m) depth contour and shoreward of the 27-fm (49-m) depth contour retention of canary rockfish and lingcod will be prohibited. Similarly to Washington, effort in Oregon's recreational groundfish fisheries during November and December is low. Because of this low effort, Oregon Department of Fish and Wildlife has predicted that the additional mortality associated with this fishery would be approximately 0.11 mt (110 kg) of canary rockfish and 0.09 mt (90 kg) of lingcod. Off the state of California, all recreational groundfish fisheries, with the exception of the fixed gear sanddab fishery, will be prohibited from November 21, 2003, through December 31, 2003. Because of the small hooks used in this recreational sanddab fishery, California Department of Fish and Game has predicted that the additional mortality of canary rockfish, lingcod, and California nearshore rockfish species would be near zero.

NMFS Actions

■ For the reasons stated herein, NMFS concurs with the Pacific Council's recommendations and hereby announces the following changes to the 2003 specifications and management measures (68 FR 11182, March 7, 2003, as amended at 68 FR 18166, April 15, 2003, at 68 FR 23901, May 6, 2003, at 68 FR 23925, May 6, 2003, at 68 FR 32680, June 2, 2003, at 68 FR 35575, June 16, 2003, at 68 FR 40187, July 7, 2003, at 68 FR 43473, July 23, 2003, at 68 FR 52703, September 5, 2003, and at 68 FR 60865, October 24, 2003) to read as follows:

■ 1. On pages 11218–11221, in section IV., under B. Limited Entry Fishery, at the end of paragraph (1), Table 3 (North), Table 3 (South), Table 4 (North), and Table 4 (South) are revised to read as follows:

IV. NMFS Actions

B. Limited Entry Fishery

(1) * * *

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Table 3 (North). 2003 Trip Limits and Gear Requirements[1/] for Limited Entry Trawl Gear North of 40°10' N. Latitude[2/]

Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

11/2003

	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area[10/] (RCA): North of 40°10' N. lat.	75 fm - 200 fm	50 fm - 200 fm	shoreline - 200 fm (line modified to incorporate petrale sole fishing grounds)

Small footrope or midwater trawl gear is required shoreward of the RCA; all trawl gear (large footrope, midwater trawl, and small footrope gear) is permitted seaward of the RCA.

A vessel may have more than one type of limited entry bottom trawl gear on board, but the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear. A vessel may not have limited entry bottom trawl gear on board if that vessel also has trawl gear on board that is permitted for use within a RCA, including limited entry midwater trawl gear, regardless of whether the vessel is intending to fish within a RCA on that fishing trip. **See IV.A.(14)(iv) for details.**

1	**Minor slope rockfish[3/]**	1,800 lb/ 2 months	
2	**Pacific ocean perch**	3,000 lb/ 2 months	
3	**DTS complex**		
4	Sablefish	9,000 lb/ 2 months, providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, shoreward or seaward of RCA) during the entire limit period, then the sablefish limit is 3,000 lb/2 months.	7,000 lb/ 2 months
5	Longspine thornyhead	11,500 lb/ 2 months, providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, shoreward or seaward of RCA) during the entire limit period, then the longspine thornyhead limit is 5,000 lb/ 2 months.	4,500 lb/ 2 months
6	Shortspine thornyhead	2,400 lb/ 2 months, providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, shoreward or seaward of RCA) during the entire limit period, then the shortspoine thornyheads limit is 1,000 lb/2 months.	900 lb/2 months

Table 3 (North). Continued

7	Dover sole	34,000 lb/ 2 months, providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, shoreward or seaward of RCA) during the entire limit period, then the Dover sole limit is 12,500 lb/ 2 months.	30,000 lb/ 2 months
8	**Flatfish**		
9	All other flatfish[4/]	All other flatfish plus petrale & rex sole: 100,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, inshore or offshore of RCA) during the entire limit period, then 20,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole.	100,000 lb/ 2 months
10	Petrale sole		Not limited
11	Rex sole	Included in all other flatfish	
12	Arrowtooth flounder	200,000 lb/ 2 months providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, inshore or offshore of RCA) during the entire limit period, then 5,000 lb/2 months.	
13	**Whiting[5/]**	Primary Season (only mid-water trawl permitted in the RCA)	10,000 lb/ trip
14	**Other Fish[9/]**	Not limited	
15	**Use of small footrope bottom trawl[7/] or mid-water trawl is required for landing all of the following species:**		
16	**Minor shelf rockfish and widow rockfish[3/]**	1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish	300 lb/ month
17	**Widow rockfish**		
18	mid-water trawl - permitted within the RCA	During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month	CLOSED[6/]
19	**Canary rockfish**	300 lb/ month	100 lb/ month

Table 3 (North). Continued

20	**Yellowtail**		
21	mid-water trawl - permitted within the RCA	During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month	CLOSED[6/]
22	small footrope trawl[7/]	In landings without flatfish, 1,000 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder. Total yellowtail landings not to exceed 10,000 lb/ 2 months, no more than 1,000 lb of which may be landed without flatfish.	
23	**Minor nearshore rockfish**	300 lb/ month	
24	**Lingcod**[8/]	1,000 lb/ 2 months	800 lb/ 2 months

1/ Gear requirements and prohibitions are explained above. See IV. A.(14).
2/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA
3/ Bocaccio and chilipepper are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.
4/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.
5/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).
6/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).
7/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.
8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.
10/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at IV. A.(19)(e), that may vary seasonally.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South). 2003 Trip Limits and Gear Requirements[1/] for Limited Entry Trawl Gear South of 40°10' N. Latitude[2/]

Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

11/2003

	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area[10/] (RCA):			
40°10' - 38° N. lat.	60 fm - 200 fm	60 fm - 200 fm	shoreline - 200 fm (line modified to incorporate petrale sole fishing grounds)
38° - 34°27' N. lat.	60 fm - 200 fm	60 fm - 200 fm	
South of 34°27' N. lat.	100 fm - 200 fm along the mainland coast; shoreline - 200 fm around islands	100 fm - 200 fm along the mainland coast; shoreline - 200 fm around islands	shoreline - 200 fm along the mainland coast; shoreline - 200 fm around islands (line modified to incorporate petrale sole fishing grounds)
Small footrope or midwater trawl gear is required shoreward of the RCA; all trawl gear (large footrope, midwater trawl, and small footrope gear) is permitted seaward of the RCA.			
A vessel may have more than one type of limited entry bottom trawl gear on board, but the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear. A vessel may not have limited entry bottom trawl gear on board if that vessel also has trawl gear on board that is permitted for use within a RCA, including limited entry midwater trawl gear, regardless of whether the vessel is intending to fish within a RCA on that fishing trip. **See IV.A.(14)(iv) for details.**			
1 **Minor slope rockfish[3/]**			
2 40°10' - 38° N. lat.	1,800 lb/ 2 months		
3 South of 38° N. lat.	30,000 lb/ 2 months		
4 **Splitnose**			
5 40°10' - 38° N. lat.	1,800 lb/ 2 months		
6 South of 38° N. lat.	30,000 lb/ 2 months		
7 **DTS complex**			
8 Sablefish	9,000 lb/ 2 months		7,000 lb/ 2 months
9 Longspine thornyhead	11,500 lb/ 2 months		4,500 lb/ 2 months
10 Shortspine thornyhead	2,400 lb/ 2 months		900 lb/ 2 months
11 Dover sole	34,000 lb/ 2 months		30,000 lb/ 2 months
12 **Flatfish**			
13 All other flatfish[4/]	All other flatfish plus petrale & rex sole: 70,000 lb/ 2 months, no more than 20,000 lb/ 2 months of which may be petrale sole		70,000 lb/ 2 months
14 Petrale sole			No limit
15 Rex sole	Included in all other flatfish		
16 Arrowtooth flounder	1,000 lb/ 2 months		No limit
17 **Whiting[5/]**	Primary Season (only mid-water trawl permitted within the RCA)		10,000 lb/ trip
18 **Other Fish[9/]**	Not limited		

Table 3 (South). Continued

19	**Use of small footrope bottom trawl[7/] or mid-water trawl is required for landing all of the following species:**		
20	**Minor shelf rockfish, widow, and chilipepper rockfish[3/]**	300 lb/ month	
21	**Widow rockfish**		
22	mid-water trawl - permitted within the RCA	CLOSED[6/]	
23	**Canary rockfish**	300 lb/ month	100 lb/ month
24	**Bocaccio**	CLOSED[6/]	
25	**Cowcod**	CLOSED[6/]	
26	**Minor nearshore rockfish**	300 lb/ month	
27	**Lingcod[8/]**	1,000 lb/ 2 months	800 lb/ 2 months

1/ Gear requirements and prohibitions are explained above. See IV. A.(14).
2/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA
3/ Yellowtail is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.
4/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.
5/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).
6/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).
7/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.
8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.
10/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat./long. coordinates set out at IV. A.(19)(e), that may vary seasonally.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (North). 2003 Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table 11/2003

		JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area[8/] (RCA):				
	North of 46°16' N. lat.	shoreline - 100 fm		shoreline - 200 fm (line modified to incorporate petrale sole fishing grounds)
	46°16' N. lat. - 40°10' N. lat.	27 fm - 100 fm		shoreline - 150 fm
1	**Minor slope rockfish[4/]**	No more than 25% of the weight of sablefish landed/ trip		1,800 lb/ 2 months
2	**Pacific ocean perch**	1,800 lb/ 2 months		
3	**Sablefish**	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months		300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months
4	**Longspine thornyhead**	9,000 lb/ 2 months		
5	**Shortspine thornyhead**	2,000 lb/ 2 months		
6	**Dover sole**	5,000 lb/ month		
7	**Arrowtooth flounder**			
8	**Petrale sole**			
9	**Rex sole**			
10	**All other flatfish[2/]**			
11	**Whiting[3/]**	10,000 lb/ trip		
12	**Minor shelf rockfish, widow, and yellowtail rockfish[4/]**	200 lb/ month		
13	**Canary rockfish**	CLOSED[5/]		
14	**Yelloweye rockfish**	CLOSED[5/]		
15	**Cowcod**	CLOSED[5/]		
16	**Minor nearshore rockfish**	4,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[6/]		
17	**Lingcod[7/]**	400 lb/ month		CLOSED[5/]
18	**Other fish[9/]**	Not limited		

Table 4 (North). Continued

1/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.

3/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).

4/ Bocaccio and chilipepper are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

6/ For black rockfish north of Cape Alava (48°09'30" N. lat.), and between Destruction Island (47°40'00" N. lat.) and Leadbetter Point (46°38'10" N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

7/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

8/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat./long. coordinates set out at IV. A.(19)(e), that may vary seasonally.

9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (South). 2003 Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table 11/2003

		JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area[7/] (RCA):				
	40°10' - 34°27' N. lat.	20 fm - 150 fm		shoreline - 150 fm
	South of 34°27' N. lat.	20 fm - 150 fm (also applies around islands) (See footnote 8 for description of Pt. Fermin/Newport South Jetty open area)	30 fm - 150 fm (also applies around islands)	shoreline - 150 fm
1	**Minor slope rockfish[4/]**			
2	40°10' - 38° N. lat.	No more than 25% of weight of sablefish landed/ trip		1,800 lb/ 2 months
3	South of 38° N. lat.	30,000 lb/ 2 months		
4	**Splitnose**			
5	40°10' - 38° N. lat.	1,800 lb/ 2 months		
6	South of 38° N. lat.	20,000 lb/ 2 months		
7	**Sablefish**			
8	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months		300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months
9	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb		
10	**Longspine thornyhead**	9,000 lb/ 2 months		
11	**Shortspine thornyhead**	2,000 lb/ 2 months		
12	**Dover sole**	5,000 lb/ month When fishing for Pacific sanddabs, vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs.		
13	**Arrowtooth flounder**			
14	**Petrale sole**			
15	**Rex sole**			
16	**All other flatfish[2/]**			
17	**Whiting[3/]**	10,000 lb/ trip		
18	**Minor shelf rockfish, widow, and yellowtail rockfish[4/]**	250 lb/ 2 months	200 lb/ 2 months	100 lb/ 2 months
19	**Canary rockfish**	CLOSED[5/]		
20	**Yelloweye rockfish**	CLOSED[5/]		
21	**Cowcod**	CLOSED[5/]		
22	**Bocaccio**	CLOSED[5/]		

Table 4 (South). Continued

23	**Minor nearshore rockfish**			
24	Shallow nearshore	400 lb/ 2 months	300 lb/ 2 months	200 lb/ 2 months
25	Deeper nearshore	500 lb/ 2 months	300 lb/ 2 months	200 lb/ 2 months
26	California scorpionfish	800 lb/ 2 months	CLOSED[5/]	
27	**Lingcod**[6/]	400 lb/ month, when nearshore open		CLOSED[5/]
28	**Other fish**[8/]	Not limited		

1/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.

3/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).

4/ Chilipepper rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

6/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

7/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at IV. A.(19)(e) that may vary seasonally.

8/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

9/ During July-August, between a line drawn due south from Point Fermin (33° 42' 30" N. lat.; 118° 17' 30" W. long.) and a line drawn due west from the Newport South Jetty (33° 35' 37" N .lat.; 117° 52' 50" W. long.,) vessels fishing for all federal groundfish species, except lingcod and all rockfish other than California scorpionfish, with hook&line and/or trap (or pot) gear may operate from shore to a seaward boundary line which approximates 50 fm.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

* * * * *

■ 2. On pages 11224 and 11225, in section IV., under C. Trip Limits in the Open Access Fishery, at the end of paragraph (1), Table 5 (North) and Table 5 (South) are revised to read as follows:

IV. NMFS Actions

C. Trip Limits in the Open Access Fishery

(1) * * *

Table 5 (North). 2003 Trip Limits for Open Access Gears North of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections IV. A. and C.
NMFS Actions before using this table 11/2003

		JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area[8/] (RCA):				
	North of 46°16' N. lat.	shoreline - 100 fm		shoreline - 200 fm (line modified to incorporate petrale sole fishing grounds)
	46°16' N. lat. - 40°10' N. lat.	27 fm - 100 fm		shoreline - 150 fm
1	**Minor slope rockfish[2/]**	Per trip, no more than 25% of weight of the sablefish landed		
2	**Pacific ocean perch**	100 lb/ month		
3	**Sablefish**	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months		300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months
4	**Thornyheads**	CLOSED[5/]		
5	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs.		
6	**Arrowtooth flounder**			
7	**Petrale sole**			
8	**Rex sole**			
9	**All other flatfish[3/]**			
10	**Whiting**	300 lb/ month		
11	**Minor shelf rockfish, widow and yellowtail rockfish[2/]**	200 lb/ month		
12	**Canary rockfish**	CLOSED[5/]		
13	**Yelloweye rockfish**	CLOSED[5/]		
14	**Cowcod**	CLOSED[5/]		
15	**Minor nearshore rockfish**	4,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[4/]		
16	**Lingcod[6/]**	300 lb/ month		CLOSED[5/]
17	**Other Fish[7/]**	Not limited		
18	**PINK SHRIMP EXEMPTED TRAWL** *(not subject to RCAs)*			
19	North	**Effective April 1 - October 31, 2003:** groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.		

Table 5 (North). Continued

20	**PRAWN EXEMPTED TRAWL** *(not subject to RCAs)*	
21	North	Groundfish 300 lb/trip. Limits and closures in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip.
22	**SALMON TROLL**	
23	North	Salmon trollers may retain and land up to 1lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons and RCA restrictions listed in the table above.

1/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ Bocaccio and chilipepper rockfishes are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.

4/ For black rockfish north of Cape Alava (48°09'30" N. lat.), and between Destruction Island (47°40' N. lat.) and Leadbetter Point (46°38'10" N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

6/ The size limit for lingcod is 24 inches (61 cm) total length.

7/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

8/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours, but specifically defined by lat./long. coordinates set out at IV. A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (South). 2003 Trip Limits for Open Access Gears South of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections IV. A. and C. NMFS Actions before using this table 11/2003

		JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[7/] (RCA):			
	40°10' - 34°27' N. lat.	20 fm - 150 fm		shoreline - 150 fm
	South of 34°27' N. lat.	20 fm - 150 fm (also applies around islands) (See footnote 8 for description of Pt. Fermin/Newport South Jetty open area)	30 fm - 150 fm (also applies around islands)	shoreline - 150 fm
1	**Minor slope rockfish[2/]**			
2	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed		
3	South of 38° N. lat.	10,000 lb/ 2 months		
4	**Splitnose**	200 lb/ month		
5	**Sablefish**			
6	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months		300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months
7	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb		
8	**Thornyheads**			
9	40°10' - 34°27' N. lat.	CLOSED[5/]		
10	South of 34°27' N. lat.	50 lb/ day, no more than 2,000 lb/ 2 months		
11	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. When fishing for Pacific sanddabs, vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb of weight per line are not subject to the RCAs.		
12	**Arrowtooth flounder**			
13	**Petrale sole**			
14	**Rex sole**			
15	**All other flatfish[3/]**			
16	**Whiting**	300 lb/ month		
17	**Minor shelf rockfish, widow and chilipepper rockfish[2/]**	250 lb/ 2 months	200 lb/ 2 months	100 lb/ 2 months
18	**Canary rockfish**	CLOSED[5/]		
19	**Yelloweye rockfish**	CLOSED[5/]		
20	**Cowcod**	CLOSED[5/]		
21	**Bocaccio**	CLOSED[5/]		
22	**Minor nearshore rockfish**			
23	Shallow nearshore	400 lb/ 2 months	300 lb/ 2 months	200 lb/ 2 months
24	Deeper nearshore	500 lb/ 2 months	300 lb/ 2 months	200 lb/ 2 months
25	California scorpionfish	800 lb/ 2 months	CLOSED[5/]	
26	**Lingcod[4/]**	300 lb/ month, when nearshore open		CLOSED[5/]
27	**Other Fish[6/]**	Not limited		

Table 5 (South). Continued

28	**PINK SHRIMP EXEMPTED TRAWL GEAR** *(not subject to RCAs)*		
29	South	**Effective April 1 - October 31, 2003:** Groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.	
30	**PRAWN AND, SOUTH OF 38°57'30" N. LAT., CALIFORNIA HALIBUT AND SEA CUCUMBER EXEMPTED TRAWL**		
31	**EXEMPTED TRAWL Rockfish Conservation Area[7/] (RCA):**		
32	40°10' - 38° N. lat.	60 fm - 200 fm	shoreline - 200 fm (line modified to incorporate petrale sole fishing grounds)
33	38° - 34°27' N. lat.		
34	South of 34°27' N. lat.	shoreline - 200 fm along the mainland coast; shoreline - 200 fm around islands	shoreline - 200 fm (line modified to incorporate petrale sole fishing grounds)
35		Groundfish 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57'30" N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 25).	

1/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.

4/ The size limit for lingcod is 24 inches (61 cm) total length.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

6/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

7/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours, but specifically defined by lat./long. coordinates set out at IV. A.(19)(e), that may vary seasonally.

8/ During July-August, between a line drawn due south from Point Fermin (33° 42' 30" N. lat.; 118° 17' 30" W. long.) and a line drawn due west from the Newport South Jetty (33° 35' 37" N .lat.; 117° 52' 50" W. long.,) vessels fishing for all federal groundfish species, except lingcod and all rockfish other than California scorpionfish, with hook&line and/or trap (or pot) gear may operate from shore to a seaward boundary line which approximates 50 fm.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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■ 3. On page 11226, in section IV., under D. Recreational Fishery, in column 2, paragraph (1)(a) is renumbered as paragraph (1)(a)(i), a new paragraph (1)(a) and paragraph (1)(a)(ii) are added, and paragraph(1)(b) is revised to read as follows:

* * * * *

(1) *Washington.* For each person engaged in recreational fishing seaward of Washington, the groundfish bag limit is 15 groundfish, including rockfish and lingcod, and is open year-round (except as specified below). The following sublimits and closed areas apply:

(a) *Closed Areas.*—

(i) *Yelloweye Rockfish Conservation Area.* The Yelloweye Rockfish Conservation Area, or YRCA, is a ''C-shaped'' area which is closed to recreational groundfish and halibut fishing. The YRCA is defined by latitude and longitude coordinates specified at 50 CFR 660.304(d).

(ii) *Federal waters (3–200 nautical miles).* Recreational groundfish fishing is prohibited in Federal waters, from 3 to 200 nautical miles offshore from November 21, 2003, through December 31, 2003.

(b) *Rockfish.* In areas seaward of Washington that are open to recreational groundfish fishing, there is a 10 rockfish per day bag limit. Taking and retaining yelloweye rockfish and canary rockfish is prohibited.

* * * * *

■ 4. On page 11226, in section IV., under D. Recreational Fishery, in column 2, paragraph (2) is revised to read as follows:

* * * * *

(2) *Oregon.* The bag limits for each person engaged in recreational fishing seaward of Oregon is 10 marine fish per day, which excludes salmon, tuna, surfperch, sanddab, lingcod, and baitfish, but which includes rockfish and other groundfish. The minimum size limit for cabezon retained in the recreational fishery is 15 in (38 cm). Within the 10 marine fish bag limit, no more than 1 may be yelloweye rockfish and taking and retaining canary rockfish and lingcod is prohibited. From November 21, 2003, through December 31, 2003, recreational groundfish fishing is prohibited seaward of specific latitude and longitude coordinates approximating the 27-fm (49-m) depth contour off Oregon. Coordinates for specific latitude and longitude coordinates approximating the 27-fm (49-m) depth contour are listed in section IV.A.(19)(e)(i). When the all-depth recreational fisheries for Pacific halibut (*Hippoglossus stenolopis*) are open, the first Pacific halibut taken of 32 in (81 cm) or greater in length may be retained. During the all-depth recreational fisheries for Pacific halibut, vessels with halibut on board may not take and retain, possess or land yelloweye rockfish or canary rockfish.

* * * * *

■ 5. On pages 11226 and 11227, in section IV., under D. Recreational Fishery, paragraphs (3)(a), (3)(a)(i), (3)(a)(ii), (3)(b)(ii) through (iv) are revised to read as follows:

* * * * *

(3) *California.* Seaward of California (north and south of 40°10′ N. lat.), California law provides that, in times and areas when the recreational fishery is open, there is a 20-fish bag limit for all species of finfish, within which no more than 10 fish of any one species may be taken or possessed by any one person. Retention of cowcod is prohibited in California's recreational fishery all year in all areas. Retention of all federally managed groundfish species, except sanddabs, is prohibited in the recreational fishery seaward of California November 21, 2003, through December 31, 2003.

(a) *North of 40°10′ N. lat.* In times and areas when the recreational fishery is open and for each person engaged in recreational fishing seaward of California north of 40°10′ N. lat., the following seasons, bag limits, and size limits apply:

(i) *RCG Complex.* The California rockfish, cabezon, greenling complex (RCG Complex), as defined in State regulations (Section 1.91, Title 14, California Code of Regulations), includes all rockfish, kelp greenling, rock greenling, and cabezon. This category does not include California scorpionfish, also known as ''sculpin.'' Recreational fishing for the RCG Complex is prohibited.

(ii) *Lingcod.* Recreational fishing for lingcod is prohibited.

* * * * *

(b) *South of 40°10′ N. lat.* In times and areas when the recreational fishery is open and for each person engaged in recreational fishing seaward of California south of 40°10′ N. lat., the following seasons, bag limits, size limits and closed areas apply:

(ii) *RCG Complex.* The California rockfish, cabezon, greenling complex (RCG Complex), as defined in State regulations (Section 1.91, Title 14, California Code of Regulations), includes all rockfish, kelp greenling, rock greenling, and cabezon. This category does not include California scorpionfish, also known as ''sculpin.'' Recreational fishing for the RCG Complex is prohibited.

(iii) *California scorpionfish.* California scorpionfish only occur south of 40°10′ N. lat. Recreational fishing for the California scorpionfish is prohibited.

(iv) *Lingcod.* Recreational fishing for lingcod is prohibited.

* * * * *

Additionally, there is a correction to the western trawl RCA boundary with specific latitude and longitude coordinates approximating the 200-fm (366-m) depth contour (modified to allow fishing for petrale sole) that was announced in an inseason action on October 24, 2003 (68 FR 60865).

1. On pages 60867–60870, in section IV., under A. General Definitions, paragraph (19)(e)(xviii) is revised to read as follows:

(xviii) * * *

* * * * *

(72) 46°15.99′ N. lat., 124°24.88′ W. long.;

(73) 46°14.22′ N. lat., 124°26.28′ W. long.;

(74) 46°11.53′ N. lat., 124°39.58′ W. long.;

(75) 46°08.77′ N. lat., 124°41.71′ W. long.;

(76) 46°05.86′ N. lat., 124°42.27′ W. long.;

(77) 46°03.85′ N. lat., 124°48.20′ W. long.;

(78) 46°02.34′ N. lat., 124°48.51′ W. long.;

(79) 45°58.99′ N. lat., 124°44.42′ W. long.;

(80) 45°49.74′ N. lat., 124°43.69′ W. long.;

(81) 45°49.68′ N. lat., 124°42.37′ W. long.;

(82) 45°40.83′ N. lat., 124°40.90′ W. long.;

(83) 45°34.88′ N. lat., 124°32.58′ W. long.;

(84) 45°13.04′ N. lat., 124°21.92′ W. long.;

(85) 45°00.17′ N. lat., 124°29.28′ W. long.;

(86) 44°50.99′ N. lat., 124°35.40′ W. long.;

(87) 44°46.87′ N. lat., 124°38.20′ W. long.;

(88) 44°48.25′ N. lat., 124°40.62′ W. long.;

(89) 44°41.34′ N. lat., 124°49.20′ W. long.;

(90) 44°23.30′ N. lat., 124°50.17′ W. long.;

(91) 44°13.19′ N. lat., 124°58.66′ W. long.;

(92) 43°57.37′ N. lat., 124°58.71′ W. long.;

(93) 43°52.32′ N. lat., 124°49.43′ W. long.;

(94) 43°51.35′ N. lat., 124°37.94′ W. long.;

(95) 43°49.73′ N. lat., 124°40.26′ W. long.;
(96) 43°39.06′ N. lat., 124°38.55′ W. long.;
(97) 43°28.85′ N. lat., 124°39.99′ W. long.;
(98) 43°20.22′ N. lat., 124°43.05′ W. long.;
(99) 43°13.29′ N. lat., 124°47.00′ W. long.;
(100) 43°10.64′ N. lat., 124°49.95′ W. long.;
(101) 43°04.26′ N. lat., 124°53.05′ W. long.;
(102) 42°53.93′ N. lat., 124°54.60′ W. long.;
(103) 42°47.57′ N. lat., 124°48.12′ W. long.;
(104) 42°46.19′ N. lat., 124°44.52′ W. long.;
(105) 42°41.75′ N. lat., 124°44.69′ W. long.;
(106) 42°38.81′ N. lat., 124°43.09′ W. long.;
(107) 42°31.83′ N. lat., 124°46.23′ W. long.;
(108) 42°32.08′ N. lat., 124°43.58′ W. long.;
(109) 42°30.96′ N. lat., 124°43.84′ W. long.;
(110) 42°28.41′ N. lat., 124°49.17′ W. long.;
(111) 42°24.80′ N. lat., 124°45.93′ W. long.;
(112) 42°19.71′ N. lat., 124°41.60′ W. long.;
(113) 42°15.12′ N. lat., 124°38.34′ W. long.;
(114) 42°12.35′ N. lat., 124°38.09′ W. long.;
(115) 42°04.38′ N. lat., 124°36.83′ W. long.;
(116) 41°59.98′ N. lat., 124°36.80′ W. long.;
(117) 41°47.79′ N. lat., 124°29.48′ W. long.;
(118) 41°21.01′ N. lat., 124°29.01′ W. long.;
(119) 41°13.50′ N. lat., 124°24.40′ W. long.;
(120) 41°11.00′ N. lat., 124°22.99′ W. long.;
(121) 41°06.69′ N. lat., 124°23.30′ W. long.;
(122) 40°54.73′ N. lat., 124°28.15′ W. long.;
(123) 40°53.95′ N. lat., 124°26.04′ W. long.;
(124) 40°49.96′ N. lat., 124°26.04′ W. long.;
(125) 40°44.49′ N. lat., 124°30.81′ W. long.;
(126) 40°40.58′ N. lat., 124°32.06′ W. long.;
(127) 40°36.09′ N. lat., 124°40.11′ W. long.;
(128) 40°34.19′ N. lat., 124°41.20′ W. long.;
(129) 40°32.93′ N. lat., 124°41.86′ W. long.;
(130) 40°31.28′ N. lat., 124°40.98′ W. long.;
(131) 40°29.68′ N. lat., 124°38.06′ W. long.;
(132) 40°25.01′ N. lat., 124°36.36′ W. long.;
(133) 40°22.28′ N. lat., 124°31.83′ W. long.;
(134) 40°16.96′ N. lat., 124°31.91′ W. long.;
(135) 40°17.59′ N. lat., 124°45.28′ W. long.;
(136) 40°13.23′ N. lat., 124°32.40′ W. long.;
(137) 40°10.14′ N. lat., 124°24.55′ W. long.;
(138) 40°06.45′ N. lat., 124°19.24′ W. long.;
(139) 40°07.08′ N. lat., 124°17.80′ W. long.;
(140) 40°05.55′ N. lat., 124°18.11′ W. long.;
(141) 40°04.74′ N. lat., 124°18.11′ W. long.;
(142) 40°02.35′ N. lat., 124°16.53′ W. long.;
(143) 40°01.13′ N. lat., 124°12.98′ W. long.;
(144) 40°01.55′ N. lat., 124°09.80′ W. long.;
(145) 39°58.54′ N. lat., 124°12.43′ W. long.;
(146) 39°55.72′ N. lat., 124°07.44′ W. long.;
(147) 39°42.64′ N. lat., 124°02.52′ W. long.;
(148) 39°35.96′ N. lat., 123°59.47′ W. long.;
(149) 39°34.61′ N. lat., 123°59.58′ W. long.;
(150) 39°34.79′ N. lat., 123°58.47′ W. long.;
(151) 39°33.79′ N. lat., 123°56.77′ W. long.;
(152) 39°33.03′ N. lat., 123°57.06′ W. long.;
(153) 39°32.20′ N. lat., 123°59.12′ W. long.;
(154) 39°07.81′ N. lat., 123°59.06′ W. long.;
(155) 39°03.06′ N. lat., 123°57.77′ W. long.;
(156) 38°52.26′ N. lat., 123°56.18′ W. long.;
(157) 38°50.21′ N. lat., 123°55.48′ W. long.;
(158) 38°46.81′ N. lat., 123°51.49′ W. long.;
(159) 38°45.28′ N. lat., 123°51.55′ W. long.;
(160) 38°42.76′ N. lat., 123°49.73′ W. long.;
(161) 38°41.53′ N. lat., 123°47.80′ W. long.;
(162) 38°41.41′ N. lat., 123°46.74′ W. long.;
(163) 38°38.01′ N. lat., 123°45.74′ W. long.;
(164) 38°37.19′ N. lat., 123°43.98′ W. long.;
(165) 38°35.26′ N. lat., 123°41.99′ W. long.;
(166) 38°33.38′ N. lat., 123°41.76′ W. long.;
(167) 38°19.95′ N. lat., 123°32.90′ W. long.;
(168) 38°14.38′ N. lat., 123°25.51′ W. long.;
(169) 38°09.39′ N. lat., 123°24.39′ W. long.;
(170) 38°10.09′ N. lat., 123°27.21′ W. long.;
(171) 38°03.76′ N. lat., 123°31.90′ W. long.;
(172) 38°02.06′ N. lat., 123°31.26′ W. long.;
(173) 38°00.01′ N. lat., 123°29.56′ W. long.;
(174) 37°58.07′ N. lat., 123°27.21′ W. long.;
(175) 37°55.02′ N. lat., 123°27.44′ W. long.;
(176) 37°51.39′ N. lat., 123°25.22′ W. long.;
(177) 37°43.94′ N. lat., 123°11.49′ W. long.;
(178) 37°35.96′ N. lat., 123°02.23′ W. long.;
(179) 37°23.48′ N. lat., 122°57.76′ W. long.;
(180) 37°23.23′ N. lat., 122°53.78′ W. long.;
(181) 37°13.97′ N. lat., 122°49.91′ W. long.;
(182) 37°09.98′ N. lat., 122°45.61′ W. long.;
(183) 37°07.38′ N. lat., 122°46.38′ W. long.;
(184) 37°00.64′ N. lat., 122°37.70′ W. long.;
(185) 36°57.40′ N. lat., 122°28.36′ W. long.;
(186) 36°59.21′ N. lat., 122°25.64′ W. long.;
(187) 36°56.90′ N. lat., 122°25.42′ W. long.;
(188) 36°57.43′ N. lat., 122°22.55′ W. long.;
(189) 36°55.43′ N. lat., 122°22.43′ W. long.;
(190) 36°52.27′ N. lat., 122°13.16′ W. long.;
(191) 36°47.10′ N. lat., 122°07.53′ W. long.;
(192) 36°47.10′ N. lat., 122°02.08′ W. long.;
(193) 36°43.76′ N. lat., 121°59.15′ W. long.;
(194) 36°38.84′ N. lat., 122°02.20′ W. long.;
(195) 36°30.82′ N. lat., 122°01.13′ W. long.;
(196) 36°30.94′ N. lat., 122°00.54′ W. long.;
(197) 36°25.99′ N. lat., 121°59.50′ W. long.;
(198) 36°22.00′ N. lat., 122°01.02′ W. long.;
(199) 36°19.01′ N. lat., 122°05.01′ W. long.;

(200) 36°14.73′ N. lat., 122°01.55′ W. long.;
(201) 36°14.03′ N. lat., 121°58.09′ W. long.;
(202) 36°09.74′ N. lat., 121°45.01′ W. long.;
(203) 36°06.75′ N. lat., 121°40.73′ W. long.;
(204) 35°58.19′ N. lat., 121°34.63′ W. long.;
(205) 35°52.21′ N. lat., 121°32.46′ W. long.;
(206) 35°51.21′ N. lat., 121°30.94′ W. long.;
(207) 35°46.28′ N. lat., 121°30.29′ W. long.;
(208) 35°33.67′ N. lat., 121°20.09′ W. long.;
(209) 35°31.33′ N. lat., 121°15.22′ W. long.;
(210) 35°23.29′ N. lat., 121°11.41′ W. long.;
(211) 35°15.26′ N. lat., 121°04.49′ W. long.;
(212) 35°07.05′ N. lat., 121°00.26′ W. long.;
(213) 35°07.46′ N. lat., 120°57.10′ W. long.;
(214) 34°44.29′ N. lat., 120°54.28′ W. long.;
(215) 34°44.23′ N. lat., 120°58.27′ W. long.;
(216) 34°32.33′ N. lat., 120°50.23′ W. long.;
(217) 34°27.00′ N. lat., 120°42.55′ W. long.;
(218) 34°17.72′ N. lat., 120°19.26′ W. long.;
(219) 34°22.45′ N. lat., 120°12.81′ W. long.;
(220) 34°21.36′ N. lat., 119°54.88′ W. long.;
(221) 34°09.95′ N. lat., 119°46.18′ W. long.;
(222) 34°09.08′ N. lat., 119°57.53′ W. long.;
(223) 34°07.53′ N. lat., 120°06.35′ W. long.;
(224) 34°10.54′ N. lat., 120°19.07′ W. long.;
(225) 34°14.68′ N. lat., 120°29.48′ W. long.;
(226) 34°09.51′ N. lat., 120°38.32′ W. long.;
(227) 34°03.06′ N. lat., 120°35.54′ W. long.;
(228) 33°56.39′ N. lat., 120°28.47′ W. long.;
(229) 33°50.25′ N. lat., 120°09.43′ W. long.;
(230) 33°37.96′ N. lat., 120°00.08′ W. long.;
(231) 33°34.52′ N. lat., 119°51.84′ W. long.;
(232) 33°35.51′ N. lat., 119°48.49′ W. long.;
(233) 33°42.76′ N. lat., 119°47.77′ W. long.;
(234) 33°53.62′ N. lat., 119°53.28′ W. long.;
(235) 33°57.61′ N. lat., 119°31.26′ W. long.;
(236) 33°56.34′ N. lat., 119°26.04′ W. long.;
(237) 33°57.79′ N. lat., 119°26.85′ W. long.;
(238) 33°58.88′ N. lat., 119°20.06′ W. long.;
(239) 34°02.65′ N. lat., 119°15.11′ W. long.;
(240) 33°59.02′ N. lat., 119°02.99′ W. long.;
(241) 33°57.61′ N. lat., 118°42.07′ W. long.;
(242) 33°50.76′ N. lat., 118°37.98′ W. long.;
(243) 33°38.41′ N. lat., 118°17.03′ W. long.;
(244) 33°37.14′ N. lat., 118°18.39′ W. long.;
(245) 33°35.51′ N. lat., 118°18.03′ W. long.;
(246) 33°30.68′ N. lat., 118°10.35′ W. long.;
(247) 33°32.49′ N. lat., 117°51.85′ W. long.;
(248) 32°58.87′ N. lat., 117°20.36′ W. long.; and
(249) 32°35.53′ N. lat., 117°29.67′ W. long.

* * * * *

Classification

These actions are authorized by the Pacific Coast groundfish FMP and its implementing regulations, and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (*see* **ADDRESSES**) during business hours.

The Assistant Administrator for Fisheries (AA), NMFS, finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity for comment would be impracticable. It would be impracticable because affording prior notice and opportunity for public comment would impede the Agency's function of managing fisheries to protect overfished groundfish species while allowing the harvest of more abundant groundfish species. Based on the best available science, it is predicted that harvest levels in the Pacific Coast groundfish fishery exceeded the ABC for lingcod and the OY for canary rockfish, both overfished groundfish species, during October. The inseason adjustments in this document primarily include increases to closed areas, or RCAs, and prohibitions in recreational groundfish fisheries to minimize the total mortality of canary rockfish and lingcod and allow for the continued rebuilding of those overfished stocks. These inseason adjustments must be implemented in a timely manner to reduce the magnitude of overfishing on lingcod and the amount by which the canary rockfish OY is exceeded. Additionally, this inseason action contains a correction to the western boundary of the trawl RCA and non-differential trip limits for DTS species. This correction to the trawl RCA and adjusted DTS trip limits allow fishers to access groundfish allocations without exceeding the OY for those species and with minimal effects on overfished or depleted stocks. Delaying these adjustments could prevent the industry from obtaining the intended economic benefits associated with these adjustments. The Pacific Coast commercial groundfish fishery is managed by trip limits and area closures, most of which are based on a 2-month cumulative period (January-February, March-April, May-June, July-August, September-October, November-December). Because the last 2-month cumulative period began on November 1, 2003, these actions should be implemented as soon as possible to protect overfished groundfish species and allow access to more abundant groundfish stocks. The affected public had the opportunity to comment on these actions at the November 3–7, 2003, Pacific Council meeting in Del Mar, CA. For these reasons, good cause also exists to waive the 30-day delay in effectiveness requirement of 5 U.S.C. 553(d)(3).

These actions are taken under the authority of 50 CFR 300.63(a)(3) and 660.323(b)(1), and are exempt from review under Executive Order 12866.

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

Dated: November 21, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–29584 Filed 11–21–03; 4:50 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 68, No. 228
Wednesday, November 26, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AH31

Licensing Proceeding for the Receipt of High-Level Radioactive Waste at a Geologic Repository: Licensing Support Network, Submissions to the Electronic Docket

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its Rules of Practice applicable to the use of the Licensing Support Network (LSN) and the electronic hearing docket in the licensing proceeding on the disposal of high-level radioactive waste at a geologic repository. The proposed amendments would establish the basic requirements and standards for the submission of adjudicatory materials to the electronic hearing docket by parties to the high-level radioactive waste licensing proceeding. The proposed amendments would also address the issue of reducing the unnecessary loading of duplicate documents on individual participant Licensing Support Network document collection servers; the continuing obligation of LSN participants to update their documentary material after the initial certification; the Secretary of the Commission's determination that the DOE license application is electronically accessible; and the provisions on material that may be excluded from the LSN.

DATES: Submit comments by January 12, 2004. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number RIN 3150-AH31 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, telephone (301) 415–1642, e-mail *FXC@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Commission's regulations in 10 CFR part 2, subpart J, provide for, among other things, the use of an electronic information management system to provide documents related to the high-level radioactive waste (HLW) licensing proceeding. Originally promulgated on April 14, 1989 (54 FR 14944), the information management system required by Subpart J is to have the following functions:

(1) The Licensing Support Network (LSN) provides full text search and retrieval access to the relevant documents of all parties and potential parties to the HLW licensing proceeding in the time period before the U.S. Department of Energy (DOE) license application for the repository is submitted;

(2) The NRC Electronic Information Exchange (EIE) provides for electronic submission of filings by the parties, as well as the orders and decisions of the Atomic Safety and Licensing Board Panel (ASLBP), during the proceeding; and

(3) The Electronic Hearing Docket (EHD) provides for the development and access to an electronic version of the HLW licensing proceeding docket.

The creation of the LSN (originally called the ''Licensing Support System'') was stimulated by the requirements of Section 114(d)(2) of the Nuclear Waste Policy Act of 1982 (NWPA). This provision sets as a goal Commission issuance of a final decision approving or disapproving issuance of the construction authorization for a geologic repository for HLW within three years of the docketing of the DOE license application. The Commission anticipated that the HLW proceeding would involve substantial numbers and volumes of documents created by well-informed parties on numerous and complex issues. The Commission believed that the LSN could facilitate the timely review of DOE's license application by providing for electronic access to relevant documents via the LSN before the license application is submitted, rather than the traditional, and potentially time-consuming, discovery process associated with the physical production of documents after

a license application is submitted. In addition, the Commission believed that early access to these documents in an electronically searchable form would allow for a thorough and comprehensive technical review of the license application by all parties and potential parties to the HLW licensing proceeding, resulting in better focused contentions in the proceeding. The LSN would also facilitate agency responses to Freedom of Information Act (FOIA) requests by providing the public with electronic access to relevant documents.

The current requirements in 10 CFR 2.1003(a) require the DOE to make its documentary material available to other potential parties and the public in electronic form via the LSN no later than six months in advance of DOE's submission of its license application to the NRC. The NRC must make its documentary material available in electronic form via the LSN no later than thirty days after the DOE certification of compliance. All other participants must make their documents available in electronic form no later than ninety days after the DOE certification of compliance. Originally, the LSN was conceived of as a large, centralized information management system administered by what was then called the Licensing Support System Administrator (now the LSN Administrator). To take advantage of the advances in technology that occurred since the promulgation of the original rule, the Commission revised the rule to use the Internet to link geographically dispersed sites rather than relying on a complex and expensive centralized system (63 FR 71729; December 30, 1998).

The proposed amendments would address a number of aspects of the current rules:

- The requirements and standards for a party's submissions to the electronic docket for the HLW licensing proceeding;
- Those provisions that could result in the loading of duplicate documents on individual participant LSN document collection servers;
- The provisions related to the Secretary of the Commission's determination that the DOE license application is electronically accessible; .
- Those provisions related to the continuing obligation of LSN participants to update their documentary material; and
- Those provisions on material that may be excluded from the LSN.

The Commission has consulted the LSN Advisory Review Panel (LSNARP) on the document format standards and the document duplication issues that are the subject of these proposed revisions. The Commission, which appreciates the advice of the LSNARP on these items, anticipates additional interaction with the LSNARP on matters raised in the proposed rule, and will further evaluate any LSNARP advice in conjunction with its evaluation of the public comments received on these proposed revisions.

II. Submissions to the Electronic Docket for the Hearing

As noted, one of the objectives of the regulations in 10 CFR Part 2, Subpart J is to provide for electronic submission of filings by the parties, as well as the orders and decisions of the ASLBP, during the proceeding. The objective of this function is to reduce the time that it takes to serve filings by substituting electronic transmission for the physical mailing of filings that is typically used in NRC licensing proceedings. Shortening the amount of time for certain activities during the hearing process will support the NRC's efforts to meet the schedule in the NWPA. Section 2.1013(c)(1) requires that all filings in the HLW licensing proceeding be transmitted electronically (emphasis added) by the submitter to the Presiding Officer, the parties, and the Secretary of the Commission. The Commission believes that the majority of these filings will consist of simple documents that can be readily transmitted by EIE. However, after further considering the nature of some of the documents that may be submitted by the parties during the proceeding, the Commission believes that it is necessary to specify requirements for submitting large and/or complex documents.

Large documents consist of electronic files that, because of their size, create challenges for both the NRC staff, potential parties and the public when transmitting, viewing, or downloading the document (*e.g.*, significant delays in transmission, uploading, or downloading times). The Commission anticipates that the potential license application and some filings in the HLW adjudicatory proceeding will be of a size that will create transmission, viewing, or downloading challenges. In electronic format, some of these files could be up to several hundreds of megabytes (MB) in size. Examples of potential large documents are:

- DOE Site Characterization Plan
- DOE License Application and supporting materials
- DOE Environmental Impact Statement
- Adjudicatory documents (*e.g.*, motions, responses, transcripts, exhibits, and orders)

Additionally, any or all of these types of documents could contain embedded photographs, charts, tables, and other graphics.

Complex documents consist (entirely or in part) of electronic files having substantial portions that are neither textual nor image in nature. For example, these types of specialized documents may include:

- Executable files, which can be opened (run) to execute a programmed series of instructions on a computer or network;
- Runtime executable software, which generally is operational upon demand without being installed on a computer or network;
- Viewer or printer executable software that causes images to be displayed on the computer monitor or pages to print on an attached printer;
- Files from a dynamic link library (.dll), which are a collection of small, bundled executable programs that each provide one or more distinctive functions used by application programs and operating systems and are available when needed by applications or operating systems;
- Large data sets associated with an executable; and
- Actual software code for analytical programs that a party may intend to introduce into the proceeding.

As part of complex document submittals, the NRC anticipates receiving files that—

(1) Due to their file size, may preclude easy transmission, retrieval, and use; or

(2) May require specialized software and/or hardware for faithful display and subsequent use; and

(3) May not be suitable for inclusion in a ''generic'' file format such as the Adobe'' Acrobat Portable Document Format (PDF).

Examples of files that could be part of a complex document are:

- Maps.
- Databases.
- Simulations.
- Audio files.
- Video files.
- Executable programs.

Some of the problems posed by the electronic transmission of these large or complex documents are:

Electronic Submission Process

When submitted via the Internet, very large documents or files can cause ''time-out'' problems for computers at either end of the transfer, resulting in a failed or canceled transfer. Time-outs occur when a computer program terminates prematurely, sometimes because the computer notices a lapse in interaction with the user during the long

amount of time needed to transfer a large document. Transmission times are dependent on the speed of the sender's communication device and the technology used by the Internet service provider. Large documents or files require lengthy transmission times during which the potential for error conditions or other service interruptions increases in direct proportion to the time the communication link must be maintained. Service interruptions can result from human error, excessive network traffic, or network component failure that prevent users from communicating with other users or networks over a local network connection or the Internet. The time-out problems could affect each party who receives the documents as part of the service of a filing. The actual transfer times for very large documents or files may approach 24 hours using standard Internet File Transfer Protocol (FTP) routines. In terms of ensuring timeliness, this may not be a significant improvement over the use of an overnight courier to send the files on optical storage media (*e.g.*, CD–ROM).

Access to Large, Complex Documents in the Electronic Hearing Docket (EHD)

Keeping a large document together in one very large file may allow users to easily search for, retrieve, and analyze the document in its entirety, but may result in service interruption problems similar to those described above. This is particularly true if a user wants to download the image file of one of these large documents. Retrieval time will be unacceptably slow, or will result in a time-out problem with the user's Internet connection. Users of the EHD may encounter comparable download delays because of the file size of large or complex documents and, depending on the nature of the file, the file may not be executable on a user's desktop personal computer because of configuration, memory, display, or other technical problems.

Use of Large, Complex Documents in a Hearing Room

Large documents may be pre-filed in their entirety as potential exhibits in the hearing docket; however, in the hearing room, it is possible that only portions of such documents, *i.e.*, chapters, pages, or paragraphs will be offered. In a dynamic and fast-paced hearing room environment, it would not be desirable to delay the proceeding to wait for a large file to load; navigate to the desired chapters, pages, or paragraphs; and then extract the appropriate selection for use in the proceeding. Complex documents may also require specialized hardware and/or software to execute software program files and access their associated data.

Official Record and Federal Records Management Considerations

For both large and complex documents, the NRC must consider the need to generate an official record of the proceeding for use in potential appellate environments, see 10 CFR 2.1013(a), and for generating an Official Agency Record (OAR) version of the docketed materials for retirement to the National Archives and Records Administration (NARA). Each of these situations requires the ability to reassemble the record version of the documentary material (excluding software executables), independent of the media or software initially used to create it.

In response to these potential problems, the Commission is proposing a revised framework for the submission of filings during the HLW licensing proceeding. This revised framework is based on segmenting large documents using manageable file size units to reduce the potential for interruption or delay in transmission, uploading, or downloading. For example, large documents could be segmented into pieces, which correspond to the organization (chapters or sections) of the document, in order to address the transfer and retrieval performance problems discussed above. The author of the document would be in the best position to break up document files into usable segments without adversely impacting the organization or content of the document.

The electronic submission of filings in the HLW licensing proceeding must be made via the Internet using the NRC EIE, when practicable. The EIE is an electronic transfer mechanism being established by the NRC for electronic transmission of documents to the agency via the Internet. EIE provides for the transmission of documents in a verifiable and certifiable mode that includes digital signatures.

The proposed amendments would revise § 2.1001 to establish three categories of electronic filings for purposes of the HLW licensing proceeding and would revise § 2.1013(c)(1) to specify the submission requirements for these three categories of electronic filings.

''*Simple documents*'' are textual or graphic oriented material that are less than 50 megabytes (MB) in size. These documents are transmitted electronically via EIE as contemplated by the current 10 CFR 2.1011. Test results have demonstrated that 50 MB is a reasonable size for downloading files across wide area networks or from the Internet via phone lines.

''*Large documents*'' are those that have textual or graphic oriented material larger than 50 MB in size. Under proposed § 2.1013(c)(1)(ii), these documents must be submitted via the EIE in multiple transmissions of 50 MB each. The large document submission may also be supplemented with a courtesy copy on optical storage media to provide NRC staff, parties, and interested governmental participants in the HLW licensing proceeding with a useful reference copy of the document. For purposes of the NRC staff review of the DOE license application, as opposed to an electronic submission to the adjudicatory docket, the requirements for DOE's submission of the license application are already specified 10 CFR 63.22 of the Commission's regulations. Section 63.22(a) specifies that the application, any amendments to the application, and an accompanying environmental impact statement and any supplements, must be signed by the Secretary of Energy or the Secretary's representative and must be filed with the Director in triplicate on paper and optical storage media. In addition, 10 CFR 63.22(b) requires that 30 additional copies of the license application be submitted on paper and optical storage media.

''Complex documents'' are any combination of the following:

- Textual or graphic-oriented electronic files
- Electronic files that cannot be segmented into 50 MB files
- Other electronic objects, such as computer programs, simulations, video, audio, data files, and files with special printing requirements.

Under proposed § 2.1013(c)(1)(iii), those portions of complex documents that can be electronically submitted through the EIE, again in 50 MB or less segments, will be transmitted electronically. Those portions that are not amenable to electronic transmission will be delivered on optical storage media. The optical storage media must include the complete document, *i.e.*, include the portions of the document that have been delivered via the EIE.

In addition to these proposed revisions, § 2.1013 (c)(1) would also be amended to require the following:

- Electronic submissions must have 300 dots per inch (dpi) as the minimum resolution for bi-tonal, color, and grayscale resolution.
- Electronic submissions must be in the appropriate PDF output format. These formats and their use are:

• PDF—Formatted Text and Graphics—use for textual documents converted from native applications
• PDF—Searchable Image (Exact)—use for textual documents converted from scanned documents +
• PDF—Image Only—use for graphic-, image-, and forms-oriented documents

Tagged Image File Format (TIFF) images and the results of spreadsheet applications will need to be converted to PDF, except in those rare instances where PDF conversion is not practicable. Spreadsheets may be submitted using Microsoft® Excel, Corel® Quattro Pro, or Lotus® 123.

• Electronic submissions to the hearing docket cannot contain any hyperlinks to other documents or Web sites. Electronic submissions to the hearing docket, however, may contain hyperlinks within a single PDF file, if those links are created using PDF authoring software. Hyperlinks are electronic links that allow a user to automatically access a document or web site by clicking on the hyperlink. The existing NRC Document Management System used as the basis for the electronic hearing docket does not accept hyperlinks to other documents or websites. Even if the NRC Document Management System were changed in the future to include a hyperlink capability, questions about the integrity of the Commission's electronic hearing docket might arise if the hyperlink in a document did not function. This could happen because either a ''hyperlinked'' website is not operating or a ''hyperlinked'' document is not included in the electronic hearing docket. Furthermore, it is uncertain whether NARA will accept as an official record documents containing hyperlinks to other documents or web sites.
• Electronic submissions must be free of any security restrictions imposed by the author (proposed § 2.1013(c)(1)(vii)).

Additional information on the submission of these filings will be provided in a guidance document from the NRC. *See* ''Guidance for Submission of Electronic Docket Materials Under 10 CFR Part 2, Subpart J'', U.S. Nuclear Regulatory Commission, October, 2003. The Guidance document is available on the NRC Web site (*http://www.nrc.gov*). The NRC expects parties, interested governmental participants, and potential parties to use the detailed instructions in the Guidance document to ensure that their electronic filings are effectively submitted. Areas covered by the guidance document address the need for and format of the transmittal letter for electronic filings, file naming conventions, copyrighted information, and instructions on sensitive or classified information.

The proposed revisions would also clarify the responsibility of the Secretary of the Commission, under §§ 2.1012(a) and 2.1013 (a)(2), to determine if the DOE license application for a HLW repository can be properly accessed under the Commission's ''electronic docket rules''. Under § 2.1012(a), the DOE license application cannot be docketed unless the Secretary of the Commission finds that it can be effectively accessed. The proposed revisions would not change this requirement. However, the Commission is clarifying that this compliance requirement refers to the accessibility of the DOE license application as part of the NRC staff licensing docket rather than the Commission's hearing docket (emphasis added). This is consistent with traditional NRC practice where a license application is part of the NRC staff licensing docket but is not added to the Commission's hearing docket unless a party offers all or part of the license application as evidence. Sections 2.1012(a) and 2.1013(a)(2) would be revised to specify that the Secretary's determination on electronic accessibility would be based on whether the DOE license application could be effectively accessed through the Commission's Agencywide Document Access and Management System (ADAMS) rather than the electronic hearing docket.

III. Documentary Material

Section 2.1003 of the current LSN rule requires a party, a potential party, or an interested governmental participant (hereinafter ''participant'') to make its documentary material available in electronic form. The definition of ''documentary material'' includes material prepared by an individual participant, for example, all reports or studies prepared by, or on behalf of, a participant. It also includes other material in the possession of the participant on which the participant intends to rely and/or cite in support of its position in the HLW licensing proceeding or that doesn't support its position. This provision can be read to obligate a party who possesses a document prepared by another participant to make that document available on its LSN document collection server even though it is already available on the LSN document collection server of the party who had prepared the document. For example, under this interpretation a document prepared by DOE would not only need to be available through the centralized LSN Web site from the DOE LSN document collection server, but also from the LSN document collection server of other participants. Without compromising the objective of ensuring that all documentary material is available on the LSN, the Commission believes that it would be beneficial to eliminate or at least significantly reduce the loading of duplicate documents. Reducing duplication will not only alleviate burdens on the participants, but will also make search and retrieval of the LSN collection more efficient. Therefore, the proposed amendment to § 2.1003(a)(1) would allow a LSN participant to avoid loading a document created by another LSN participant if that document has already been made available by the LSN participant who created the document or on whose behalf the document was created.

If, in the process of eliminating duplicate documents, an LSN participant identifies a document which the creator of that document has not included on its LSN document collection server, as a practical matter, the participant who identified the document should include it on its LSN document collection server, as well as notifying the creator of the document that it is taking that action. Moreover, in such circumstances, it is not apparent what purpose would be served by raising the issue before the Pre-license application Presiding Officer (PAPO) unless the documentary material has some readily apparent significance as a Class 2 document (as delineated in the discussion below) or a significant number of ''missing'' documents were identified with regard to a particular LSN participant, so as to raise the issue of a concerted, deliberate effort not to comply with the regulations.

The Commission is also proposing to amend § 2.1003 by adding a new paragraph (e) to this section. Proposed § 2.1003(e) would require LSN participants to supplement the documentary material provided under § 2.1003(a) in its initial certification with documentary material produced after that event. While much of an LSN participant's documentary material will be made available early, it is reasonable to expect that additional material will be created after the initial compliance period specified in § 2.1003(a). In addition, the ongoing performance confirmation program required of DOE by § 63.131 of the Commission's regulations will generate additional documentary material after the license application is docketed. In addition, during the proceeding, the Atomic Safety and Licensing Board can always

direct that additional discovery must take place.

Finally, the Commission is providing further information and a clarification on the responsibilities of LSN participants in regard to the three classes of documentary material in § 2.1001. These three classes are:

1. Any information on which a party, potential party, or interested governmental participant intends to rely and/or cite in support of its position in the HLW proceeding;

2. Any information that is known to, and in the possession of, or developed by the party that is relevant to, but does not support, that information noted in item 1 or that party's position; and

3. All reports and studies prepared by or on behalf of a potential party, interested governmental participant, or party, including all related ''circulated drafts'' relevant to the license application and the issues set forth in the Topical Guidelines, regardless of whether they will be relied upon or cited by a party.

The first two classes of documentary material are tied to a ''reliance'' criterion. Reliance is fundamentally related to a position that a party in the HLW licensing proceeding will take in regard to compliance with the Commission regulations on the issuance of a construction authorization for the repository. These compliance issues take the form of ''contentions'' of law or fact that a party has successfully had admitted for litigation in the HLW proceeding under § 2.1014(a)(2) of the regulations. The third class of material, ''reports and studies prepared for or on behalf of the potential party, * * *'' has meaning independent of any contentions that might be offered. The material in this class must be available on the LSN regardless of whether it has any relation to a contention offered at the hearing. It is also a likely source of the material that a party would use to develop its contentions. ''Reports'' and ''studies'' will also include the basic documents relevant to licensing such as the DOE environmental impact statement, the NRC Yucca Mountain Review Plan, as well as other reports or studies prepared by a LSN participant or its contractor.

To fall within the definition of ''documentary material'', reports or studies must have a nexus to both the license application (emphasis added) and the Topical Guidelines contained in NRC Regulatory Guide 3.69. This dual requirement is designed to ensure that LSN participants do not have to identify, and include as documentary material, reports or studies that have no bearing on the DOE license application for a geologic repository at the Yucca Mountain site, such as reports or studies on other potential repository sites or on issues outside of the NRC licensing criteria. In addition, § 63.21 of the Commission's regulations requires that the DOE Environmental Impact Statement (EIS) must accompany the license application. Therefore, reports and studies relevant to issues addressed by the DOE EIS must also be made available as Class 3 documentary material. This is also consistent with the coverage of the Topical Guidelines.

To assist participants in identifying documentary material that may be relevant to the future license application in the time period before it is submitted, the Commission is recommending that LSN participants use the NRC Yucca Mountain Review Plan (NUREG–1804, Rev. 2, July, 2003) as a guide. The Yucca Mountain Review Plan provides guidance to the NRC staff on evaluating the DOE license application. As such, it anticipates the form and substance of the DOE license application and can be used as a reliable guide for identifying documentary material.

The Commission also notes that the history of the LSN and its predecessor, the Licensing Support System, makes it apparent it was the Commission's expectation that the LSN, among other things, would provide potential participants with the opportunity to frame focused and meaningful contentions and to avoid the delay potentially associated with document discovery, by requiring parties and potential parties to the proceeding to make all their Subpart J-defined documentary material available through the LSN prior to the submission of the DOE application. These purposes still obtain. Nonetheless, the Commission is clarifying that, because the full scope of coverage of the reliance concept will only become apparent after proffered contentions are admitted by the Presiding Officer in the proceeding, an LSN participant would not be expected to identify specifically which of its documents fall within either Class 1 or Class 2 documentary material in the pre-license application phase.

In this regard, the Commission still expects all participants to make a good faith effort to include on their LSN document collection servers all of the Class 1 and Class 2 documentary material that reasonably can be identified by the date specified for initial compliance in § 2.1003(a) of the Commission's regulations. Thereafter, in conjunction with its license application submission, DOE would be required to supplement its Class 1 and Class 2 documents to the degree the application makes it apparent the scope of the DOE documentary material in those classes had changed, a process that might well be repeated by all parties following the admission of contentions. Finally, as part of the regular post-contention admission discovery process under § 2.1018, a party could be required to identify the specific documents that comprise its Class 1 and Class 2 documentary material. As a consequence, while it is not possible to say there are no special circumstances that would necessitate a ruling by the PAPO on the availability of a particular document in the pre-license application stage based on its Class 1 or Class 2 status, disputes over Class 1 and Class 2 documentary material generally would be of a type that would be more appropriately raised before the Presiding Officer designated in the Notice of Hearing during the fifteen months following the admission of contentions that are allotted to the NRC staff to complete the Safety Evaluation Report in its entirety.

IV. Exclusions

The Commission has reviewed its procedural rules for the HLW licensing proceeding, including the LSN requirements, to assess whether they appropriately reflect the evolution of the relevant technology, law, and policy since the rules were originally promulgated in 1987, being mindful of a recent report by the House Committee on Appropriations, issued July, 2003, expressing concern on the extent of documentation that DOE may be required to provide as part of the LSN. The Committee encouraged the Commission to review its regulatory requirements regarding the LSN to ensure that they do not require the duplication of information otherwise easily obtainable, focus on information that is truly relevant to the substantive decisions that will have to be made, and establish a time frame in accord with the traditional conduct of an adjudicatory proceeding.[1] Based on our review, the Commission has determined that the LSN rule could be further revised to address the Committee's concerns, while still maintaining the overall purpose and functionality of the LSN.

The Commission is proposing to revise § 2.1005 of the rule to specify an additional category of documents, ''congressional correspondence'', that may be excluded from the LSN. Section 2.1005 of the Commission's regulations establishes several categories of documents that do not have to be

[1] H.R. Rep. No. 108, 108th Cong. 1st Sess. (2003).

entered into the LSN, either under the documentary material requirements of § 2.1003, or under the derivative discovery provisions of § 2.1019. These include materials that are either widely available or do not have any significant relevance to the issues that might be litigated in the HLW licensing proceeding. The Commission is proposing to add ''correspondence between a party, potential party, or interested governmental participant and the Congress of the United States' to these exclusions. This reflects the Commission's current judgment that this type of material will not have a significant bearing on repository licensing issues. Much of this material either relates to budgetary issues or is merely a reiteration of an agency primary document. It would normally not be the source of material that a party would rely on for its case in the hearing or as a source of material that would be contrary to such reliance information. However, the material directed to Federal entities will still be available as part of the normal Federal recordkeeping requirements. If a particular item of Congressional correspondence does become relevant to a contention admitted in the HLW proceeding, it can be made available at that time. The Commission does not anticipate that any disputes over this clearly and narrowly defined exclusion would be brought before the PAPO.

Plain Language

The Presidential memorandum dated June 1, 1998, entitled, ''Plain Language in Government Writing,'' directed that the Government's writing be in plain language. This memorandum was published June 10, 1998 (63 FR 31883). In complying with this directive, editorial changes have been made in these proposed revisions to improve the organization and readability of the existing language of the paragraphs being revised. These types of changes are not discussed further in this document. The NRC requests comments on the proposed rule specifically with respect to the clarity of the language used. Comments should be sent to the address listed under the **ADDRESSES** caption of the preamble.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. This proposed rule would establish requirements and standards for the submission of filings to the electronic docket for the HLW licensing proceeding. Although the specific standards in the proposed rule are unique to the Commission's HLW proceeding, they are based on industry-wide standards such as Portable Document Format (PDF).

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared.

Paperwork Reduction Act Statement

This proposed rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Analysis

The following regulatory analysis identifies several alternatives to the Commission's proposal set forth in the proposed rule. Subpart J of 10 CFR part 2 establishes an electronic environment for the adjudicatory proceeding for consideration of a potential license application by the U.S. Department of Energy (DOE) to construct, receive, and emplace waste at the proposed HLW repository at Yucca Mountain, Nevada. The NRC expects to begin receiving and processing a significant volume of electronic documents associated with the adjudicatory proceeding in the near future. Some of these filings will consist of large or complex documents Examples of these large electronic files include maps, charts, video presentations, computer modeling or simulation programs with their associated databases, and narrative reports with extensive embedded graphic objects. Consistent with 10 CFR part 2, subpart J:

- The NRC has established the Licensing Support Network (LSN) so that all parties, potential parties, and participants in the proceeding will be able to make their documentary material electronically available to meet discovery requirements through individual participant LSN Web sites.
- The NRC will direct all participants in the adjudicatory proceeding to use the agency's EIE capabilities to submit their filings electronically to the NRC when practicable.
- After processing, documents submitted in the HLW proceeding would be available in the Electronic Hearing Docket (EHD), which is accessible via the Internet; electronic objects that cannot be made directly accessible via the EHD Web site, such as computer simulation models, will be described in the EHD and made available on optical storage media.

The assessment of existing and anticipated technology capabilities identified a number of potential issues that may make it difficult to meet the challenges of electronic submission of large documents as specified in 10 CFR part 2, subpart J. Those challenges are driven by the following fundamental issues:

- Technology limitations of current electronic document and records transmission and management systems.
- Maintaining document and object fidelity, integrity, and authenticity.
- Receiving source document formats in an acceptable resolution.
- Management of and access to non-textual information.
- Federal recordkeeping requirements.
- General usability of the electronic submittals.
- Potential limitations of information technology (hardware, software, or Internet service provider) used by the general public.

The Nature of the Documents

Documents may be large, complex, or a combination of both, as follows:

- Large documents consist of electronic files that, because of their size, create challenges for both the NRC and the public when transmitting, viewing, or downloading the document (*e.g.*, significant delays in transmission, uploading, or downloading times). The NRC anticipates that the potential license application and some filings in the HLW adjudicatory proceeding will be of a size that will create transmission, viewing, or downloading challenges. In electronic format, some of these files could contain several hundred megabytes.
- Complex documents consist (entirely or in part) of electronic files having substantial portions that are neither textual nor image in nature. For example, specialized exhibits may include computer software programs and their operating components, large data files, and actual software code for analytical programs that a party may intend to introduce into the proceeding.

Articulation of the Issues

Large and/or complex documents may pose challenges in any or all of the following general areas:

- *Electronic Submission Process.*

When submitted via the Internet, very large documents or files can cause ''time-out'' problems for computers at either end of the transfer, resulting in a failed or canceled transfer. Transmission times are dependent on the speed of the sender's communication device and the technology used by the Internet service provider. Very large document or files require lengthy transmission times during which the potential for error conditions or other service interruptions increases in direct proportion to the time the communication link must be maintained. The time-out problems could affect each party who receives the documents as part of the service of a filing. The actual transfer times for very large documents or files may approach 24 hours using standard Internet File Transfer Protocol (FTP) routines. In terms of ensuring timeliness, this may not be a significant improvement over the use of an overnight courier to send the files on optical storage media (*e.g.*, CD–ROM).

• *Access to Large, Complex Documents in the Electronic Hearing Docket (EHD).*

Keeping a large document together in one very large file may allow users to easily search for, retrieve, and analyze the document in its entirety, but may result in service interruption problems similar to those described above. This is particularly true if a user wants to download the image file of one of these large documents. Retrieval time will be unacceptably slow, or will result in a time-out problem with the user's Internet connection.

Users of the EHD may encounter comparable download delays because of the file size of large or complex documents and, depending on the nature of the file, the file may not be executable on a user's desktop personal computer because of configuration, memory, display, or other technical problems.

• *Use of Large, Complex Documents in a Hearing Room.*

Large documents may be pre-filed as potential exhibits in the docket; however, in a hearing room, it is possible that only portions of such documents, *i.e.*, specified chapters, pages, or paragraphs' will be offered. In a dynamic and fast-paced hearing room environment, it would not be desirable to delay the proceeding to wait for a large file to load; navigate to the desired chapters, pages, or paragraphs; and then extract the appropriate selection for use in the proceeding. Complex documents may also require specialized hardware and/or software to execute software program files and access their associated data.

• *Official Record and Federal Records Management Considerations.*

For both large and complex documents, the NRC must consider the need to generate an official record of the proceeding for use in potential appellate environments, see 10 CFR 2.1013(a), and for generating an Official Agency Record (OAR) version of the docketed materials for retirement to the National Archives and Records Administration (NARA). Each of these situations requires the ability to reassemble the record version of the documentary material (excluding software executables), independent of the media or software initially used to create it.

Coupled with the project objectives and technical requirements (discussed in the next section), these issues represent the framework for potential solutions. The NRC analysis distilled and assessed the objectives, technical requirements, and issues and developed four designs.

Technical Requirements

Given the anticipated size and complexity of individual documents, and the quantity of submittals, the need to transmit, manage, and retrieve electronic documents and objects challenges both the NRC's current processes and its information technology/information management (IT/IM) infrastructures, and the information technology (hardware, software, Internet service provider) in use by the general public. Examples of potential large documents are:

• The DOE Site Characterization Plan;

• The DOE License Application and supporting materials;

• The DOE Environmental Impact Statement;

• Adjudicatory documents (*e.g.*, motions, responses, transcripts, exhibits, and orders).

Any or all of these types of documents may contain embedded photographs, charts, tables, and other graphics that contribute to the understanding of the narrative.

The NRC also anticipates receiving files that could be part of complex document submittals that:

(1) Due to their file size, may preclude easy transmission, retrieval, and use; or

(2) May require specialized software and/or hardware for faithful display and subsequent use; and

(3) May not be suitable for inclusion in a ''generic'' file format such as PDF. The PDF standard, though it is proprietary to Adobe®, has been published and is available for use by software vendors. Users can access the content of a PDF format file through the use of the Adobe Reader® viewer software.

Examples of files that could be part of complex documents include maps, databases, simulations, audio files, video files, and executable programs.

The analysis of the challenges of handling large documents in the NRC and public IT environments considered the following functional areas:

• *Transmit* activities entail sending a submittal from the submitter to the NRC, either via electronic format (through transmission or media) or as a physical object (*e.g.*, video or audio).

• *Capture* relates to the receipt of electronic objects, with notifications provided according to an approved service list, preferably through e-mail. Upon receipt at the NRC, each submittal is staged for additional processing.

• *Index & Cross-Reference* are two distinct processes. Each submittal must be indexed based on prescribed profile templates. In addition, as part of the cataloging process, a submittal may be identified (or cross-referenced) as part of a package or compound document.

• *Store* manages the storage location of a submittal, *i.e.*, within a folder or larger collection for electronic submittals, or the physical media location for submittals provided on optical storage media (*e.g.*, CD–ROM) containing text, data, and objects. This process involves applying security and audit controls, as well as the appropriate retention schedule.

• *Search & Retrieve* operations involve querying the bibliographic header and content, displaying the pertinent object(s), and, if desired, printing all or part of the displayed object(s).

• *Create & Revise* activities facilitate the creation or revision of new documents using content that has been extracted (copied and pasted) from original submittals.

• *Copy & Distribute* activities involve maintaining distribution (service) lists and providing the means to copy or download an individual document or a collection of documents.

These activities may also involve reproduction when the need arises to generate a hard copy of a submittal (*e.g.*, ''8.5″ x 11″ paper'', drawings, etc.).

Finally, there was an assessment of the existing NRC document and records management systems environment as well as requirements for enhancements to support the large document business requirements.

Assessment and Alternatives

The NRC assessed a number of alternatives to the existing technology

infrastructure, current and planned operating procedures for processing documents, and regulatory requirements to determine how the identified objectives, issues, and technical requirements can be addressed while ensuring that—

- Document fidelity and integrity is preserved (*e.g.* organization, accuracy, completeness);
- Documents are accessible to users via commonly used computer configurations;
- The information is available on reliable and controllable media; and
- Unique submittals with special software/hardware components can be handled.

The assessment also considered that the NRC should provide guidance to participants in the proceeding well in advance of when large, complex filings are reasonably anticipated. The guidance, as well as the underlying technology and procedures, would address matters such as processes, file sizes, file formats, document organization overviews to facilitate reconstruction of the complete filing, labeling formats, and alternative transfer media.

This section presents general concepts and four alternatives for handling large, complex electronic submittals in the HLW proceeding.

General Concept

The overall information infrastructure for receiving and managing HLW-related documents involves several existing agency information systems. Participants in the proceeding will primarily send submittals to the NRC in the preferred PDF format via EIE, which provides a Web-form (an entry form similar to that of an overnight express mail carrier shipping form) for the submitter to accurately identify what is being transmitted. Upon receipt, each submittal would be entered into ADAMS. Once captured within ADAMS, the submittal would be available for internal use by agency staff, and the information would be made publicly available (as appropriate) via the EHD. Variations on this general process and issues associated with large, complex documents are described in the following sections.

Alternative 1

Description: Documents, images, and other submittal components are submitted through the EIE as a single file, and the EIE Web-form serves as the transmittal letter. The NRC captures large files as single units, without the need for any manual manipulation, such as breaking a submission into workable pieces. Based on the service list, an e-mail is sent to provide notification of receipt and a link from the EIE server to the file for immediate access by parties and participants to the proceeding. In addition, the file is made available (as appropriate) to the EHD. Interested parties can search on the bibliographic header information, the content, or a combination of the two. Retrieval of a document is directly to the user's desktop.

Positives: This alternative would satisfy the electronic transmission requirements of 10 CFR Part 2, Subpart J. This alternative primarily benefits and is less restrictive to the submitter. That is, the submitter dictates the form and format of the content, and the submittal comes in as a single optimized PDF format file.

Negatives: Submittal file size could be very large (potentially several hundred MB), particularly if graphics are widely used. The transmission may be problematic because of service interruptions or time-outs attributable to the very long transfer times required for large files. File sizes could also make this alternative unfeasible for subsequent users of a file, primarily because of download delays and time-outs. In addition, although any executables contained in the submittal could be stored in the EHD, they could not be indexed for search and retrieval or accessed online. The executable file would need to be downloaded and run locally.

Alternative 2

Description: The only object transmitted through the EIE is the transmittal letter for the large, complex document, which notifies the NRC of an impending package submittal. All other electronic files pertaining to the submittal are sent on optical storage media (*e.g.*, CD–ROM), which is delivered to the NRC via an overnight express mail carrier. Based on the service list, the NRC sends an e-mail containing links from the EIE server to the transmittal letter for immediate access by parties and participants to the proceeding. All text-based components (*e.g.*, narrative with embedded graphics) are rendered as optimized PDF format files. The NRC extracts each file from the optical storage media (*e.g.*, CD–ROM) and makes the files available (as appropriate) to the EHD as either individual objects or a compound document, depending on the document organization. The NRC also links a bibliographic header to the appropriate optical storage media (*e.g.*, CD–ROM) for files or objects that are not candidates for extraction (because of some technical constraint). Interested parties can search the EHD on the bibliographic header, the content, or a combination of the two. Retrieval of a document or specified component(s) is directly to the user's desktop. Additionally, the NRC provides copies (upon request and for a fee) of the optical storage media (*e.g.*, CD–ROM) for public access.

Positives: The NRC provides guidance to the submitter to facilitate processing and use within the agency. This alternative also avoids potential problems associated with submitting large files via the EIE.

Negatives: This alternative does not meet the electronic service requirements of 10 CFR part 2, subpart J. There may also be a delay in parties and participants receiving documents. As compared with Alternative 1, additional processing will be required to extract, profile, and store files in a timely manner. In addition, use of this alternative could adversely affect document fidelity and integrity (*e.g.* organization, accuracy, or completeness) which could affect the efficient conduct of an adjudication, as well as for agency recordkeeping and eventual turnover to NARA.

Alternative 3

Description: Documents, images, and other components (including the transmittal letter and enhanced Web-form) are transmitted through the EIE as multiple segmented files (''chunks'') of a single submittal. All text-based components (*e.g.*, narrative with embedded graphics) are rendered as optimized PDF format files. Based on the service list, the NRC sends an e-mail containing links from the EIE server to the transmittal letter and the various segmented files for immediate access by parties and participants to the proceeding. Upon receipt and subsequent processing, the NRC makes the segmented files available (as appropriate) to the EHD as a ''package'' or ''compound document.'' Interested parties can search on the bibliographic headers, or content, or a combination of both. Retrieval of selected components is direct to the user's computer.

Positives: This alternative satisfies electronic transmission requirements of 10 CFR part 2 and allows submission via the EIE. It also allows the NRC to provide guidance to have precisely defined segments and bibliographic header information associated with each segment. The segmentation facilitates later use and access.

Negatives: This alternative requires the EIE to facilitate the transfer, segregate component content from

bibliographic header information and the transmittal letter, and make that information available to the EHD. A possible fatal flaw is that some file types may not be able to be segmented into manageable sizes (*e.g.*, graphic-oriented materials showing subsurface geology in color or computer modeling information and/or software), and some materials may not be accessible via the EHD.

Alternative 4

Description: All text-based components (*e.g.* narrative with embedded graphics) are rendered as optimized PDF format files and transmitted in manageable segments. All non-text components (*e.g.*, runtime executable software, viewer or printer executables) that are not suitable for an optimized PDF file are placed on optical storage media (*e.g.*, CD–ROM). When necessary, due to the nature of the submittal, a submittal letter identifies all electronic files that comprise the submission, clearly indicating which components are submitted via EIE, and which are submitted on optical storage media (*e.g.*, CD–ROM). The submittal letter, enhanced Web-forms, and all segmented text files are sent through the EIE. The optical storage media (*e.g.*, CD–ROM) containing the complete submission (*i.e.*, text-based segments submitted via EIE and any files submitted only on optical storage media) are delivered to the NRC and other parties via an overnight mail carrier or other overnight delivery service. The NRC links a bibliographic header to the optical storage media (*e.g.*, CD–ROM) component of the submission.

Based on the service list, the NRC sends an e-mail containing links from the EIE server to the transmittal letter and the various components submitted through the EIE for immediate access by parties and participants to the proceeding. The NRC indexes the text-based components sent via EIE and makes them available to the EHD as a ''package'' or ''compound document.'' Additionally, the NRC provides copies (upon request and for a fee) of the optical storage media (*e.g.*, CD–ROM) for the public. Interested parties can search on the bibliographic header information, content, or a combination of both. Retrieval of text-based components is directly to the user's computer, and non-text components are retrievable from the optical storage media (*e.g.*, CD–ROM).

Positives: This alternative combines the best features and advantages of Alternatives 2 and 3, including text-based component submission through the EIE and non-text component submissions via optical storage media (*e.g.*, CD–ROM). This alternative provides several means to optimize a submission and allows the NRC to process the submission appropriately; provide access to end-users (*i.e.*, adjudicatory proceeding participants and the general public); and prepare for the eventual transfer to NARA.

Negatives: Processing by the NRC staff will need to be closely coordinated to maintain the integrity of the various submittal components (segmented files stored in ADAMS with the bibliographic header records that point to optical storage media, such as a CD–ROM).

Documentary material submitted on optical storage media and sent by overnight mail (or other expedited delivery services) would not meet the electronic transmission requirements of 10 CFR part 2, subpart J. There may be a delay in parties and participants receiving document components contained only on the optical storage media (*e.g.*, CD–ROM).

Planned Actions

Alternative 4 is the recommended approach for the NRC to meet the identified objectives. The NRC believes that this alternative provides the best means for transferring the wide variety of file types and sizes received from parties and participants in the proceeding, as well as the most practical means for delivering electronic information to parties and participants in the HLW adjudicatory proceeding, the presiding officer, and the Office of the Secretary (SECY), under the requirements of 10 CFR part 2, subpart J.

Toward that end, the agency will take the following steps:

- Develop guidance for use in generating HLW proceeding submissions that specifies the size, file characteristics, and method (either EIE or optical storage media) for different submittal types (i.e. simple, large, or complex). This guidance will also provide direction concerning the information the agency requires to ensure proper identification of each segment.
- Implement enhancements to the agency's existing IT/IM systems (such as an improved EIE capability) in anticipation of storage, search, and retrieval needs, as they pertain to Alternative 4.
- Implement enhancements to the agency's current document processing work flows in anticipation of the receipt, indexing, and distribution of information, as they pertain to Alternative 4.
- Develop a rule change to implement the recommended alternative.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission has evaluated the impact of the proposed rule on small entities. The NRC has established standards for determining who qualifies as small entities (10 CFR 2.810). The Commission certifies that this proposed rule, if adopted, would not have a significant economic effect on a substantial number of small entities. The proposed amendments would modify the NRC's rules of practice and procedure in regard to the HLW licensing proceeding. Parties to the HLW licensing proceeding will be required to submit their filings during the proceeding according to the standards in the proposed rule. Some of the participants affected by the proposed rule, for example, DOE, NRC, the State of Nevada, would not fall within the definition of ''small entity'' under the NRC's size standards. Other parties and potential parties may qualify as ''small entities'' under these size standards. However, the required standards will overall make it easier for those parties who are small entities to participate in the HLW licensing proceeding.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this proposed rule because these amendments would not include any provisions that require backfits as defined in 10 CFR chapter I.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the Nuclear Regulatory Commission is proposing the following amendments to 10 CFR part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, I, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (I), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Sections 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 890, as amended by section 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.1001, definitions of ''Complex document,'' ''Large document,'' and ''Simple document'' are added to read as follows:

§ 2.1001 Definitions.

* * * * *

Complex document means a document that consists (entirely or in part) of electronic files having substantial portions that are neither textual nor image in nature. For example, specialized submissions may include runtime executable software, viewer or printer executables, dynamic link library (.dll) files, large data sets associated with an executable, and actual software code for analytical programs that a party may intend to introduce into the proceeding.

* * * * *

Large document means a document that consists of electronic files that are larger than 50 megabytes.

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Simple document means a document that consists of electronic files that are 50 megabytes or less.

* * * * *

3. In § 2.1003, the introductory text of paragraph (a) and paragraph (a)(1) are revised, and paragraph (e) is added, to read as follows:

§ 2.1003 Availability of Material.

(a) Subject to the exclusions in § 2.1005 and paragraphs (b), (c), and (e) of this section, DOE shall make available, no later than six months in advance of submitting its license application to receive and possess high-level radioactive waste at a geologic repository operations area, the NRC shall make available no later than thirty days after the DOE certification of compliance under § 2.1009(b), and each other potential party, interested governmental participant or party shall make available no later than ninety days after the DOE certification of compliance under § 2.1009(b)—

(1) An electronic file including bibliographic header for all documentary material (including circulated drafts but excluding preliminary drafts) generated by, or at the direction of, or acquired by, a potential party, interested governmental participant or party; provided, however, that an electronic file need not be provided for acquired documentary material that has already been made available by the potential party, interested governmental participant or party that originally created the documentary material. Concurrent with the production of the electronic files will be an authentication statement for posting on the LSN website that indicates where an authenticated image copy of the documents can be obtained.

* * * * *

(e) Each potential party, interested governmental participant or party shall continue to make available to other participants via the LSN documentary material created after the time of its initial certification in accordance with paragraph (a)(1) through (a)(4) of this section.

4. In § 2.1005, paragraph (i) is added to read as follows:

§ 2.1005 Exclusions.

* * * * *

(i) Correspondence between a potential party, interested governmental participant, or party and the Congress of the United States.

5. In § 2.1012, paragraph (a) is revised to read as follows:

§ 2.1012 Compliance.

(a) If the Department of Energy fails to make its initial certification at least six months prior to tendering the application, upon receipt of the tendered application, notwithstanding the provisions of § 2.101(f)(3), the Director of the NRC's Office of Nuclear Material Safety and Safeguards will not docket the application until at least six months have elapsed from the time of the certification. The Director may determine that the tendered application is not acceptable for docketing under this subpart if the application is not accompanied by an updated certification pursuant to § 2.1009(b), or if the Secretary of the Commission determines that the application cannot be effectively accessed through the Commission's Agencywide Documents Access and Management System (ADAMS).

* * * * *

6. In § 2.1013, paragraph (a)(2) and (c)(1) are revised to read as follows:

§ 2.1013 Use of the electronic docket during the proceeding.

* * * * *

(a) * * *

(2) The Secretary of the Commission will establish an electronic docket to contain the official record materials of the high-level radioactive waste licensing proceeding in searchable full text, or, for material that is not suitable for entry in searchable full text, by header and image, as appropriate.

* * * * *

(c)(1) All filings in the adjudicatory proceeding on the license application to receive and possess high-level radioactive waste at a geologic repository operations area under part 60 or 63 of this chapter shall be transmitted by the submitter to the Presiding Officer, parties, and Secretary of the Commission, according to the following requirements—

(i) ''Simple documents'' must be transmitted electronically via the NRC Electronic Information Exchange (EIE);

(ii) ''Large documents'' must be transmitted electronically in multiple transmissions of 50 megabytes each via EIE;

(iii) Those portions of complex documents that are amenable to electronic submission must be transmitted electronically. Those portions that are not amenable to electronic transmission must be delivered on optical storage media. The optical storage media must include the complete document, including the

portions of the document that have been transmitted electronically;

(iv) Electronic submissions must have 300 dots per inch (dpi) as the minimum resolution for bi-tonal, color resolution, and grayscale resolution.

(v) Electronic submissions must be generated in the appropriate PDF output format by using:

(A) PDF—Formatted Text and Graphics for textual documents converted from native applications;

(B) PDF—Searchable Image (Exact) for textual documents converted from scanned documents; and

(C) PDF—Image Only for graphic-, image-, and forms-oriented documents. In addition, Tagged Image File Format (TIFF) images and the results of spreadsheet applications must to be converted to PDF, except in those rare instances where PDF conversion is not practicable.

(vi) All electronic submissions must be free of hyperlinks to other documents or websites, provided, however, that electronic submissions to the hearing docket may contain hyperlinks within a single PDF file, if those links are created using PDF authoring software;

(vii) All electronic submissions must be free of author-imposed security restrictions.

* * * * *

Dated at Rockville, Maryland, this 20th day of November, 2003.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 03–29557 Filed 11–25–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–212–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model 717–200 airplanes. This proposal would require a general visual inspection to detect corrosion of the left- and right-hand horizontal stabilizer hinge fitting bolts, barrel nuts, and the associated holes in the horizontal stabilizer structure, and to detect corrosion of the left- and right-hand elevator sector pinch bolts and associated holes, as applicable; and corrective actions, if necessary. This action is necessary to detect and correct corrosion of the left- and right-hand horizontal stabilizer hinge fitting bolts, barrel nuts, and the associated holes in the horizontal stabilizer structure, and the left- and right-hand elevator sector pinch bolts and associated holes, which could lead to loss of a hinge fitting and reduced structural integrity of the horizontal stabilizer. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 12, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–212–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–212–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 Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5238; fax (562) 627–5210.

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–212–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–212–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that the barrel nuts and bolts used to attach the horizontal stabilizer hinge fittings to the rear spar of the horizontal stabilizer were not properly protected against corrosion during assembly of certain McDonnell Douglas Model 717–200 airplanes. In addition, there is the possibility that the left- and right elevator sector pinch bolts may not

have been properly treated for corrosion protection. These conditions, if not detected and corrected, could result in corrosion of the left- and right-hand horizontal stabilizer hinge fitting bolts, barrel nuts, and associated holes in the horizontal stabilizer structure, and the left- and right-hand elevator sector pinch bolts and associated holes, which could lead to loss of a hinge fitting and reduced structural integrity of the horizontal stabilizer.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 717–55–0003, dated June 18, 2002, which describes the following procedures:

- Performing a general visual inspection for corrosion in the left- and right-hand horizontal stabilizer hinge fitting bolts, barrel nuts, and the associated holes in the horizontal stabilizer structure;
- Performing a visual inspection for corrosion in the left- and right-hand elevator sector pinch bolts and associated holes;
- Removing corrosion;
- Performing corrective actions; and
- Contacting Boeing for repair if corrosion rework exceeds tolerance limits.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

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

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Operators should also note that, although the service bulletin does not list a grace period in the compliance times, this proposal adds a grace period to the compliance times. The FAA finds that such a grace period will preclude airplanes from being grounded unnecessarily.

Cost Impact

There are approximately 84 airplanes of the affected design in the worldwide fleet. The FAA estimates that 67 airplanes of U.S. registry would be affected by this proposed AD. The work hours vary according to the configuration group to which the affected airplane belongs.

The following table shows the estimated cost impact for airplanes affected by this proposed AD:

TABLE—COST IMPACT

Airplane configuration group—	Work hours per airplane (estimated)—	Labor rate per work hour	Cost per airplane (estimated)—
1	61	$65	$3,965
2	57	65	3,705

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed 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. Manufacturer warranty remedies may be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

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 adding the following new airworthiness directive:

McDonnell Douglas: Docket 2002–NM–212–AD.

Applicability: Model 717–200 airplanes, as listed in Boeing Service Bulletin 717–55–0003, dated June 18, 2002, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion of the left- and right-hand horizontal stabilizer hinge fitting bolts, barrel nuts, and associated holes in the horizontal stabilizer structure, and the left- and right-hand elevator sector pinch bolts and associated holes, which could lead to loss of a hinge fitting and reduced

structural integrity of the horizontal stabilizer, accomplish the following:

Service Bulletin References

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Service Bulletin 717–55–0003, dated June 18, 2002.

Initial Inspection

(b) Prior to the accumulation of 18,000 total flight cycles, or within 15 months after the effective date of this AD, whichever is later: Perform the general visual inspections specified in paragraphs (c) and (d) of this AD, as applicable, 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.''

Horizontal Stabilizer Hinge Fitting Bolt Inspection

(c) For Group 1 and Group 2 airplanes identified in paragraph 1.A.1. of the service bulletin: Perform a general visual inspection of the left- and right-hand horizontal stabilizer hinge fitting bolts, barrel nuts, and the associated holes in the horizontal stabilizer for corrosion in accordance with the service bulletin.

(1) If no corrosion is found, before further flight, install bolts and barrel nuts with applicable corrosion protection in accordance with the service bulletin.

(2) If any corrosion is found, before further flight, remove the corrosion and do the actions specified in paragraph (c)(2)(i) or (c)(2)(ii) of this AD, as applicable, in accordance with the service bulletin.

(i) If corrosion rework is within tolerance limits, before further flight, perform the corrective actions in accordance with the service bulletin, as applicable.

(ii) If corrosion rework exceeds the tolerance limits and the service bulletin specifies to contact Boeing for repair: Before further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Los Angeles ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Elevator Sector Pinch Bolt Inspection

(d) For Group 1 airplanes identified in paragraph 1.A.1. of the service bulletin: Perform a general visual inspection of the left- and right-hand elevator sector pinch bolts and associated holes for corrosion in accordance with the service bulletin.

(1) If no corrosion is found, before further flight, install bolts and barrel nuts with applicable corrosion protection in accordance with the service bulletin.

(2) If any corrosion is found, before further flight, remove the corrosion and do the actions specified in paragraph (d)(2)(i) or (d)(2)(ii) of this AD, as applicable, in accordance with the service bulletin.

(i) If corrosion rework is within tolerance limits, before further flight, perform the corrective actions in accordance with the service bulletin, as applicable.

(ii) If corrosion rework exceeds the tolerance limits and the service bulletin specifies to contact Boeing for repair: Before further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO, FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Los Angeles ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance

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

Issued in Renton, Washington, on November 20, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–29573 Filed 11–25–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–288–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400F series airplanes. This proposal would require repetitive detailed and general visual inspections of the external fuselage skin for cracks; various inspections of the affected area where cracks are found to determine the extent of the damage; and repair of cracks. This action is necessary to detect and correct fatigue cracks in the fuselage skin and frame shear tie assemblies, which could propagate and result in possible in-flight decompression of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 12, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–288–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–288–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 Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Candice Gerretsen, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6428; fax (425) 917–6590.

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–288–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–288–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that cracking was noticed during production of three Boeing Model 747–400F series airplanes. The cracking occurred on the section 42 skin panel assemblies at several fastener locations common to the body station 800 frame shear tie between stringers 13 and 15 on both the left and right sides of the airplanes. The maximum crack length was approximately 0.5 inch. Further investigation revealed that the cracks resulted from cyclic fatigue due to insufficient support at the tool attachment locations for the section 42 skin panel assemblies during shipment. Fatigue cracks in the fuselage skin and frame shear assemblies, if not detected and corrected, could propagate and result in undetected cracks and possible in-flight decompression of the airplane.

Boeing Model 747–400F series airplanes after line number 1286 have been inspected and show no damage. Section 42 skin panel assemblies on future Model 747–400F series airplanes will be shipped in a modified shipping fixture that provides improved support to prevent future damage. The section 42 skin panel assemblies for Boeing Model 747–100, –200B, –200C, –100B, –300, –100B SUD, –400, and ''400D series airplanes have different shipping fixtures that provide adequate support. Therefore, these airplanes are not subject to the same unsafe condition identified in the 747–400F series airplanes having line numbers 968 through 1286, inclusive.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Special Attention Service Bulletin 747–53–2480, dated March 28, 2002, which describes procedures for repetitive detailed and general visual inspections of the external fuselage skin for cracks; various inspections of the affected area where cracks are found to determine the extent of the damage; and repair of cracks. Repair of a crack eliminates the need for the repetitive detailed and general visual inspections for that repair area only. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

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

Differences Between Proposed Rule and Service Bulletin

Although the service bulletin specifies that operators may contact the manufacturer for an alternate repair for certain cracking conditions, this proposed AD would require operators to repair those conditions per a method approved by the FAA or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Cost Impact

There are approximately 72 airplanes of the affected design in the worldwide fleet. The FAA estimates that 12 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspections, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $780, or $65 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed 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. Manufacturer warranty remedies may be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

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 adding the following new airworthiness directive:

Boeing: Docket 2002–NM–288–AD.

Applicability: Model 747–400F series airplanes, having line numbers 968 through 1286 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracks in the fuselage skin and frame shear tie assemblies, which could propagate and result in possible in-flight decompression of the airplane, accomplish the following:

Service Bulletin Reference

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2480, dated March 28, 2002.

Compliance Time

(b) At the later compliance time specified in paragraphs (b)(1) and (b)(2) of this AD, do the inspections specified in paragraph (c) of this AD.

(1) Within 6,000 flight cycles after the date of issuance of the original Airworthiness Certificate or date of issuance of the Export Certificate of Airworthiness, whichever comes first.

(2) Within 3,000 flight cycles after the effective date of this AD.

Repetitive Inspections

(c) Perform both inspections of the external fuselage skin as shown in Table 1 of this AD, per the service bulletin. Repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles.

TABLE 1.—INSPECTION REQUIREMENTS

Type of inspection	Area to inspect
(1) Detailed	Inspect the skin surface for cracks initiating from the shear tie fasteners (14 locations on each side) common to the body station 800 frame between stringers S–13 and S–15 on both the left and right sides of the airplane.
(2) General	Inspect the skin surface at all fastener locations for cracks between body stations 780 to 800 and stringers S–13 through S–15 on both the left and right sides of the airplane.

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

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

Crack Findings: Inspections and Repair

(d) If any crack is found during any inspection required by paragraph (c) of this AD, before further flight, do the actions specified in paragraphs (d)(1) and (d)(2) of this AD.

(1) Perform inspections of the affected area to determine the extent of the crack using the following applicable inspection methods, per the service bulletin: detailed inspection; open-hole high frequency eddy current (HFEC) inspection; surface HFEC inspection; and dye penetrant inspection.

(2) Repair any crack per the service bulletin. Where the service bulletin specifies contacting Boeing for an alternate repair method: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings.

Terminating Action for Repaired Area

(e) Accomplishment of the repair per paragraph (d)(2) of this AD ends the repetitive inspection requirements of paragraph (c) of this AD for that repaired area only.

Alternative Methods of Compliance

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

Issued in Renton, Washington, on November 20, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–29572 Filed 11–25–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–ANE–12–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric CF6–80C2 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to General Electric (GE) CF6–80C2 series turbofan engines. That action would have required imposing a life limit on certain forward engine mount thrust links. Since that NPRM was issued, the FAA has determined that the affected parts are no longer eligible for installation, and therefore, the unsafe condition is not likely to exist or develop on other products of the same type design. Accordingly, the proposed rule is withdrawn.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to GE CF6–80C2 series turbofan engines, was published in the **Federal Register** on July 11, 1986 (51 FR 25208). The proposed rule would have required imposing a life limit on certain forward engine mount thrust links. The forward engine mount frame thrust links, part numbers (P/Ns) 9383M45G01 and 9383M45G02, and the forward engine mount platform thrust links, P/Ns 9383M45G03 and 9383M45G04, would have been life-limited to 5,000 cycles-since-new (CSN). That action was prompted by the results of low-cycle-fatigue test results that determined certain forward engine mount frame and platform thrust links had a finite low-cycle-fatigue life limit. GE Service Bulletin (SB) 72–022, dated April 26, 1988, introduced a redesigned forward engine thrust mount system. The proposed actions were intended to prevent fracture of forward mount thrust links, which could result in the mount's inability to carry design loads.

Since that NPRM was issued, the FAA has determined that all affected engines are in compliance with the proposed AD by having complied with GE SB 72–022, dated April 26, 1989. The SB was issued as a Category 3, Campaign Change, and GE recommended that this SB be done at the next shop visit. In addition, the FAA has determined that the affected parts are no longer eligible for installation, and therefore, the unsafe condition is not likely to exist or develop on other products of the same type design. Accordingly, the proposed rule is withdrawn.

Withdrawal of this notice of proposed rulemaking applies only to the NRPM, and does not prevent us from issuing another notice in the future, nor does it commit us to any course of action in the future.

This action is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because it only withdraws a notice of proposed rulemaking, and it is neither a proposed nor a final rule.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

The notice of proposed rulemaking, Docket No. 86–ANE–12–AD, published in the **Federal Register** on July 11, 1986 (51 FR 25208), is withdrawn.

Issued in Burlington, Massachusetts, on November 20, 2003.

Francis A. Favara,

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

[FR Doc. 03–29571 Filed 11–25–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16207; Airspace Docket No. 03–ANM–10]

Proposed Revision of Class E Airspace: Polson, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal would revise Class E airspace at Polson Airport, Polson, MT. The establishment of Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAP) makes this proposal necessary. Class E airspace extending upward from 700 feet or more above the surface of the earth currently exists in support of Instrument Flight Rules (IFR) operations. This additional Class E airspace extending upward from 700 feet or more above the surface of the earth is necessary for the safety of IFR aircraft executing new RNAV (GPS) SIAPs at Polson Airport. Controlled airspace is developed where there is a requirement for IFR services, which includes transitioning to/from the terminal or en route environment at Polson Airport, Polson, MT.

DATES: Comments must be received by January 12, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number, FAA–2003–16207 Airspace Docket No. 03–ANM–10, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone number 1 (800) 647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informed docket may also be examined during normal business hours at the Office of the Regional Air Traffic Division, Northwest Mountain Region, Federal Aviation Administration, Airspace Branch ANM–520, 1601 Lind Avenue, SW., Renton, WA 98055.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify Docket No. FAA–2003–16207, Airspace Docket 03–ANM–10, and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16207; Airspace Docket No. 03–ANM–10''. The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA, 98055. Communications must identify both document numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

The Proposal

This action amends title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Polson Airport, Polson, MT. The establishment of new RNAV (GPS) SIAPs at the Polson Airport makes this proposal necessary. Establishing Class E airspace extending upward from 700 feet or more above the surface of the earth is necessary to provide adequate controlled airspace for the safety of IFR RNAV operations at Polson Airport. Controlled airspace is developed where there is a requirement for IFR services, which includes transitioning to/from the terminal or en route environment at Polson Airport, Polson, MT.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9L dated September 16, 2003, and effective September 15, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 16, 2003, and effective September 15, 2004, is amended as follows:

Paragraph 6005, Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Polson, MT (Revised)

Polson Airport, Polson, MT
(Lat. 47°49′44″ N., long. 114°11′06″ W.)

That airspace extending upward from 700 feet above the surface of the earth bounded by a line beginning at lat. 47°49′55″ N., long 114°13′30″ W., to lat. 47°47′00″ N., long. 114°01′00″ W.; to lat. 47°31′45″ N., 114°10′10″ W.; to lat. 47°35′35″ N., long. 114°22′35″ W.; thence to point of origin; excluding that airspace within Federal airways.

* * * * *

Issued in Seattle, Washington, on November 12, 2003.

John Pipes,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 03–29594 Filed 11–25–03; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE056/059–1038b; FRL–7591–1]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Revisions to Delaware's Motor Vehicle Emissions Inspection Program and Low Enhanced Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Delaware pertaining to its Vehicle Emissions Inspection Program and Low Enhanced Inspection and Maintenance Program. These revisions include a five-model-year vehicle exemption, the incorporation of a New Model Year Clean Screen provision, and the addition of an on-board diagnostic (OBD) systems check. In the Final Rules section of this **Federal Register**, EPA is approving these revisions as a direct final rule without prior proposal because the Agency views these as noncontroversial submittals and anticipates no adverse comments. A more detailed description of the state submittals and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by December 26, 2003.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov or to http://www.regulations.gov.,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, (215) 814–2174, or by e-mail at *magliocchetti.catherine@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number DE056–1038 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

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

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *morris.makeba@epa.gov,* attention DE056–1038. EPA's e-mail system is not

an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

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

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

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

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

Submittal of CBI Comments

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

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

Considerations When Preparing Comments to EPA

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

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

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

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

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

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

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: November 13, 2003.

Maria Parisi Vickers,

Acting Regional Administrator, Region III.

[FR Doc. 03–29428 Filed 11–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 198–1198; FRL–7591–3]

Approval and Promulgation of Implementation Plans; State of MO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the State Implementation Plan (SIP) submitted by the state of Missouri. The purpose of this revision is to update the transportation conformity rule.

DATES: Comments on this proposed action must be received in writing by December 26, 2003.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Electronic comments should be sent either to *hamilton.heather@epa.gov,* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in ''What action is EPA taking'' in the **SUPPLEMENTARY INFORMATION** section of the direct final rule which is located in the rules section of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of

this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: November 13, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 03–29426 Filed 11–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0209; FRL–7332-4]

Proposed Revocation of Tolerance Exemptions for Certain Biopesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke exemptions from the requirement of a tolerance, as expressed in 40 CFR part 180, on residues of the following pesticide active ingredients because there are no active Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) product registrations applicable to these exemptions: Dihydroazadirachtin; Kontrol HV; *Metarhizium anisopliae* strain ESF1 in attractant stations; polyhedral occlusion bodies of *Autographa californica* NPV; *Pseudomonas fluorescens* EG-1053; *Pseudomonas fluorescens* NCIB 12089; and *Puccinia canaliculata* ATCC (40199). In addition, this document proposes to revoke the tolerance exemption for *Bacillus thuringiensis* CryIA(b) delta-endotoxin and the genetic material necessary for its production in corn because that tolerance exemption has been replaced by a tolerance exemption that applies to all plants. The regulatory actions proposed in this document contribute toward the Agency's tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess tolerances in existence on August 2, 1996. For counting purposes, the proposed revocations would count as nine FQPA tolerance/exemption reassessments made toward the August 2006 review deadline.

DATES: Comments, identified by docket (ID) number OPP–2003–0209, must be received on or before January 26, 2004.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2003–0209 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara Mandula, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–7378; e-mail address: *mandula.barbara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/.* To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2003–0209. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2003–0209 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *opp-docket@epa.gov*, or you can submit a computer disk as described in

this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2003–0209. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as 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 version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. 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 copies of 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 the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Can I Do if I Wish the Agency to Maintain a Tolerance Exemption that the Agency Proposes to Revoke?

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance exemption proposed for revocation. If EPA receives a comment within the 60–day period to that effect, EPA will not proceed to revoke the tolerance exemption immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f) if needed. The order would specify data needed and the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA. EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

II. Background

A. What Action is the Agency Taking?

EPA is proposing to revoke various exemptions from the requirement of a tolerance, as expressed in specific sections of 40 CFR part 180, for residues of the following active ingredients because of non-payment of maintenance fees and because there are no currently registered products to which the subject tolerance exemptions apply: Polyhedral occlusion bodies of *Autographa californica* NPV in 40 CFR 180.1125; Dihydroazadirachtin in 40 CFR 180.1169; Kontrol HV in 40 CFR 180.1063; *Metarhizium anisopliae* strain ESF1 in attractant stations in 40 CFR 180.1116; *Pseudomonas fluorescens* EG-1053 in 40 CFR 180.1088; *Pseudomonas fluorescens* NCIB 12089 in 40 CFR 180.1129; and *Puccinia canaliculata* ATCC 40199 in 40 CFR 180.1123.

It is EPA's general practice to propose revocation of those tolerance exemptions for residues of pesticide active ingredients on food for which there are no active registered uses under FIFRA, or for which there are no registered products to which the tolerance exemption applies, or for tolerance exemptions that have been superseded, unless any person commenting on the proposal indicates a need for the tolerance exemption to cover residues in or on imported commodities or domestic commodities legally treated.

Following are the details of the final product cancellations for the above active ingredients and the number of tolerances that will be counted as reassessed once a final rule is issued.

1. *Dihydroazadirachtin.* Product 70051–29 canceled on August 25, 2000 for non-payment of maintenance fees. Announced on September 6, 2000 (67 FR 54114) (FRL–6737–7). According to Agency records, this product was the last FIFRA registered product containing the active ingredient Dihydroazadirachtin, which is exempt from the requirement of a tolerance in or on all raw agricultural commodities when applied as specified under 40 CFR 180.1169. The Agency believes that sufficient time has passed for stocks to have been exhausted and for treated commodities to have cleared channels of trade. Revocation of this tolerance exemption in a final rule will count as one tolerance reassessment.

2. *Kontrol HV.* Product 17217–2 canceled on July 21, 1998 for non-payment of 1998 maintenance fees. Announced on July 31 1998 (63 FR 41145) (FRL–6015–8). According to Agency records, this product was the last FIFRA registered product containing the active ingredient Kontrol HV, which is exempt from the requirement of a tolerance when used on cotton to control the tobacco budworm under 40 CFR 180.1063. The Agency believes that sufficient time has passed for stocks to have been exhausted and for treated commodities to have cleared channels of trade. Revocation of this tolerance exemption in a final rule will count as one tolerance reassessment.

3. *Metarhizium anisopliae strain ESF1 in attractant stations.* Product 64296–2 canceled on August 25, 2000 for non-payment of maintenance fees. Announced on September 6, 2000 (65 FR 54114) (FRL–6737–7). According to Agency records, this product was the last FIFRA registered product containing the active ingredient *metarhizium anisopliae* strain ESF1 for use in attractant stations. Currently, there are three tolerance exemptions in 40 CFR 180.1116 for *metarhizium anisopliae* ESF1 in or on all raw agricultural commodities, animal feed, and processed food when used in attractant stations. The Agency believes that sufficient time has passed for stocks to have been exhausted and for treated

commodities to have cleared channels of trade. Revocation of this tolerance exemption in a final rule will count as three tolerance reassessments.

4. *Polyhedral occlusion bodies of Autographa californica nuclear polyhedrosis virus (NPV).* Product 70051–43 canceled on July 21, 1998 for non-payment of maintenance fees. Announced on July 31, 1998 (63 FR 41145) (FRL–6015–8). According to Agency records, this product was the last FIFRA registered product containing the active ingredient polyhedral occlusion bodies of *Autographa californica* NPV, which is exempt from the requirement of a tolerance in or on all raw agricultural commodities under 40 CFR 180.1125. The Agency believes that sufficient time has passed for stocks to have been exhausted and for treated commodities to have cleared channels of trade.

The tolerance exemption in 40 CFR 180.1125 for polyhedral occlusion bodies of *Autographa californica* nuclear polyhedrosis virus in or on all raw agricultural commodities was previously reassessed in 2002 and counted at that time. Therefore, revocation of this tolerance exemption in a final rule would not be counted toward the tolerance reassessment total.

5. *Pseudomonas fluorescens* EG-1053. Product 55638–5 canceled on July 9, 1997 for non-payment of maintenance fees. Announced on July 23, 1997 (62 FR 39517) (FRL–5729–8). According to Agency records, this product was the last FIFRA registered product containing the active ingredient *Pseudomonas fluorescens* EG-1053, which is exempt from the requirement of a tolerance when used in or on cottonseed and cotton forage under 40 CFR 180.1088. The Agency believes that sufficient time has passed for stocks to have been exhausted and for treated commodities to have cleared channels of trade. Revocation of this tolerance exemption in a final rule will count as two tolerance reassessments.

6. *Pseudomonas fluorescens* NCIB 12089. Product 67186–1 canceled June 27, 1997 for non-payment of fees for 1997. Announced on July 23, 1997 (62 FR 39517) (FRL–5729–8). According to Agency records, this product was the last FIFRA registered product containing the active ingredient *Pseudomonas fluorescens* NCIB 12089, which is exempt from the requirement of a tolerance when used in or on mushrooms under 40 CFR 180.1129. The Agency believes that sufficient time has passed for stocks to have been exhausted and for treated commodities to have cleared channels of trade. Revocation of this tolerance exemption in a final rule will count as one tolerance reassessment.

7. *Puccinia canaliculata* ATCC 40199. Product 65263–1 canceled July 29, 1999 for non-payment of fees for 1999. Announced on August 11, 1999 (64 FR 43820) (FRL–6086–8). According to Agency records, this product was the last FIFRA registered product containing the active ingredient *Puccinia canaliculata* ATCC 40199, which is exempt from the requirement of a tolerance in or on all raw agricultural commodities when applied as specified under 40 CFR 180.1123. The Agency believes that sufficient time has passed for stocks to have been exhausted and for treated commodities to have cleared channels of trade. Revocation of this tolerance exemption in a final rule will count as one tolerance reassessment.

8. *Bacillus thuringiensis.* EPA is proposing to revoke the exemption from a requirement of a tolerance for residues of *Bacillus thuringiensis* CryIA(b) delta-endotoxin and the genetic material necessary for its production in corn listed as (plasmid vector pCIB4431) in 40 CFR 180.1152. That tolerance exemption is no longer necessary, having since been subsumed by a tolerance exemption, 40 CFR 180.1173, announced on August 2, 1996 (61 FR 40343) (FRL–5391–3), that applies to all plants and all genetic material necessary to produce CryIA(b). The text of 40 CFR 180.1152 exempts this active ingredient from the requirement of a tolerance when used as a plant pesticide in or on the raw agricultural commodities field corn, sweet corn, and popcorn. Because this tolerance exemption was previously reassessed, as explained below, the number of tolerances that will be counted as reassessed by revocation of 40 CFR 180.1152 is zero.

EPA has found previously that the exemption in 40 CFR 180.1152, *Bacillus thuringiensis* CryIA(b) delta-endotoxin and the genetic material necessary for its production (plasmid vector pCIB4431) in corn, is superseded by the exemption in 40 CFR 180.1173, covering all plant-incorporated protectants. In a registration decision document titled ''Biopesticides Registration Action Document: *Bacillus thuringiensis* Plant-Incorporated Protectants,'' issued October 15, 2001, EPA states:

> By this reassessment, EPA has completed its tolerance reassessment for Cry1A(b) (§180.1173) and for Cry3A (§180.1147) under 408(q) of the FFDCA. The following tolerance exemptions allow the use of the listed plant-incorporated protectants in food and/or feed.
>
> c. *Bacillus thuringiensis* Cry1A(b) delta-endotoxin and the genetic material necessary for its production in all plants are exempt from the requirement of a tolerance when used as plant-incorporated protectants in all plant raw agricultural commodities 40 CFR 180.1173, August 2, 1996 (61 FR 40343) (FRL–5391–3).

The October 15, 2001 Biopesticides Registration Action Document further states that the tolerance exemption in 40 CFR 180.1152 is also considered reassessed because it is included in the broader tolerance exemption described in (c) above. The report continues:

> The Agency plans on revoking this more narrow tolerance exemption in the near future in order to reduce confusion.

Therefore, in this document EPA is proposing to revoke the exemption in 40 CFR 180.1152 because it is no longer needed. The final rule will not change availability or use of the pesticide mentioned. A hardcopy of the Executive Summary of the October 15, 2001 document is available in the public docket for this rule, while an electronic copy is available through EPA's electronic public docket and comment system, EPA Dockets at *http://www.epa.gov/edocket/.* You may search for docket ID number OPP–2003–0209, then click on that docket number to view its contents.

B. What is the Agency's Authority for Taking this Action?

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods hereinafter collectively referred to as (''food''). Section 408 of FFDCA, 21 U.S.C. 301 *et seq.*, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on foods, 21 U.S.C. 346(a). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA. If food containing pesticide residues is considered to be ''adulterated,'' you may not distribute the product in interstate commerce 21 U.S.C. 331a) and 342(a). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA 7 U.S.C. (*et seq.*). Food-use pesticides not registered in the United States have tolerances for residues of pesticides in or on commodities imported into the United States.

EPA's general practice is to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may

therefore, no longer be used in the United States. EPA also revokes tolerances that have been superseded or replaced. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, and as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in an unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances and exemptions for residues on crop uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerance exemptions to identify themselves and those exemptions that are needed to cover imported commodities.

Parties interested in retention of the tolerance exemptions should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance or exemption, EPA may require that parties interested in maintaining the tolerances or exemptions provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance or exemption at issue.

C. When Do These Actions Become Effective?

EPA is proposing that revocation of these tolerance exemptions become effective on the day the final rule revoking these tolerance exemptions is published in the **Federal Register.** The Agency believes that the revocation date allows users to exhaust stocks and allows sufficient time for passage of treated commodities through the channels of trade. However, if EPA is presented with information that existing stocks would still be available and that information is verified, the Agency will consider leaving the existing tolerance exemption in place. If you have comments regarding existing stocks and whether the effective date allows sufficient time for treated commodities to clear the channels of trade, please submit comments as described under Unit I.C. Similarly, if you have comments regarding these tolerance exemption revocations or the effective date of the revocations, please submit comments as described under Unit I.C.

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(i)(5), as established by FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration (FDA) that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

D. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. For counting purposes, and based on this proposed action, nine exemptions would be counted as reassessments toward the August 2006 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

III. Are the Proposed Actions Consistent With International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standards established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. EPA has developed guidance concerning submissions for import tolerance support (June 1, 2000 65 FR 35069) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/*. On the Home Page select ''Laws and Regulations,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under **Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

IV. Regulatory Assessment Requirements

In this proposed rule, EPA is proposing to revoke specific tolerance exemptions established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action, i.e., a tolerance exemption revocation for which extraordinary circumstances do not exist from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed

rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) Public Law 104–4. Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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). Pursuant to the Regulatory Flexibility Act (RFA) 5 U.S.C. 601 (*et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticides named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposed revocations that would change EPA's previous analysis. Any comments about the Agency's determination should be submitted to EPA along with comments on the proposal, and will be addressed prior to issuing a final rule.

In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 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 directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, 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 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. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 7, 2003.

James Jones,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§§ 180.1063, 180.1088, 180.1116, 180.1123, 180.1125, 180.1129, 180.1152, and 180.1169 [Removed]

2. Sections 180.1063, 180.1088, 180.1116, 180.1123, 180.1125, 180.1129, 180.1152, and 180.1169 are removed.

[FR Doc. 03–29322 Filed 11–25–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3644, MB Docket No. 03–234, RM–10698]

Digital Television Broadcast Service; Fargo, ND

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by North Dakota Television License Sub, LLC, licensee of station KVLY–go, North Dakota, proposing the substitution of DTV channel 44 for DTV channel 58. DTV Channel 44 can be allotted to Fargo at reference coordinates 47–20–32 N. and 97–17–20 W. with a power of 414, a height above average terrain HAAT of 543 meters. Since the community of Fargo is within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government must be obtained for this allotment.

DATES: Comments must be filed on or before January 5, 2004, and reply comments on or before January 20, 2004.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). *See*

Electronic Filing of Documents in Rule Making Proceedings, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Andrew S. Kersting, Dickstein, Shapiro, Morin & Oshinsky, LLP, 2101 L Street, NW., Washington, DC 20037–1526 (Counsel for North Dakota Television Sub, LLC).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–234, adopted November 6, 2003, and released November 14, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under North Dakota is amended by removing DTV channel 58 and adding DTV channel 44 at Fargo.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–29467 Filed 11–25–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1080–AI82

Endangered and Threatened Wildlife and Plants; Endangered Status for Scimitar-Horned Oryx, Addax, and Dama Gazelle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), provide notice of the reopening of the comment period for the proposed rule to list three species of antelope: scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Gazella dama*), as endangered. The comment period is reopened to accommodate requests by two non-government organizations for additional time to provide information. Comments previously submitted need not be resubmitted because they will be incorporated into the public record as part of this comment period and will be fully considered in the final determination.

DATES: The most recent comment period for the proposed rule closed October 22, 2003. With this reopening notification, written comments may now be submitted until January 12, 2004.

ADDRESSES: Submit any comments, information, and questions by mail to the Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 750, Arlington, VA 22203; or by fax to 703–358–2276; or by e-mail to *ScientificAuthority@fws.gov.* Comments and supporting information will be available for public inspection, by appointment, from 8 a.m. to 4 p.m. at the above address. You may also obtain copies of the November 5, 1991, proposed rule, and the July 24, 2003, notice to reopen the comment period from the above address.

FOR FURTHER INFORMATION CONTACT: Eleanora Babij at the above address, or by phone, 703–358–1708; fax, 703–358–2276; or e-mail, *ScientificAuthority@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Gazella dama*) originally occupied the same general region of North Africa. The reasons for the decline of all three antelope species are similar. Desertification, coupled with severe droughts, has dramatically reduced available habitat. The growth of permanent farming has brought additional pressures, such as human habitat disturbance and competition from domestic livestock, which have restricted these antelopes to marginal habitat. Additional pressures from the civil wars in Chad and the Sudan have resulted in increased military activity, construction, and uncontrolled hunting.

For further information regarding background biological information, factors affecting the species, and conservation measures available to scimitar-horned oryx, addax, and dama gazelle, please refer to the proposed rule published in the **Federal Register** on November 5, 1991 (56 FR 56491), and the notice to reopen the comment period published on July 24, 2003 (68 FR 43706).

Public Comments Solicited

We will accept written comments and information during this reopened comment period from the public, other concerned governmental agencies, the

scientific community, industry, or any other interested party. Comments particularly are sought concerning;

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the scimitar-horned oryx, addax, and dama gazelle;

(2) Additional information concerning the range, distribution, and population size of the scimitar-horned oryx, addax, and dama gazelle;

(3) Current planned activities in the species' range and their possible impacts on the scimitar-horned oryx, addax, and dama gazelle;

(4) Information on the validity of *G. d. lozanoi* as a subspecies;

(5) Alternatives to the treatment of captive and non-native free-ranging populations of scimitar-horned oryx, addax, and dama gazelle; and

(6) Information on the genetic integrity of captive and non-native free-ranging populations of scimitar-horned oryx, addax, and dama gazelle, and particularly whether any captive or non-native free ranging populations are likely to have been hybridized.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Any person commenting may request that we withhold their home address, which we will honor to the extent allowable by law. In some circumstances, we may also withhold a commenter's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m. at the Division of Scientific Authority (*see* **ADDRESSES** section).

Author

The primary author of this notice is Eleanora Babij, Division of Scientific Authority, U.S. Fish and Wildlife Service (*see* **ADDRESSES** section).

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

Dated: November 14, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–29533 Filed 11–25–03; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 68, No. 228

Wednesday, November 26, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes Provincial Advisory Committee (DPAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes Provincial Advisory Committee will meet on December 12th, 2003 starting at 9 a.m. at the Mid-Oregon Federal Credit Union Conference Room on 1386 NE Cushing (near the corner of 27th and Neff), Bend, Oregon. Agenda items will include an overview of the fire history on the Deschutes National Forest, the district fire recovery briefings, Recreation Fee Demo Project, and the Lower Deschutes River limited entry system. The remainder of the day will include info sharing and a Public Forum from 4 p.m. till 4:30 p.m. All Deschutes Province Advisory Committee Meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Chris Mickle, Province Liaison, Deschutes NF, Crescent RD, P.O. Box 208, Crescent, OR 97754, Phone (541) 433–3216.

Dated: November 20, 2003.

Leslie A.C. Weldon,

Deschutes National Forest Supervisor.

[FR Doc. 03–29633 Filed 11–25–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Fresno County Resource Advisory Committee will meet in Prather, California. The purpose of the meeting is to discuss and to recommend project proposals for FY2004 funds regarding the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) for expenditure of Payments to States Fresno County Title II funds.

DATES: The meeting will be held on December 16, 2003 from 6:30 p.m. to 9:30 p.m.

ADDRESSES: The meeting will be held at the High Sierra Ranger District, Sierra National Forest, 29688 Auberry Road, Prather, California 93651. Send written comments to Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, c/o Sierra National Forest High Sierra Ranger District, 29688 Auberry Road, Prather, CA 93651 or electronically to *rekman@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, (559) 855–5355 ext. 3341.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Fresno County Title II project matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Public sessions will be provided and individuals who made written requests by December 16, 2003 will have the opportunity to address the Community at those sessions. Agenda items to be covered include: (1) Call for new projects; (2) Status report from project recipients; (3) review and adopt project monitoring form and (4) Public comment.

Dated: November 19, 2003.

Ray Porter,

District Ranger,

[FR Doc. 03–29569 Filed 11–25–03; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Hampshire Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a community forum of the New Hampshire Advisory Committee will begin at 9 a.m. and end at 3:30 p.m., Thursday, December 4, 2003, in the Aldermanic Chambers of Manchester City Hall, 108 Elm Street, Manchester, New Hampshire.. The purpose of the community forum is to address issues related to access to health care by limited-English-proficient and hearing-impaired persons.

Persons desiring additional information should contact Aonghas St-Hilaire of the Eastern Regional Office, (202) 376–7533, TDD: (202) 376–8116. Hearing impaired persons who will attend the community forum and require the services of a sign language interpreter should contact the Eastern Regional Office at least 10 (ten) working days before the scheduled date of the community forum.

The community forum will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC November 19, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–29585 Filed 11–25–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–868]

Certain Folding Metal Tables and Chairs from the People's Republic of China: Notice of Partial Rescission of First Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Partial Rescission of First Antidumping Duty Administrative Review.

SUMMARY: On July 29, 2003, the Department of Commerce (''the Department'') published in the **Federal Register** a notice announcing the initiation of the administrative review of the antidumping duty order on folding metal tables and chairs from the People's Republic of China (''PRC''). The period of review (''POR'') is December 3, 2001, to May 31, 2003. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative*

Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews, 68 FR 44524, July 29, 2003 (''*Initiation Notice*''). This review has now been partially rescinded for certain companies because the requesting party withdrew its requests.

EFFECTIVE DATE: November 26, 2003.

FOR FURTHER INFORMATION CONTACT: John Drury, Patrick Edwards or Anya Naschak, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 7866, Washington, D.C. 20230; telephone (202) 482–0195, (202) 482–8029, (202) 482–6375, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Review

The merchandise subject to this review consists of assembled and unassembled folding tables and folding chairs made primarily or exclusively from steel or other metal, as described below:

(1) Assembled and unassembled folding tables made primarily or exclusively from steel or other metal (''folding metal tables''). Folding metal tables include square, round, rectangular, and any other shapes with legs affixed with rivets, welds, or any other type of fastener, and which are made most commonly, but not exclusively, with a hardboard top covered with vinyl or fabric. Folding metal tables have legs that mechanically fold independently of one another, and not as a set. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of folding metal tables are the following:

a. Lawn furniture;
b. Trays commonly referred to as ''TV trays'';
c. Side tables;
d. Child-sized tables;
e. Portable counter sets consisting of rectangular tables 36'' high and matching stools; and
f. Banquet tables. A banquet table is a rectangular table with a plastic or laminated wood table top approximately 28'' to 36'' wide by 48'' to 96'' long and with a set of folding legs at each end of the table. One set of legs is composed of two individual legs that are affixed together by one or more cross-braces using welds or fastening hardware. In contrast, folding metal tables have legs that mechanically fold independently of one another, and not as a set.

(2) Assembled and unassembled folding chairs made primarily or exclusively from steel or other metal (''folding metal chairs''). Folding metal chairs include chairs with one or more cross-braces, regardless of shape or size, affixed to the front and/or rear legs with rivets, welds or any other type of fastener. Folding metal chairs include: those that are made solely of steel or other metal; those that have a back pad, a seat pad, or both a back pad and a seat pad; and those that have seats or backs made of plastic or other materials. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of folding metal chairs are the following:

a. Folding metal chairs with a wooden back or seat, or both;
b. Lawn furniture;
c. Stools;
d. Chairs with arms; and
e. Child-sized chairs.

The subject merchandise is currently classifiable under subheadings 9401710010, 9401710030, 9401790045, 9401790050, 9403200010 and 9403200030 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and U.S. Customs and Border Protection (''CBP'') purposes, the Department's written description of the merchandise is dispositive.

Background:

On June 16, 2003, in response to the Department's notice of opportunity to request a review published in the **Federal Register**, Wok and Pan Industry, Inc. (''Wok & Pan'') requested the Department conduct an administrative review of the antidumping duty order on folding metal tables and chairs (''FMTC'') from the PRC (*See Notice of Antidumping Duty Order: Folding Metal Tables and Chairs from the People's Republic of China*, 67 FR 43277 (June 27, 2002)) for entries of subject merchandise made by Wok & Pan. On June 26, 2003, EJ Footwear, LLC requested the Department conduct an administrative review of entries of subject merchandise made by Dongguan Shichang Metals Factory Co., Ltd. (''Shichang''). On June 30, 2003, the Meco Corporation (''petitioner'') requested the Department conduct an administrative review of entries of subject merchandise made by three Chinese producers/exporters: Feili Furniture Development Co., Ltd and Feili (Fujian) Co., Ltd (''Feili''), New-Tec Integration Co., Ltd. (''New-Tec''), and Shichang. The Department initiated the review for all companies. *See Initiation Notice*.

On October 27, 2003, the petitioner requested a withdrawal of its request for review of products manufactured or exported by Feili and New-Tec. The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review. The petitioner made a request for withdrawal within the 90–day deadline, in accordance with 19 CFR 351.213(d)(1). Respondents Feili and New-Tec objected to this request, on the grounds that Feili and New-Tec had also submitted requests for review of entries of subject merchandise produced by Feili and New-Tec. Petitioner argued that there is no record evidence that Feili or New-Tec officially filed a copy of their request for review and, further, that there is no copy of such a request available in the public case file at the Department. The Department has found that Feili and New-Tec have submitted no evidence on record that any individual representing their interests in this case attempted to file on the official record a request for review with the requisite number of copies to the Import Administration Docket Center, nor that the review request was served on interested parties in this case, as required under the regulations. The Department has determined that the record strongly indicates that Feili and New-Tec did not officially request a review in this case. For further discussion of these issues, please see the Decision Memorandum to Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, Group III from John Drury, Patrick Edwards, Anya Naschak, case analysts for Office 8 through Richard O. Weible, Office 8 Director (November 20, 2003).

Therefore, for Feili and New-Tec, the Department is rescinding this review of the antidumping duty order on FMTC from the PRC covering the period December 3, 2001, to May 31, 2003.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(l) of the Act and 19 CFR 351.213(d)(4) of the Department's regulations.

Dated: November 20, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–29600 Filed 11–25–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-357–812]

Honey From Argentina: Extension of Time Limit for Preliminary Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the 2001–2002 administrative review of the antidumping duty order on honey from Argentina. This review covers five exporters of the subject merchandise to the United States and the period May 11, 2001 through November 30, 2002.

EFFECTIVE DATE: November 26, 2003.

FOR FURTHER INFORMATION CONTACT: Brian J. Sheba at (202) 482–0145 or Donna Kinsella at (202) 482–0194, Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 31, 2002, the American Honey Producers Association and the Sioux Honey Association (collectively ''petitioners'') requested an administrative review of the antidumping duty order on honey from Argentina in response to the Department's notice of opportunity to request a review published in the **Federal Register**. *See Notice of Antidumping Duty Order: Honey from Argentina*, 66 FR 63672 (December 10, 2001). The petitioners requested the Department conduct an administrative review of entries of subject merchandise made by 21 Argentine producers/exporters. In addition, the Department received requests for review from 9 Argentine exporters. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 3009 (January 22, 2003).

The Department initiated the review for all companies. On January 17, 2003, petitioners withdrew their request for review of 14 companies and the Department granted this request. *See Notice of Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 13895 (March 21, 2003).

Based on withdrawals of request for review from Compania Apicola Argentina S.A. and Mielar S.A., the Department rescinded the review with respect to these two companies. *See Notice of Partial Rescission of Antidumpting Duty Administrative Review*, 68 FR 25568 (May 13, 2003). On August 13, 2003, Radix S.R.L. (Radix) and Compania Europeo Americana S.A. (CEASA), submitted letters of withdrawal of request for review. On the same date, petitioners also submitted a letter of withdrawal of request for review with respect to Radix and CEASA. The Department granted these requests and subsequently rescinded the review with respect to Radix and CEASA. *See Notice of Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 52386 (September 3, 2003).

Notice of Extension

Pursuant to the time limits for administrative reviews set forth in section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the original time limit for the preliminary results of review was September 2, 2003. On July 23, 2003, we extended the time limit for the preliminary results of review to December 8, 2003. *See Extension of Time Limit for Preliminary Results of Administrative Review*, 68 FR 43491. It is not practicable to complete this review within this time limit due to a number of significant case issues, such as sales below cost, the collection of cost data, high inflation, and currency devaluation. Therefore, the Department is further extending the time limit for completion of the preliminary results of review until December 31, 2003 in accordance with section 751(a)(3)(A) of the Tariff Act. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act (19 U.S.C. 1675 (a)(3)(A) (2001)).

Dated: November 20, 2003.

Edward C. Yang,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–29602 Filed 11–25–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C-489–806]

Certain Pasta from Turkey: Notice of Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Countervailing Duty Administrative Review.

SUMMARY: In response to a request made on July 31, 2003, by Gidasa Sabanci Gida Sanayi ve Ticaret A.S., a producer/exporter of certain pasta from Turkey, the Department of Commerce initiated an administrative review of the countervailing duty order on certain pasta from Turkey, covering the period January 1, 2002, through December 31, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 50750 (August 22, 2003). As a result of a timely withdrawal of the request for review by Gidasa Sabanci Gida Sanayi ve Ticaret, A.S., we are rescinding this review.

EFFECTIVE DATE: November 26, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4987.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, the Department of Commerce (''the Department'') published a countervailing duty order on certain pasta from Turkey. *See Notice of Countervailing Duty Order: Certain Pasta from Turkey*, 61 FR 38546 (July 24, 1996). On July 31, 2003, Gidasa Sabanci Gida Sanayi ve Ticaret, A.S. (''Gidasa''), a producer/exporter of certain pasta from Turkey, requested an administrative review of the countervailing duty order on certain pasta from Turkey for the relevant period. In accordance with 19 CFR 351.221(c)(1)(i), we initiated the review on August 22, 2003 (68 FR 50750). On November 3, 2003, Gidasa withdrew its request for review.

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not

enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (*HTSUS*). Although the *HTSUS* subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope ruling to date: (1) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See Memorandum from John Brinkmann to Richard Moreland*, dated May 24, 1999, in the case file in the Central Records Unit, main Commerce building, room B-099 (''CRU'').

Rescission of Administrative Review

The Department's regulations, at 19 CFR 351.213(d)(1), provide that the Department will rescind an administrative review if the party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Gidasa withdrew its request for an administrative review on November 3, 2003, which is within the 90-day deadline. No other party requested a review of Gidasa's sales. Therefore, the Department is rescinding this administrative review.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with 19 CFR 351.213(d)(4).

Dated: November 17, 2003.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–29601 Filed 11–25–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 03–00005.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to American Commodity Company, LLC (''ACC''). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number), or by e-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of l982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2003).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the Certification in the **Federal Register.** Under section 305 (a) of the Act and 15 CFR 325.ll(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

U.S. rice and rice products including: rough rice, brown rice, milled, undermilled or unpolished rice, coated rice, oiled rice, enriched rice, rice bran, rice polish, head rice, broken rice, secondhead rice, brewers rice, screenings, rice flour, and rice hulls.

2. Technology Rights

Technology Rights, including, but not limited to: patents, trademarks, service marks, copyrights, trade secrets and know-how that relate to the Products.

3. Export Trade Facilitation Services (as they relate to the Export of Products and Technology Rights)

Export Trade Facilitation Services, including, but not limited to: arranging and coordinating delivery of Product to port of export, arranging for inland and/or ocean transportation, allocating Product to vessel; arranging for storage space at port; arranging for warehousing, stevedoring, wharfage, handling, inspection, fumigation, quality control, financing, freight forwarding, insurance and documentation; reviewing letters of credit; invoicing foreign buyer; collecting payment; and arranging for payment of applicable brokerage fees and commissions.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

With respect to the sale of Products, licensing of Technology Rights, and provisions of the Export Trade Facilitation Services, under its proposed Export Trade Certificate of Review, the American Commodity Company, LLC may:

(a) Receive information on an individual basis from individual Suppliers regarding Product available for export and delivery schedules for the purpose of determining the availability of Products for purchase and export;

(b) Solicit offers from Suppliers to sell Product to ACC for a specific export opportunity;

(c) Obtain agreements from Suppliers to offer/sell Product through the certified activities of ACC;

(d) Establish prices, quantities and terms for sales of Product in export markets;

(e) Solicit orders from potential foreign distributors and purchasers of Product for delivery to export markets;

(f) Submit offers to potential distributors and purchasers for sale of Product for delivery to export markets;

(g) Negotiate and enter into agreements for sale of Product in export markets;

(h) Enter into agreements to purchase Product from one or more Suppliers by which Suppliers may agree to sell exclusively to ACC for delivery in a particular export market or markets. ACC may agree to purchase exclusively from particular Supplier(s) for resale of Product in a particular export market or markets;

(i) Enter into agreements with one or more Export Trade Intermediaries or purchasers for their purchase of Product by which ACC may agree to deal exclusively with a given customer in the export market and/or that customer may agree to deal exclusively with ACC. Additionally, that customer may agree not to purchase from ACC's competitors unless authorized by the ACC to do so;

(j) Allocate sales of Product and/or distribute export orders among Suppliers on any basis ACC deems appropriate;

(k) Act as broker and/or operate as sub-contractor to suppliers and possibly take title to Product;

(l) Utilize applicable export assistance and incentive programs which are available to ACC within the government and trade sectors;

(m) Provide and/or arrange for the provision of Export Trade Facilitation Services;

(n) Use its discretion, in good faith, to sell Product, quote prices for Product, provide information regarding Product, or to market or sell Product to any distributors or purchasers of its choosing in export markets or in any countries or geographic areas in export markets; and

(o) Meet with Suppliers, Export Trade Intermediaries, or trade associations periodically to discuss matters specific to exporting Product (not related to price and supply arrangements between applicant and the individual suppliers) such as relevant facts concerning export markets (*e.g.* demand conditions, transportation costs and prices), or the possibility of joint marketing, selling or bidding arrangements in the export markets.

Definition

''Export Trade Intermediary'' means a person who acts as distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions including or arranging for the provision of Export Trade Facilitation Services.

''Supplier'' means a person who produces, provides or sells a Product.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, ACC shall not intentionally disclose, directly or indirectly, to any Supplier any information regarding its or any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, domestic customers, or U.S. business plans, strategies, or methods, unless such information is already generally available to the trade or public.

2. ACC will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: November 19, 2003.

Jeffrey C. Anspacher,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 03–29563 Filed 11–25–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030602141–3284–05; I.D. 061703A]

RIN 0648–ZB55

Availability of Grants Funds for Fiscal Year 2004

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

ACTION: Notice; extension of application deadline.

SUMMARY: The National Oceanic and Atmospheric Administration, National Marine Fisheries Service publishes this notice to extend the solicitation period on a notice inviting the public to submit proposals for available funding for the Chesapeake Bay Fisheries Research Program, which funds projects that support research, monitoring, modeling and management addressing various aspects of Chesapeake Bay fisheries, published on Friday, October 17, 2003. NOAA extends the solicitation period by 11 days to provide the public more time to submit proposals. The new deadline for the receipt of proposals is December 12, 2003. All other requirements for this solicitation remain the same.

DATES: Applications must be received by 5 p.m. eastern daylight savings time on December 12, 2003. Originally, the application deadline was published on October 17, 2003 (68 FR 59778).

ADDRESSES: The address for submitting Proposals electronically is: *http://www.grants.gov/*. (Electronic submission is encouraged). Paper applications must be mailed to the following address: Derek M. Orner, NOAA Chesapeake Bay Office, 410 Severn Avenue, Suite 107A, Annapolis, MD 21403.

FOR FURTHER INFORMATION CONTACT: For further information, contact Derek M. Orner, NOAA Chesapeake Bay Office,410 Severn Avenue, Suite 107A, Annapolis, MD 21403, or by phone at 410–267–5676, or fax to 410–267–5666, or via Internet at *derek.orner@noaa.gov*.

Dated: November 20, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 03–29599 Filed 11–25–03; 8:45 am]

BILLING CODE 3510–12–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Commercial Remote Sensing Advisory Committee Meeting

ACTION: Notice of public meeting.

SUMMARY: The Advisory Committee on Commercial Remote Sensing (ACCRES) will meet December 11, 2003.

Date and Time: The meeting is scheduled as follows:

December 11, 2003, 8:30 a.m.–5 p.m. The first part of this meeting will be closed to the public. The public portion of the meeting will begin at 1 p.m.

ADDRESSES: The meeting will be held in Room 8331 of Silver Spring Metro

Center Building I (SSMC I) in Silver Spring, Maryland. SSMC I is located at 1335 East-West Highway. It is located near the Silver Spring Metro Station on the Red Line. While open to the public, seating capacity may be limited.

SUPPLEMENTARY INFORMATION: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of the meeting of ACCRES. ACCRES was established by the Secretary of Commerce (Secretary) on May 21, 2002, to advise the Secretary through the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for the licensing of commercial remote sensing satellite systems.

Matters To Be Considered

The first part of the meeting will be closed to the public pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended by Section 5(c) of the Government in Sunshine Act, Pub. L. 94–409 and in accordance with Section 552b(c)(1) of Title 5, United States Code. Accordingly, portions of this meeting which involve the ongoing review and implementation of the April 2003 U.S. Commercial Remote Sensing Space Policy and related national security and foreign policy considerations for NOAA's licensing decisions may be closed to the public. These briefings are likely to disclose matters that are specifically authorized under criteria established by Executive Order 12958 to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order.

All other portions of the meeting will be open to the public. During the open portion of the meeting, the Committee will discuss its initial findings, the status of NOAA's licensing program review, special NOAA projects concerning the commercial remote sensing industry, and civil agency initiatives on the use of commercial remote sensing products and services. The committee will also receive public comments on its activities.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed to ACCRES, NOAA/NESDIS International and Interagency Affairs Office, 1335 East-West Highway, Room 7311, Silver Spring, Maryland 20910.

Additional Information and Public Comments

Any member of the public wishing further information concerning the meeting or who wishes to submit oral or written comments should contact Timothy Stryker, Designated Federal Officer for ACCRES, NOAA/NESDIS International and Interagency Affairs Office, 1335 East-West Highway, Room 7311, Silver Spring, Maryland 20910. Copies of the draft meeting agenda can be obtained from Tahara Moreno at (301) 713–2024 ext. 202, fax (301) 713–2032, or e-mail *Tahara.Moreno@noaa.gov.*

The ACCRES expects that public statements presented at its meetings will not be repetitive of previously-submitted oral or written statements. In general, each individual or group making an oral presentation may be limited to a total time of five minutes. Written comments (please provide at least 13 copies) received in the NOAA/NESDIS International and Interagency Affairs Office on or before December 5, 2003, will be provided to Committee members in advance of the meeting. Comments received too close to the meeting date will normally be provided to Committee members at the meeting.

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 Douglas Brauer at telephone (301) 713–2024 x213, e-mail *Douglas.Brauer@noaa.gov.*

Gregory W. Withee,

Assistant Administrator for Satellite and Information Services.

[FR Doc. 03–29561 Filed 11–25–03; 8:45 am]

BILLING CODE 3510–HR–P

COMMODITY FUTURES TRADING COMMISSION

Citrus Associates of the New York Cotton Exchange Proposed FCOJ–A Futures and Options Contract and FCOJ–B Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of terms and conditions of new contract specifications for FCOJ–A futures and options contracts and FCOJ–B futures contract.

SUMMARY: The Citrus Associates of the New York Cotton Exchange (CANYCE or Exchange) has requested that the Commission approve the subject proposed new FCOJ–A futures and options contracts and FCOJ–B futures contract. The proposals were submitted pursuant to Commission Regulations 40.3 and 40.5.

The delivery provisions of the proposed FCOJ–A futures contract are the same as the existing FCOJ–2 futures contract, and the delivery provisions of the proposed FCOJ–B futures contract are the same as the existing FCOJ–1 futures contract. The FCOJ–A contract will trade outright, as the principal trading vehicle, and the FCOJ–B contract will trade as a differential to the FCOJ–A contract (currently, the FCOJ–1 contract trades outright and the FCOJ–2 contract trades as a differential to the FCOJ–1 contract).

Both the FCOJ–A and FCOJ–B futures contracts will require delivery of 15,000 pounds of US Grade A orange solids with a Brix value of not less than 62.5 degrees, and a Brix to acid value ration of not less than 14 to 1 nor more than 19 to 1. Deliverable product must also have a minimum score of 94, with the minimums for the component factors fixed at 37 for color, 37 for flavor and 19 for defects. In addition, both the FCOJ–A and FCOJ–B futures contracts will require delivery in drums or tanks, at the seller's option, at Exchange-licensed warehouses in Florida, New Jersey, Delaware, or California. The principal difference between the two contracts is that the FCOJ–A futures contract, which, as noted, will be the principal trading vehicle, will require delivery of product that is 100% Florida origin, 100% Brazilian origin, or a combination of the two origins, whereas the FCOJ–B contract, which, as noted, will trade as a differential to FCOJ–A, will not have a country or state of origin requirement.

The Director of the Division of Market Oversight (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the Exchange's proposal for comment is in the public interest, and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before December 11, 2003.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette, Centre, 1155 21st Street, NW., Washington 20581 by the specified date. In addition, comments may be sent by facsimile transmission to (202) 418–5521 or by electronic mail to *secretary@cftc.gov*. Reference should be

made to FCOJ–A and FCOJ–B futures and options contract and FCOJ–B futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Martin Murray of the Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington 20581, (202) 418–5276. Facsimile number: (202) 418–5507. Electronic mail: *mmurray@cftc.gov*.

SUPPLEMENTARY INFORMATION: Copies of the Exchange's proposal will be available for inspection at the Office of the Secretariat, Three Lafayette Centre, 1155 21st Street, NW., Washington 20581. Copies of the proposal can also be obtained through the Commission's Web site at *http://www.cftc.gov/dea/pending/deanewcontr.htm*, or through the Office of the Secretariat by mail at the above mailing address or by phone at (202) 418–5100.

Other materials submitted by the CANYCE in support of the request for approval may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (2002)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8 at the above address.

Issued in Washington, DC on November 20, 2003.

Michael Gorham,

Director.

[FR Doc. 03–29498 Filed 11–25–03; 8:45 am]

BILLING CODE 8351–01–M

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0229]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Foreign Acquisition

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the 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 the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through March 31, 2004. DoD proposes that OMB extend its approval for use through March 31, 2007.

DATES: DoD will consider all comments received by January 26, 2004.

ADDRESSES: Respondents may submit comments directly on the Internet at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@osd.mil*. Please cite OMB Control Number 0704–0229 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite OMB Control Number 0704–0229.

At the end of the comment period, interested parties may view public comments on the Internet at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328. The information collection requirements addressed in this notice are available electronically via the Internet at: *http://www.acq.osd.mil/dp/dars/dfars.html*. Paper copies are available from Ms. Amy Williams, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Foreign Acquisition—Defense Federal Acquisition Regulation Supplement Part 225 and Related Clauses at 252.225; DD Form 2139; OMB Control Number 0704–0229.

Needs and Uses: DoD needs this information to ensure compliance with restrictions on the acquisition of foreign products imposed by statute or policy to protect the industrial base; to ensure compliance with U.S. trade agreements and memoranda of understanding that promote reciprocal trade with U.S. allies; and to prepare reports for submission to the Department of Commerce on the Balance of Payments Program.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 352,380 (52,285 reporting hours; 300,095 recordkeeping hours).

Number of Respondents: 22,415.

Responses Per Respondent: Approximately 7.

Number of Responses: 165,134.

Average Burden Per Response: .32 hours.

Frequency: On occasion.

Summary of Information Collection

DFARS 252.225–7000, Buy American Act-Balance of Payments Program Certificate, as prescribed in 225.1101(1), requires an offeror to identify, in its proposal, supplies that are not domestic end products, separately listing qualifying country and other foreign end products.

DFARS 252.225–7003, Report of Intended Performance Outside the United States, and 252.225–7004, Reporting of Contract Performance Outside the United States, as prescribed in 225.7203, require offerors and contractors to report information on subcontracts to be performed outside the United States. The reporting thresholds are $500,000 for contracts exceeding $10 million and the simplified acquisition threshold ($100,000) for contracts exceeding $500,000. The contractor may submit the report on DD Form 2139, Report of Contract Performance Outside the United States, or may use a computer-generated report that contains all information required by DD Form 2139.

DFARS 252.225–7005, Identification of Expenditures in the United States, as prescribed in 225.1103(1), requires contractors incorporated or located in the United States to identify, on each request for payment under contracts for supplies to be used, or for construction or services to be performed, outside the United States, that part of the requested payment representing estimated expenditures in the United States.

DFARS 252.225–7013, Duty-Free Entry, as prescribed in 225.1101(4), replaces three clauses formerly at DFARS 252.225–7009, Duty-Free Entry—Qualifying Country Supplies (End Products and Components), DFARS 252.225–7010, Duty-Free Entry—Additional Provisions, and

DFARS 252.225–7037, Duty-Free Entry—Eligible End Products. This new clause requires the contractor to provide information on shipping documents and customs forms regarding products that are eligible for duty-free entry.

DFARS 252.225–7016, Restriction on Acquisition of Ball and Roller Bearings, as prescribed in 225.7009–4(a), requires the contractor to retain records showing compliance with the requirement that ball and roller bearings delivered under the contract be wholly manufactured in the United States or Canada. The contractor must retain the records for 3 years after final payment and must make the records available upon request of the contracting officer. The contractor may request a waiver of this requirement in accordance with DFARS 225.7009–3, which requires the contractor to submit a written plan for transitioning to domestically manufactured bearings, if the waiver is requested under a multiyear contract or a contract exceeding 12 months.

DFARS 252.225–7018, Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Ballistic Missile Defense Research, Development, Test, and Evaluation, as prescribed in 225.7017–4, gives notice of the statutory prohibition on award of a contract to a foreign government or firm, if the contract provides for the conduct of research, development, test, or evaluation in connection with the Ballistic Missile Defense Program. The provision requires an offeror to indicate whether it is or is not a U.S. firm.

DFARS 252.225–7020, Trade Agreements Certificate, as prescribed in 225.1101(5), requires an offeror to list the item number and country of origin of any nondesignated country end product that it intends to furnish under the contract. This provision is used in all solicitations for products subject to the Trade Agreements Act.

DFARS 252.225–7025, Restriction on Acquisition of Forgings, as prescribed in 225.7102–4, requires the contractor to retain records showing compliance with the requirement that end items and their components delivered under the contract contain forging items that are of domestic manufacture only. The contractor must retain the records for 3 years after final payment and must make the records available upon request of the contracting officer. The contractor may request a waiver of this requirement in accordance with DFARS 225.7102–3.

DFARS 252.225–7032, Waiver of United Kingdom Levies—Evaluation of Offers, and 252.225–7033, Waiver of United Kingdom Levies, as prescribed in 225.1101(7) and (8), require an offeror to provide information to the contracting officer regarding any United Kingdom levies included in the offered price, and require the contractor to provide information to the contracting officer regarding any United Kingdom levies to be included in a subcontract that exceeds $1 million, before award of the subcontract.

DFARS 252.225–7035, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, as prescribed in 225.1101(9), requires an offeror to list any qualifying country, NAFTA country, or other foreign end product that it intends to furnish under the contract.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 03–29495 Filed 11–25–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 26, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 21, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Annual Client Assistance Program (CAP) Report.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 350.

Abstract: Form RSA–227 is used to analyze and evaluate the Client Assistance Program (CAP) administered by designated CAP agencies. These agencies provide services to clients and client applicants of programs, projects, and community rehabilitation programs authorized by the Rehabilitation Act of 1973, as amended. Data also are reported on information and referral services provided to any individual with a disability.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2411. When you access the information collection, click on ''Download Attachments ''to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements

should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–29581 Filed 11–25–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG04–3–000]

Butte Creek Expansion, LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

October 14, 2003.

Take notice that on October 8, 2003, Butte Creek Expansion, LLC (Butte Creek), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Butte Creek, a Delaware limited liability company, states that it will be engaged directly and exclusively in the business of owning all or part of one or more eligible facilities, and selling electric energy at wholesale. Butte Creek further states that it is developing an approximately 238 megawatt wind power generation facility to be located in Prowers County, Colorado and indicates that the Project will be an eligible facility pursuant to section 32(a)(2) of PUHCA.

Butte Creek states that it has served a copy of the filing on the Securities and Exchange Commission and the Public Utilities Commission of the State of Colorado.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: October 29, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–29516 Filed 11–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA04–1–000]

CEC Technologies, Limited; Notice of Petition for Adjustment

November 19, 2003.

Take notice that on October 28, 2003, CEC Technologies Limited (CEC), filed a petition for staff adjustment under section 502(c) of the Natural Gas Policy Act (NGPA) of 1978,[1] and Rules 207 and 212 (18 CFR 385.207—385.212) of the Commission's Rules of Practice and Procedure.CEC seeks relief from paying Kansas *ad valorem* tax refunds to Northern Natural Gas Company (Northern), pursuant to the Commission's January 2, 2003, order in Northern, Docket No. RP98–39–029.[2]

In this petition, CEC asserts it first became aware of a refund claim against CEC earlier this year when it received a letter from Northern stating that Chinook Energy Corporation (Chinook) had a refund obligation of Kansas *ad valorem* taxes by reason of Chinook's ownership of working interest in natural gas wells in Comanche County, Kansas.

CEC asserts: (1) It had no knowledge of the claims made by Northern and therefore is not in a position to affirm or deny Northern's claims; (2) it does not own any gas producing properties in Kansas or have any records of Chinook or CEC ever receiving any revenues from Northern or from any other pipeline with respect to gas producing properties in Kansas; (3) it neither owns any working interests in any gas producing properties; (4) it has no record of such Kansas properties; (5) it has virtually no revenues from any source with which it might make refunds; and (6) it does not have the financial resources to prosecute its claim for relief through the evidentiary and multiple briefing phases associated with the Commission hearing in Docket No. RP98–39–029.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission rules. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the eFiling link.

Comment Date: December 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00392 Filed 11–25–03; 8:45 am]

BILLING CODE 6717–01–P

[1] 15 U.S.C. 3142 (c) (1982).

[2] 102 FERC ¶ 61,007 (2003).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–18–000, et al.]

Alfalfa Electric Cooperative, Inc., et al.; Electric Rate and Corporate Filings

November 19, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Alfalfa Electric Cooperative, Inc., Choctaw Electric Cooperative, Inc., People's Electric Cooperative

[Docket Nos. EC04–18–000 and EL04–18–000]

Take notice that on November 12, 2003, Alfalfa Electric Cooperative, Inc. (AEC), Choctaw Electric Cooperative, Inc. (CEC), and People's Electric Cooperative (PEC) (collectively, the Cooperatives) filed with the Federal Energy Regulatory Commission (the Commission) a petition for declaratory order pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2003), disclaiming jurisdiction under section 201 of the Federal Power Act (FPA), 16 U.S.C. 824(e) (2000). The Cooperatives state that they are seeking a disclaimer of jurisdiction over the passive investors, including owner lessors, owner participants, and managers or owner trustees (collectively, Passive Participants) in a lease and leaseback transaction (the Transaction) involving bulk electric distribution systems owned by the Cooperatives and including transmission facilities owned by PEC and wholesale distribution facilities owned by AEC (PEC's transmission facilities and AEC's wholesale distribution facilities are collectively the Jurisdictional Facilities.). The Cooperatives also petitioned the Commission to authorize the lease and leaseback of the Jurisdictional Facilities pursuant to section 203 of the FPA

The Cooperatives request that the Commission issue the requested declaratory order by December 19, 2003.

Comment Date: December 3, 2003.

2. Lake Road Trust Ltd. Lake Road Generating Company, L.P., Lake Road Holding Company LLC, Lake Road GP Company LLC

[Docket No. EC04–19–000]

Take notice that on November 12, 2003, Lake Road Trust Ltd. and Lake Road Generating Company, L.P. (together, the Lake Road Parties) and Lake Road Holding Company LLC and Lake Road GP Company LLC (collectively, Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization to transfer certain jurisdictional facilities held by the Lake Road Parties to the lenders, interest hedge providers and investors of the Lake Road Parties. Applicants seek expedited review of the application and request confidential treatment of certain documents submitted therewith.

The Applicants state that a copy of the application was served upon the Connecticut Department of Public Utility Control.

Comment Date: December 2, 2003.

3. Dominion Nuclear Marketing I, Inc., Dominion Nuclear Marketing II, Inc., Dominion Nuclear Connecticut, Inc., and Dominion Energy Marketing, Inc.

[Docket Nos. EC04–20–000 and ER04–189–000]

Take notice that on November 12, 2003, Dominion Nuclear Marketing I, Inc. (DNM I), Dominion Nuclear Marketing II, Inc. (DNM II), Dominion Nuclear Connecticut, Inc. (DNC) and Dominion Energy Marketing, Inc. (DEMI) filed an application pursuant to section 203 of the Federal Power Act, for an order authorizing the proposed internal corporate reorganization pursuant to which DNM I and DNM II's interest in DNC will be transferred to DEMI and DNM I and DNM II's market-based rate schedules shall be cancelled.

Comment Date: December 3, 2003.

4. Union Electric Company d/b/a AmerenUE and Central Illinois Public Service Company d/b/a AmerenCIPS

[Docket No. EC04–21–000]

Take notice that on November 12, 2003, Union Electric Company d/b/a AmerenUE (AmerenUE) and Central Illinois Public Service Company d/b/a AmerenCIPS (AmerenCIPS) (collectively, AmerenUE and AmerenCIPS are referred to as Applicants), submitted an application pursuant to section 203 of the Federal Power Act, and Part 33 of the Federal Energy Regulatory Commission (Commission) regulations, 18 CFR Part 33, requesting all Commission authorizations and approvals necessary for AmerenUE to sell and transfer, and for AmerenCIPS to purchase and accept, certain jurisdictional assets now owned by AmerenUE.

Applicants state that copies of this filing have been served on all affected state commissions and also parties to contracts affected by the transfer.

Comment Date: December 3, 2003.

5. Covanta Energy Corporation Covanta Fairfax, Inc. Covanta Haverhill Associates Covanta Union, Inc. Covanta Onondaga, Limited Partnership

[Docket No. EC04–22–000]

Take notice that on November 13, 2003 Covanta Energy Corporation (Covanta), Covanta Fairfax, Inc., Covanta Haverhill Associates, Covanta Union, Inc. and Covanta Onondaga, Limited Partnership (collectively, the Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization to indirectly dispose of jurisdictional facilities through a change of control transaction that has been proposed as part of Covanta's plan of reorganization filed with the U.S. Bankruptcy Court for the Southern District of New York.

Applicants respectfully request that the Commission approve this transfer on an expedited basis and no later than December 19, 2003.

Comment Date: December 4, 2003.

6. FirstEnergy Corp. and its Public Utility Subsidiaries NRG Energy, Inc. and its Public Utility Subsidiaries

[Docket No. EC04–23–000]

Take notice that on November 14, 2003, FirstEnergy Corp. and its public utility subsidiaries (FirstEnergy) and NRG Energy, Inc. and its public utility subsidiaries (NRG) (collectively Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization for FirstEnergy to acquire certain debt and common equity securities of NRG as a means of settling outstanding claims against NRG, and for authorization for FirstEnergy to dispose of such securities as soon as possible thereafter in light of market conditions. Applicants state that if a Settlement Agreement is approved, FirstEnergy will be entitled to receive approximately 6.5% of the common stock of NRG and approximately $30 million of NRG Senior Notes.

Comment Date: December 5, 2003.

7. H.Q. Energy Services (U.S.) Inc.

[Docket No. ER97–851–013]

Take notice that on November 12, 2003, H.Q. Energy Services (U.S.) Inc. (HQUS) tendered for filing an updated market power study and Change in Status Report pursuant to the Commission's order in H.Q. Energy Services (U.S.) Inc., 81 FERC ¶ 61,184 (1997). The HQUS states that its submission demonstrates that HQUS continues to satisfy the Commission's requirements for authority to sell power at market-based rates.

Comment Date: December 3, 2003.

8. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–986–002]

Take notice that on November 12, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a revised Interconnection and Operating Agreement among Montana-Dakota Utilities Co., a Division of MDU

Resources Group, Inc. (Transmission), the Midwest ISO and Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. (Generation) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's regulations, 18 CFR 35.13 (2002).

The Midwest ISO requests an effective date of June 17, 2003.

The Midwest ISO states it has served all parties listed on the official service list maintained by the Secretary in this proceeding. In addition, the filing has been electronically posted on the Midwest ISO's website at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO further states it will provide hard copies to any interested parties upon request.

Comment Date: December 3, 2003.

9. Kansas City Power & Light Company

[Docket No. ER03–997–001]

Take notice that on November 12, 2003, Kansas City Power & Light Company (KCPL) submitted for filing its proposed procedures regarding the dispute between KCPL and the City of Independence, Missouri regarding an agreement filed under KCPL's Market-Based Rate Tariff providing for the sale of 90 MW of capacity from KCPL to the City of Independence.

Comment Date: December 3, 2003.

10. Northeast Utilities Service Company

[Docket No. ER03–1247–001]

Take notice that on November 12, 2003, Northeast Utilities Service Company, on behalf of its affiliates, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Power Company, Holyoke Water Power Company, and Public Service Company of New Hampshire (collectively, NU Companies), submitted First Revised Sheet No. 29 superseding Original Sheet No. 29 of the NU Companies' Open-Access Transmission Tariff for local network service, FERC Electric Tariff Original Volume No. 10, in compliance with the Commission's October 22, 2003 Order Accepting and Suspending Revised Open Access Transmission Tariff, and Establishing Hearing and Settlement Judge Procedures, Northeast Utilities Service Company, 105 FERC ¶ 61,089 (2003).

Comment Date: December 3, 2003.

11. Entergy Services, Inc.

[Docket No. ER03–1272–001]

Take notice that on November 12, 2003, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, Entergy) filed an amendment to its filing in the above-captioned proceeding in response to the Commission's October 22, 2003 Letter Order. Entergy states that the amendment and original filing address proposed revisions to the Entergy Open Access Transmission Tariff, FERC Electric Tariff Second Revised Volume No. 3, designed to implement an Available Flowgate Capability process for evaluating short-term transmission service requests.

Comment Date: December 3, 2003.

12. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–1260–001]

Take notice that on November 12, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a second revised Interconnection and Operating Agreement among GM Transmission, LLC, the Midwest ISO and Northern States Power Company d/b/a Xcel Energy pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's regulations, 18 CFR 35.13. The Midwest ISO requests an effective date of September 1, 2002.

The Midwest ISO states it has served all parties listed on the official service list maintained by the Secretary in this proceeding. In addition, the filing has been electronically posted on the Midwest ISO's website at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO further states that it will provide hard copies to any interested parties upon request.

Comment Date: December 3, 2003.

13. Northern/AES Energy, LLC

[Docket No. ER04–102–001]

Take notice that on November 12, 2003, Northern/AES Energy LLC (Northern) tendered for filing an amendment to the Notice of Cancellation filed on October 29, 2003 in Docket No. ER04–102–000.

Comment Date: December 3, 2003.

14. Union Electric Development Corporation

[Docket No. ER04–104–001]

Take notice that on November 13, 2003, Union Electric Development Corporation (UEDC) submitted for filing a Notice of Cancellation of its FERC Electric Tariff, Original Volume No. 1. UEDC asserts that the purpose of the filing is to cancel its market-based authority granted in Docket No. ER97–3663–000.

Comment Date: December 4, 2003.

15. KeySpan Generation LLC

[Docket No. ER04–112–001]

Take notice that on November 13, 2003, KeySpan Generation LLC submitted for filing an amendment to their October 30, 2003 filing in Docket No. ER04–112–000.

Comment Date: November 21, 2003.

16. New York Independent System Operator, Inc.

[Docket No. ER04–186–000]

Take notice that on November 12, 2003, the New York Independent System Operator, Inc. (NYISO), filed proposed revisions to the Independent System Operator Agreement. NYISO states that the proposed revisions would amend the Independent System Operator Agreement to allow two individuals to be elected to the position of chairperson or vice-chairperson of the Management Committee.

The NYISO states it has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's OATT or Services Tariff, the New York State Public Services Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: December 3, 2003.

17. North Jersey Energy Associates, A Limited Partnership

[Docket No. ER04–187–000]

Take notice that on November 12, 2003, North Jersey Energy Associates, A Limited Partnership (NJEA) petitioned the Commission to: (1) accept for filing NJEA's FERC Electric Tariff (Tariff) and grant NJEA the blanket authority to make market-based sales of energy, capacity and ancillary services under its Tariff; (2) accept for filing NJEA's Amended and Restated Power Purchase Agreement; (3) grant NJEA such waivers and authorizations as have been granted by the Commission to other entities authorized to transact at market-based rates; and (4) grant NJEA a waiver of the 60-day and 120-day notice requirements in section 35.3 of the Commission's regulations, 18 CFR 35.3, to the extent necessary to permit this filing to become effective conditioned on and as of the future date that NJEA notifies the Commission that it has terminated the Qualifying Facility status of its 300 MW natural gas-fired electricity and steam enerating facility in the borough of Sayreville, New Jersey.

Comment Date: December 3, 2003.

18. Delmarva Power & Light Company

[Docket No. ER04–188–000]

Take notice that on November 12, 2003, Delmarva Power & Light Company (Delmarva) tendered for filing a Notice of Cancellation and an Order No. 614 compliant cancelled rate schedule sheet (collectively referred to as Cancellation Documents) terminating the rate schedule between Delmarva and the Delaware City of Lewes (the Lewes Rate Schedule). Delmarva also tendered for filing a new executed Interconnection Agreement with the City of Lewes (Lewes IA).

Delmarva requests that the Commission allow the Cancellation Documents to become effective on December 31, 2003, the date that the Lewes Rate Schedule terminates as of its own terms. Delmarva further requests that the Commission allow the Lewes IA to become effective on January 1, 2004, the first date on which interconnection service will no longer be provided as part of the bundled service provided under the Lewes Rate Schedule.

Delmarva states that copies of the filing were served upon the City of Lewes and the Delaware Public Service Commission.

Comment Date: December 3, 2003.

19. Alan J. Fohrer

[Docket No. ID–3949–000]

Take notice that on October 8, 2003, Alan J. Fohrer submitted for filing an application for authorization under section 305(b) of the Federal Power Act to hold the following positions: Director and Chief, California Edison Company, Executive Officer, Director, Duratek, Inc.

Comment Date: December 10, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00391 Filed 11–25–03; 8:45 AM]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

November 19, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 1413–032.

c. *Date filed:* October 30, 2002.

d. *Applicant:* Fall River Rural Electric Cooperative, Inc.

e. *Name of Project:* Buffalo River Hydroelectric Project.

f. *Location:* On the Buffalo River near its confluence with the Henry's Fork River, near the town of Idaho Falls, in Fremont County, Idaho. The project occupies 9.8 acres of land within the Targhee National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Fall River Rural Electric Cooperative, Inc., 1150 North 3400 East, Ashton, Idaho 83420, Tel. # (208) 652–7431, and/or Brent L. Smith, President, Northwest Power Services, Inc, P.O. Box 535, Rigby, Idaho 83442, Tel. # (208) 745–0834.

i. *FERC Contact:* Gaylord Hoisington, (202) 502–6032, *gaylord.hoisington@ferc.gov*.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice. Reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The existing Buffalo River Project consists of: (1) A 142-foot-long by 12-foot-high timber-faced rock-filled diversion dam; (2) a 40-foot-long by 3-foot-high concrete slab spillway with stop logs; (3) a fish passage structure; (4) a concrete intake structure with a 5-foot steel slide gate; (5) a trash rack; (6) a 52-foot-long by 5-foot-diameter concrete encased steel penstock; (7) a 34-foot-long by 22-foot-high masonry block powerhouse containing a 250-kilowatt Bouvier Kaplan inclined shaft turbine; and (8) other appurtenant facilities. The applicant estimates that the total average annual generation would be 1,679 megawatthours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS'', ''TERMS AND CONDITIONS'', or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the

filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00393 Filed 11–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications for Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

November 19, 2003.

Take notice that the following applications have been filed with the Commission and are available for public inspection:

a. *Application Types:* Non-Project Use of Project Lands.

b. *Project Nos:* 2210–091, 2210–093 and 2210–094.

c. *Dates Filed:* 2210–091 filed on October 14, 2003, 2210–093 filed on October 20, 2003, and 2210–094 filed on October 16, 2003.

d. *Applicant:* Appalachian Power Company (APC).

e. *Name of Project:* Smith Mountain Pumped Storage Project.

f. *Location:* The project is located on the Roanoke River, in Bedford, Pittsylvania; Franklin and Roanoke Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. *Applicant Contact:* Teresa P. Rogers, Hydro Generation Department, American Electric Power, P.O. Box 2021, Roanoke, VA 24022–2121, (540) 985–2441

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 502–6182, or e-mail address: *heather.campbell@ferc.gov*.

j. *Deadline for filing comments and or motions:* December 19, 2003.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2210–091, –093, or –094) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission(s Web site at*http://www.ferc.gov* under the (e-Filing(link. The Commission strongly encourages e-filings.

k. *Description of Request:* Appalachian is requesting approval of non-project uses of project lands for the proposals described below.

P–2210–091—Request for approval for Waterways Properties to install and operate within the project boundary two docks with a total of twenty-eight covered stationary slips and two floaters. The first dock would have 16 covered boat slips and two floaters. The second dock would have 12 boat slips. The docks and associated facilities will serve multi-family type dwellings and single family homes. Construction would take place along the Roanoke River at a development known as the Waterways. There is no dredging associated with the proposal.

P–2210–093—Request for approval for Pat Bailey of CB Rentals and Sales to install and operate one dock with eight stationary covered slips, and four floating slips plus two additional floaters. In addition, the existing dock will be modified to incorporate 8 jet ski lifts. Construction would take place along the Roanoke River at an area identified as CB Rental and Sales. The site is located off Virginia Route 122. No dredging will be needed.

P–2210–094—Request for approval for WHM Corporation to construct and operate twenty three stationary docks with a total of 296 covered boat slips and 6 boat docks with a total of 74 floating boat slips for a total of 370 boat slips. Construction would take place in the upper third of the Roanoke River at a site known as Bridgewater Bay. No dredging is proposed.

l. *Location of the Applications:* These filings are available for review at the Commission in the Public Reference Room 888 First Street, NE, Room 2A, Washington, D.C. 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described applications. Copies of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00394 Filed 11–25–03; 8:45 am

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11847–003, Project No. 11848–003, Project No. 11849–003, and Project No. 11850–003]

Washington Hydro Energy Development Corporation, Skookum Hydro Inc.: Notice of Surrender of Preliminary Permits

November 19, 2003.

Take notice that the permittees for the subject projects have requested to surrender their preliminary permits because of the status of current economic conditions.

Project No.	Project name	Stream	State	Expiration date
11847–003	Cumberland Creek	Cumberland Creek	WA	11–30–2003
11848–003	Mill Creek	Mill Creek	WA	11–30–2003
11849–003	O'Toole Creek	O'Toole Creek	WA	11–30–2003
11850–003	Skookum Creek	Skookum and Orsino Creeks	WA	11–30–2003

The permits shall remain in effect through the thirtieth day after issuance of this notice unless that day is Saturday, Sunday, or holiday as described in18 CFR 385.2007, in which case each permit shall remain in effect through the first business day following that day. New applications involving these project sites, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00395 Filed 11–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Valley Electric Association Interconnection of Ivanpah Energy Center to Mead Substation (DOE/EIS–0354)

AGENCY: Western Area Power Administration, DOE.

ACTION: Record of decision.

SUMMARY: The Department of the Interior, Bureau of Land Management (BLM), prepared an Environmental Impact Statement (EIS) evaluating the construction, operation and maintenance of the Ivanpah Energy Center (IEC) power plant and ancillary facilities. The project would provide 500 megawatts (MW) of baseload power to the southern Nevada power grid. As a cooperating agency for the EIS, the Department of Energy's (DOE) Western Area Power Administration (Western) considered the environmental impacts of the Ivanpah Energy Center Project (Project) and the interconnection to Western's Mead Substation. Western specifically evaluated proposed modifications to facilities at the substation. The modifications are necessary to accommodate the new Valley Electric Association (VEA) 230-kilovolt (kV) transmission line interconnection for this new source of electric power. Western adopted the BLM EIS on May 28, 2003. This Record of Decision (ROD) announces Western's decision to grant the VEA interconnection request. Western will ensure that its responsibilities under the National Historic Preservation Act and the Endangered Species Act are met before the interconnection is implemented.

FOR FURTHER INFORMATION CONTACT: Mr. John Holt, Environmental Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, telephone (602) 352–2592, E-mail *holt@wapa.gov.* Copies of the EIS and the BLM Record of Decision are available from Jerry Crockford, Project Manager, BLM Farmington Field Office, 1235 La Plata Hwy, Suite A, Farmington, NM 87401, telephone (505) 599–6333, E-mail *jcrockford@nm.blm.gov.* For information about the DOE National Environmental Policy Act (NEPA) process, contact Carol M. Borgstrom, Director, NEPA Policy and Compliance, EH–42, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: The BLM is the lead agency for the IEC EIS (Final EIS dated May 2003). Western requested to be, and was designated, a cooperating agency for the IEC EIS on October 2, 2002. The EIS addresses the effects of the Project, including modification of Western's transmission system. After an independent review of the EIS, Western concluded that its comments and suggestions had been satisfied and subsequently adopted the IEC EIS as its own under 40 CFR part 1506.3. Western's EIS document number is DOE/EIS–0354.

Project Purpose and Need

The Project is designed to provide electric power to the southern Nevada power grid. Currently, demand in the southwestern United States exceeds capacity and continues to increase. Peak demand energy requirements for the Arizona-New Mexico-southern Nevada Power Area are projected to grow at an annual compound rate of 3.3 percent between 2000 and 2010. Annual energy requirements for the period are expected to increase at a compound rate of 3.4 percent according to North American Electric Reliability Council projections. The Project action alternatives considered in the EIS would partially satisfy this projected need.

Description of Alternatives

The Draft EIS evaluated two alternative plant sites, four alternative transmission line alignments, and the No Action Alternative. The Primm Plant site was selected as the environmentally preferred alternative. However, this alternative became commercially

unavailable to the Project proponent after the Draft EIS was published. The Final EIS, therefore, evaluated only the proposed alternative plant site (Goodsprings Site) and two associated alternative transmission line alignments, plus the No Action Alternative.

The proposed alternative is located entirely within Clark County, Nevada, and primarily on BLM land, within a BLM utility corridor, or on Western withdrawn land. The alternative principally consists of a 30-acre (permanent disturbance) site for the generation plant southeast of the town of Goodsprings, Nevada, and a new 230-kV transmission line to Western's Mead Substation.

The plant design is a 500–MW, natural gas-fired, combined-cycle, dry- and refrigeration-cooled, baseload electrical power generation station, as described in the EIS. Associated Project components include an onsite power substation, transmission line interconnection for the proposed Table Mountain Wind Generation Facility, fiber optic ground wires, natural gas pipeline, water treatment plant, water supply pipeline, telecommunications cable, and necessary temporary and permanent access roads.

Two alternative transmission line alignments were considered, Alternatives C and E. Both include interconnecting with the existing VEA 230-kV Pahrump-to-Mead transmission line at the Goodsprings power plant site and constructing a new Goodsprings-to-Mead 230-kV line. Alternative E would generally follow or parallel the existing Pahrump-to-Mead line and right-of-way southeast across the Ivanpah Valley, then northeast across the McCullough Mountain Range and the Eldorado Valley to Mead Substation (approximately 47.5 miles). Alternative C deviates from Alternative E only along one line segment that remains on the west side of Eldorado Valley before crossing to Mead Substation (approximately 47.8 miles). Regardless of the transmission line alternative, the interconnection at Western's Mead Substation will require constructing a new transmission line within the same alignment across Western's withdrawn lands, and modifying the 230-kV area of the substation.

The No Action Alternative would preclude construction and operation of the proposed power plant, transmission line, and other Project components. Existing conditions would remain unchanged. No environmental impacts are associated with the No Action Alternative, but the generation, transmission, and end use of the proposed electric power would be unavailable to potential users of the southern Nevada power grid.

Western's Decision

The BLM released its Project ROD on October 23, 2003, granting BLM rights-of-way for the Goodsprings Alternative plant site and Alternative E transmission line alignment. Based on the need for the Project and the results of the EIS, Western's decision is to grant the interconnection request for the VEA transmission line component of the Project. Western will facilitate the VEA 230-kV Alternative E transmission line approach across Western's withdrawn lands to Mead Substation and modify current substation configuration to accommodate the requested interconnection in the southeast portion of the 230-kV area within the Mead Substation. The No Action Alternative was not selected because it would not meet the defined purpose and need for the Project. Nor would this alternative allow Western to meet its obligations to VEA, as defined by Western's General Requirements for Interconnections and Western's obligations to provide interconnection under Section 211 of the Federal Power Act.

Mitigation Measures and Commitments

The Final EIS identified mitigation measures needed to reduce Project impacts. Specific measures are discussed in Section 1.3 on pages 1–2 to 1–6 of the Final EIS. Additional mitigation measures and standard practices are provided in the BLM Construction, Operations and Maintenance Plan.

The EIS impact analysis concluded that, with mitigation measures, most impacts from the selected Project alternative would not be significant. The only significant and unavoidable impacts of the Project are to Category B (medium population density) desert tortoise habitat. These impacts are associated with construction at the plant site, telecommunication lines, access roads, water supply line, and transmission lines. Significant impacts would result from direct incidental take during construction or operation, habitat fragmentation, introduction of nonnative plant species, soil compaction, and increased public access to the Project area.

The BLM provided a biological assessment outlining Project impacts to the U.S. Fish and Wildlife Service (FWS). In response, the FWS issued a Biological Opinion for the Project dated October 17, 2003. Western's decision is to grant the VEA interconnection request. However, the grant is issued with the condition that the Project must comply with the terms and conditions recommended in the FWS Final Biological Opinion to avoid, minimize, or mitigate any Project impacts to biological resources. Western will ensure that its responsibilities under the Endangered Species Act are met before the transmission system modifications are implemented.

The BLM has consulted with the State Historic Preservation Office and Native American Tribes. A Programmatic Agreement (PA) and treatment plan were developed to avoid, minimize, and mitigate adverse effects to historical and cultural properties. Western is a signatory to the PA and will ensure that its responsibilities under the PA and the National Historic Preservation Act are met before the action is implemented.

Western contacted 26 Native American Tribes during the Final EIS 30-day waiting period to ensure it satisfied Nation-to-Nation consultation requirements regarding the Project. Western received no response to its inquiries and no additional action is required.

The Project area does intersect 100-year floodplains in a few locations, but individual and cumulative floodplain impacts associated with transmission line structure location and construction are negligible. There are no wetlands affected by the Project. However, Western will require appropriate measures to minimize any potential impacts.

Western is adopting those mitigation measures that apply to its action, the interconnection and authorization for use of its withdrawn land for the 230–kV transmission line, and will issue a Mitigation Action Plan before any construction activity takes place. The Plan will address the adopted and standard mitigation measures. When completed, the Mitigation Action Plan will be made available to the public.

Compliance With Regulations

This ROD has been prepared following Council on Environmental Quality 1 regulations for implementing NEPA (40 CFR parts 1500–1508) and DOE Procedures for Implementing NEPA (10 CFR part 1021).

Dated: November 18, 2003.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 03–29566 Filed 11–25–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0059, FRL–7591–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; Emission Defect Information Reports and Voluntary Emission Recall Reports, EPA ICR Number 0282.13, OMB Control Number 2060–0048

AGENCY: Environmental Protection Agency.

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 to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2004. 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 January 26, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2003–0059, to EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epamail.epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Nydia Y. Reyes-Morales, Mail Code 6403J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–343–9264; fax number: 202–343–2057; e-mail address: *reyes-morales.nydia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2003–0059, which is available for public viewing at the 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 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 *www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are manufacturers of nonroad engines and heavy-duty truck engines.

Title: Emission Defect Information Reports and Voluntary Emission Recall Reports.

Abstract: Per sections 207(c)(1) and 213 of the Clean Air Act (CAA), when emission testing shows that a substantial number of properly maintained and used engines produced by a manufacturer do not conform to emission standards, the manufacturer is required to recall the engines. Manufacturers are also required to submit Defect Information Reports (DIRs) to alert EPA of the existence of emission-related defects on certain classes of engines that may cause the engines' emissions to exceed the standards and ultimately may lead to a recall. EPA uses these reports to target potentially nonconforming classes of engines for future testing, to monitor compliance with applicable regulations and to order a recall, if necessary. Manufacturers can also initiate a recall voluntarily by submitting a Voluntary Emission Recall Report (VERR). VERRs and VERR updates allow EPA to determine whether the manufacturer conducting the recall is acting in accordance with the CAA and to examine and monitor the effectiveness of the recall campaign.

The information is collected by the Engine Programs Group, Certification and Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation. Confidentiality of proprietary information submitted by manufacturers is granted in accordance with the Freedom of Information Act, EPA regulations at 40 CFR part 2, and class determinations issued by EPA's Office of General Counsel. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 21 hours per response. DIRs and VERRs are submitted on occasion, whereas VERRs updates are submitted quarterly by approximately 15 respondents. EPA estimates that the total cost to respondents resulting from this collection is approximately $353,749. This estimate includes operation and maintenance expenses of approximately $443. No start-up costs are associated with this information collection. 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: November 21, 2003.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 03–29589 Filed 11–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0324; FRL–7336–3]

Notice of Receipt of Requests to Cancel Certain Creosote and Acid Copper Chromate (ACC) Wood Preservative Products, and/or to Amend to Terminate Certain Uses of Other Creosote Products; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is extending for an additional 30 days the comment period commenced by a September 29, 2003 Notice of Receipt of Requests by registrants of pesticide products containing either Creosote or Acid Copper Chromate (ACC) to voluntarily cancel certain pesticide registrations and/or to amend to terminate certain uses of affected products. Specifically, the five registrants who are members of the Creosote Council III have requested to cancel the registrations for their creosote non-pressure treatment end-use products and/or to amend to terminate all non-pressure treatment uses of other creosote products. These registrants are requesting that these voluntary product cancellations and/or use terminations become effective December 31, 2004. Osmose, Inc., the sole registrant of ACC, is also requesting to immediately cancel the registration for its product with no provision for existing stocks. Neither the registrants of the affected creosote products nor that of the affected ACC product have requested any existing stocks provision, and all registrants waived the 180–day comment period (i.e., any comment period in excess of 30 days). This notice provides an additional 30–day public comment period in response to request for such extension.

DATES: Unless a request is withdrawn by December 26, 2003, or unless the Agency receives substantive comments within this additional comment period that would merit further review of the request, the Agency intends to issue orders granting these requests to cancel certain products, and to amend to terminate certain uses. The Agency will consider withdrawal requests received on or before December 26, 2003. Comments, identified by docket ID number OPP–2003–0324, must be received on or before December 26, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Bonaventure A. Akinlosotu, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0653; e-mail address: *akinlosotu.bonaventure@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0324. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall # 2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

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'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.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's 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.

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 ID 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. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, 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. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0324. 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 e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0324. 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 mailing address identified in Unit 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: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0324.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0324. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit 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. 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 listed under **FOR FURTHER INFORMATION CONTACT**.

E. 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 ID 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 Action is the Agency Taking?

This notice announces receipt by the Agency of requests from registrants to cancel the registrations of four pesticide

products and to amend to terminate certain uses of seven other pesticide products (See Tables 1 and 2), and extends by an additional 30 days the public comment period on requests. In a June 30, 2003 letter, which was received by the Agency on July 14, 2003, Osmose, Inc. requested voluntary cancellation of its ACC product. Similarly, in letters dated September 5, 2003, Coopers Creek Chemical Corporation, KMG-Bernuth, Inc., Koppers, Inc., Railworks Wood Products, and Rutgers Chemicals AG, requested voluntary cancellation of certain creosote end-use products and/or amendments to terminate certain creosote end uses of other creosote end-use products.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary termination of any minor agricultural use before granting the request, unless (1) the registrant requests a waiver of the comment period, or (2) the Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment. The registrants have requested that EPA waive the 180–day comment period. EPA is granting the registrants' request to waive the 180–day comment period. Since publication of the Notice of Receipt on September 29, 2003 (68 FR 55952–55954), the Agency has been requested to extend the public comment period by an additional 30 days. The Agency has considered the request and has no objection to extending the public comment period by an additional 30 days and is doing so by this notice. Accordingly, EPA will provide an additional 30–day public comment period on the requests. EPA anticipates granting the cancellation requests and requests for termination of uses shortly after the end of the additional 30–day comment period for this notice unless the Agency receives substantive comments within the comment period that would merit further review of the request, or unless the subject request for voluntary cancellation and/or use termination is withdrawn as provided herein.

The following products would be affected by the requests for voluntary cancellations:

TABLE 1.— REQUESTS FOR CANCELLATION OF PRODUCTS

Registration No.	Product name	Chemical name
003008–00060	Osmose ACC 50% Wood Preservative	Chromic acid, Cupric acid
061468–00005	Coal Tar Creosote	Creosote
073408–00001	Creosote	Creosote
073408–00002	Creosote Solution	Creosote

The following creosote/coal tar creosote product uses would be affected by the requests for amendments to terminate non-pressure treatment uses of the products listed in Table 2 below: home and farm use, ground line treatment of utility poles, end cuts, piling applications/repair, pole framing and railroad tie uses/repair.

TABLE 2.— REQUEST FOR AMENDMENTS TO TERMINATE NON-PRESSURE TREATMENT USES

Registration No.	Product name	Chemical name
000363–00014	C-4 Brand Black Creosote Coal Tar solution	Creosote
000363–00015	C-4 Brand Coopersote Creosote Oil	Creosote
061468–00006	Creosote	Creosote
061470–00001	KMG-B Coal Tar Creosote	Creosote
061483–0007	Creosote Oil-24CB	Coal Tar Creosote
061483–0008	Creosote/Coal Tar solution	Coal Tar Creosote
061483–0009	Creosote Oil	Coal Tar Creosote

Unless the Agency receives substantive comments within this additional public comment period that would merit further review of the request, or unless a request is withdrawn by the registrant within 30 days of publication of this notice, the Agency intends to issue orders canceling all of these registrations and granting the amendments effecting the use terminations. Users of these pesticides or anyone else desiring the retention of a registration or particular use should contact the applicable registrant directly before the lapse of this 30–day period.

The following Table 3 includes the names and addresses of record for all registrants of the products in Tables 1 and 2, in sequence by EPA company number:

TABLE 3.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENT TO TERMINATE USES

EPA Company No.	Company name and address
000363	Coopers Creek Chemical Corp., 884 River Road, West Conshohocken, PA 19428–2699
003008	Osmose Inc., 980 Ellicott Street, Buffalo, NY 14209–2398
061468	Koppers Inc., 436 Seventh Avenue, Pittsburgh, PA 15219–1800
061470	Rutgers Chemicals, 10611 Harwin Drive, Suite 402, Houston, TX 77036
061483	KMG-Bernuth, Inc., 10611 Harwin Drive, Suite 402, Houston, TX 77036–1534
073408	Railworks Wood Products, 2525 Prairieton Road, Terre Haute, IN 47802

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**, and provide a 30–day public comment period. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for voluntary cancellation or amendment to terminate uses must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. The Agency will consider withdrawal requests received on or before December 26, 2003. This written withdrawal of the request for cancellation or amendment to terminate uses will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation or use termination action, the effective date of cancellation and all other provisions of any earlier cancellation or use termination order are controlling. The withdrawal request must also include a commitment to pay any reregistration fees that are due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a Special Review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical. This is in accordance with the Agency's statement of policy as set forth in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4).

1. *Creosote*. The registrants of affected creosote products have requested that the voluntary product cancellations and/or use terminations become effective December 31, 2004, with no provision for existing stocks.

2. *ACC*. The effective date of cancellation will be the date of the cancellation order. Osmose stated in its request that its affected product (EPA Reg. No. 3008–60) is no longer being manufactured or distributed by them and that, therefore, there is no need for a time period for the depletion of existing stocks.

List of Subjects

Environmental Protection, Creosote, Acid Copper Chromate, Pesticides and Pests.

Dated: November 20, 2003.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 03–29591 Filed 11–25–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0364; FRL–7333–8]

Sodium thiosulfate; Notice of Filing a Pesticide Petition to Amend a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the amendment of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0364, must be received on or before December 26, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Princess Campbell, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8033 ; e-mail address: *campbell.princess@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0364. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

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'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.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's 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.

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 ID 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. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, 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. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0364. 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 e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0364. 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 mailing address identified in Unit 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: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC20460–0001, Attention: Docket ID Number OPP–2003–0364.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0364. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit 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. 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 listed under **FOR FURTHER INFORMATION CONTACT**.

E. 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 copies of 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 the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 13, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

EDEN Bioscience Corporation

PP OE6177

EPA has received a pesticide petition (PP OE6177) from EDEN Bioscience Corporation, 3830 Monte Villa Parkway, Bothell WA 98021–6942 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by amending the current exemption from the requirement of a tolerance for the inert ingredient sodium thiosulfate in or on all food crops. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

In the **Federal Register** of September 6, 2000 (65 FR 54015) (FRL–6738–4), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), announcing the filing of a tolerance petition (PP OE6177) by EDEN Bioscience. This notice included a summary of the petition prepared by the petitioner and this summary contained conclusions and arguments to support its conclusion that the petition complied with the Food Quality Protection Act (FQPA) of 1996. This petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the inert ingredient sodium thiosulfate in or on all food crops. The final rule exempted the inert ingredient sodium thiosulfate from requirement of a tolerance when it comprises no more than 6% of the formulated product and when used on growing crops or on raw agricultural commodities after harvest. EPA published a final rule establishing a tolerance exemption in the **Federal Register** on December 21, 2001 (66 FR 65850) (FRL–6811–6) amending 40 CFR 180.1001(c). Research by EDEN Bioscience Corporation indicates that higher levels of sodium thiosulfate are needed in certain situations, such as the use of very high water volumes with products containing a low percentage of active ingredient. Therefore, EDEN proposes to amend this exemption to permit the use of sodium thiosulfate in a pesticide formulated product with no numerical limitation when used on growing crops or on raw agricultural commodities after harvest.

A. Residue Chemistry

1. *Plant metabolism*. Due to the breakdown of sodium thiosulfate in chlorinated water to sodium chloride, water, sulfur, and sulfate prior to application to plants, there is no plant metabolism of the parent compound. All of the breakdown products are considered to be plant nutrients. Sodium thiosulfate pentahydrate (CAS 10102–17–7) is an odorless crystalline substance with a molecular weight of 248.18. The molecular formula is Na_2S_{23} (Na 29.08%, O 30.36%, S 40.56%). It has a pKa of 1.6, is soluble in water (42%; by weight at 0°C) and insoluble in alcohol. The aqueous solution is practically neutral with a pH range of 6.5-8.0. In aqueous solution sodium thiosulfate slowly decomposes to its molecular constituents. Sodium thiosulfate pentahydrate has a melting point of 48°C when heated rapidly. It loses all its water at 100°C and decomposes at higher temperatures. When sodium thiosulfate is used to remove chlorine from an aqueous solution it follows the equations: $Na_2S_2O3 + 4Cl_2 + 5H_2O = 2NaHSO_4 + 8HCl$ and $Na_2S_2O3 + 2HCl = 2NaCl + H_2O + S + SO_2$.

2. *Analytical method*. Analysis of sodium thiosulfate can be accomplished through a variety of methods. Some researchers have employed a gas chromatographic (GC) analytical method using a C18 column and 420-E fluorescence detector for determining elution of thiosulfate in plasma and urine. Other researchers have reported using a high performance liquid chromatographic (HPLC) method used to determine thiosulfate concentrations in plasma and urine. Medical researchers have also described the use of a clinical nephelometer to determine sulfate and thiosulfate concentrations in plasma and urine.

3. *Magnitude of residues*. Due to the breakdown of sodium thiosulfate in water to sodium chloride, water, sulfur and sulfate, there are no residues of sodium thiosulfate applied to the plants.

B. Toxicological Profile

Sodium thiosulfate has been safely used for over 100 years as a therapeutic agent; medical uses of sodium thiosulfate have been well documented since 1895. In humans it is employed as an antidote for acute cyanide poisoning; as a chemoprotectant against carboplatin and cisplatin induced ototoxicity; to prevent cyanide poisoning from treatment with sodium nitroprusside, nitrile compounds and laetrile; to reduce calcinosis; and is used topically to treat acne and pityriasis versicolor (tinea versicolor, a type of ringworm). Recent studies have shown that sodium thiosulfate may be effective in reducing some chemically induced cancers. In veterinary medicine it is used to treat or prevent cyanide poisoning; as a ''general detoxifier'' to treat bloat; and when applied dermally to treat ringworm and mange. Sodium thiosulfate is also being used experimentally to increase food utilization in livestock.

Sodium thiosulfate is present at 8% in lotion formulations to treat acne. Other lotions, containing 25% sodium thiosulfate, are used for treating ringworm and may be applied twice daily to affected and susceptible skin for at least a week to many months until complete control is achieved. Sodium thiosulfate (12%) is also mixed with a sterile solution of 0.5% potassium ferricyanide to treat silver nitrate burns.

Sodium thiosulfate is used to treat drinking water where there is concern with high levels of chlorine, chloroform or other reactive species, especially in drinking water produced by desalination plants. It is also used as a dechlorinator in aquariums and aquaculture, and in a number of manufacturing processes that require the removal of chlorine or other reactive species.

Sodium thiosulfate is classified in the Code of Federal Regulations, U.S. Food and Drug Administration, title 21, part 184, as a Direct Food Substance Affirmed As Generally Recognized As Safe (§ 184.1807) and title 21, part 582 as a Substance Generally Recognized As Safe, (§ 582.6807). According to § 184.1807, sodium thiosulfate is used as a formulation aid and a reducing agent. It is used in alcoholic beverages and table salt at levels not to exceed good manufacturing practice, currently 0.00005% in alcoholic beverages and 0.1% in table salt. Section 582.6807 authorizes the use of sodium thiosulfate as a sequestrant in salt with a tolerance of 0.1%.

1. *Acute toxicity*. Sodium thiosulfate exhibits a low order of acute toxicity. In an acute oral toxicity study of sodium thiosulfate in the rat, an $LD_{50} > 5{,}000$ milligrams/kilograms (mg/kg) was established, which places this material in Toxicity Category IV. Sodium thiosulfate is not well absorbed through the intestinal tract at high doses. Sodium thiosulfate is low in acute toxicity but may cause irritation of the gastrointestinal tract and purging if large quantities are ingested. Sodium thiosulfate has been used as a topical treatment for a variety of ailments for numerous years. Sodium thiosulfate is available in various lotion formulations such as Komed™, an acne medication containing 8% sodium thiosulfate together with 2% salicylic acid, 25% isopropyl alcohol and other ingredients. Tinver™ and Versiclear™, are lotions used for tinea versicolor (ringworm). Both lotions contain 25% sodium thiosulfate, 1% salicylic acid and 10% isopropyl alcohol. It is recommended that the lotions be applied twice daily to affected and susceptible skin for at least a week to many months until complete control of tinea versicolor is achieved. Sodium thiosulfate (12%) is also mixed with a sterile solution of 0.5% potassium ferricyanide to treat silver nitrate burns. No adverse effects are expected when sodium thiosulfate is used topically. There is little information available on inhalation toxicity of sodium thiosulfate, but as with all dust or crystalline compounds, breathing product dust or mist may irritate the respiratory tract. Product labeling calls for mixers to wear a dust mask, thus precluding inhalation of dust when sodium thiosulfate is present as part of the product formulation. Eden Bioscence Corporation believes that the use of sodium thiosulfate as proposed is not expected to pose an inhalation hazard since it is already incorporated into the formulation at low to moderate concentrations (1 to 25%), or will be added in tablet form. Once the sodium thiosulfate either in tablet form or in the formulated end product is mixed with water, it breaks down into sodium chloride, water, sulfur and sulfate, which eliminates further possibility of inhalation exposure to the parent compound.

Although intravenous (IV) exposure to sodium thiosulfate is irrelevant to concerns with its proposed use, information from IV studies and therapeutic uses provides further data on the safety of sodium thiosulfate. Sodium thiosulfate is considered to be essentially a nontoxic drug, although nausea and vomiting have been described with rapid IV administration of antidotal doses to normal adult human volunteers. The standard dose of sodium thiosulfate for treatment of cyanide poisoning in humans is an IV administration of 50 milliliters (mL) of a 250 mg/mL (25%) solution. Patients also have been administered 50 mL of a 50% sodium thiosulfate solution without adverse effects. Sodium thiosulfate administered IV at 150–200 mg/kg over a period of 15 minutes, is part of the therapy to treat suspected cyanide toxicity from administration of sodium nitroprusside.

The lethal dose of sodium thiosulfate when given at intravenous doses to rats is greater than 2.5 g/kg. The IV LD_{50} in

mice is 1.19 g/kg, while the median lethal dose in dogs is 3 g/kg. The lethal dose injected into the flank of rabbits was estimated to be 4 g/kg. The main toxic effects from IV administration of sodium thiosulfate appear to be osmotic, which result from the rapid sodium load together with acid-base disturbances. Osmotic and acid-base disturbances have not been observed at lower doses or from dermal or oral administration of sodium thiosulfate.

Information from intraperitoneal (IP) studies provide further support that sodium thiosulfate has relatively low acute toxicity. Sodium thiosulfate protects the auditory system from the major ototoxic effects of cisplatin and reduces other overt signs of systemic toxicity.

Hamsters receiving IP injections of sodium thiosulfate at 1,600 mg/kg every other day until five injections were completed showed no ill effects from sodium thiosulfate. When sodium thiosulfate was injected in hamsters in combination with cisplatin (a chemotherapeutic agent that has been shown to cause ototoxicity), sodium thiosulfate provided amelioration over a broad hearing range, as well as providing protection from cisplatin induced gastrointestinal necrosis and nephrotoxicity. Similarly, in a study where guinea pigs treated with cisplatin, cisplatin and sodium thiosulfate, saline or sodium thiosulfate only (1,600 mg/kg/day for 8 days), there were no signs of toxicity in any of the guinea pigs treated with sodium thiosulfate only. There were no effects on body weight (bwt) or auditory brainstem response and animals treated with cisplatin and sodium thiosulfate, had improved hearing and lost less weight than animals treated with cisplatin only.

Sodium thiosulfate has been shown to be an effective antidote in mice exposed to acrylonitrile. Mice were given IP injections of sodium thiosulfate at 400 mg/kg from 10 to 30 minutes prior to acrylonitrile administration at the LD_{50} dose level of 60 mg/kg. All mice appeared normal after prophylactic treatment with sodium thiosulfate and showed no ill effects from subsequent acrylonitrile exposure. Animals treated with sodium thiosulfate only, showed no evidence of toxicity.

Aquated cisplatin has a higher uptake by tumors than that of cisplatin, but aquated cisplatin is also more nephrotoxic. Subcutaneous injection of sodium thiosulfate (1,000 mg/kg) five minutes before IP administration of aquated cisplatin to B6D2F1 mice resulted in reduced aquated cisplatin-induced nephrotoxicity.

2. *Genotoxicity.* Sodium thiosulfate is not genotoxic and is regularly used in cell culture mediums as a source of sulfur. Sodium thiosulfate does not cause cell death or reduce the rate of growth in a wide variety of bacteria. Sodium thiosulfate is non-mutagenic to *Salmonella typhimurium* and can reduce the mutagenic effects induced by other chemicals. Sodium thiosulfate does not increase the rate of sister chromatid exchanges (SCEs) or chromosomal aberrations in human lymphocytes. Sodium thiosulfate has been shown to reduce the number of SCEs in human lymphocytes and Chinese hamster (CH) lung cells when administered simultaneously with known SCE inducers. When sodium thiosulfate at concentrations up to 5 X 10\2\ M was added to untreated human cells, there was no effect at all on the cells. *In vitro* studies with sodium thiosulfate and LX-1 small-cell lung carcinoma cells found that sodium thiosulfate concentrations of 10 mg/kg and above were toxic to LX-1 cells, presumably due to high osmolarity. However, lower concentrations of sodium thiosulfate had no effect on cell growth. Sodium thiosulfate has also been shown to inhibit cisplatin-induced mutagenesis in somatic tissue of Drosophila.

3. *Reproductive and developmental toxicity*. Sodium thiosulfate is not considered to be a reproductive or developmental toxicant due to its rapid breakdown in the body to normal constituents, (i.e. thiosulfate is a normal constituent of blood and is utilized by mitochondrial enzyme rhodanase, a.k.a. thiosulfate sulfurtransferase, as a sulfur donor). In addition, remaining thiosulfate is rapidly hydrolyzed by water into sodium chloride, water, sulfur and sulfate, which are all compounds readily used by living organisms. Teratology studies conducted in two species established that the administration of 550 mg/kg sodium thiosulfate for 13 days in the mouse and of 580 mg/kg sodium thiosulfate for 10 days in the rabbit had no effect on nidation or on maternal or fetal survival in either species. Use of sodium nitroprusside for the treatment of hypertensive emergencies in pregnancy has been hampered by concern for the possibility of cyanide poisoning in both the mother and fetus. Coinfusion of sodium thiosulfate with nitroprusside in gravid ewes prevented fetal and maternal cyanide toxicity. Physicians are currently treating some pregnant women with IV administration of sodium thiosulfate and sodium nitroprusside.

4. *Subchronic toxicity.* No studies that fall into the usual subchronic category were found. However, data from chronic and acute studies provide adequate information as to the non-toxicity of sodium thiosulfate. It should be noted that Versiclear™ Lotion containing 25% sodium thiosulfate and 1% salicylic acid in propylene glycol is recommended for subchronic treatment of tinea versicolor in humans. In a series of studies of various therapeutics for cyanide poisoning in sheep, up to 660 mg/kg of sodium thiosulfate was administered in distilled water via stomach tube directly to the rumen of ewes that had been treated with lethal doses of sodium cyanide (7.6 mg/kg). All ewes treated with 660 mg/kg sodium thiosulfate survived. Ewes receiving 66.7 mg/kg sodium thiosulfate still exhibited severe signs of cyanide poisoning and subsequently died. Based on this study, it is recommended that cyanide toxicity in ruminants should be treated with high doses of sodium thiosulfate (500 mg/kg or more) and repeated as needed, since sodium thiosulfate is rapidly cleared from the body and sustained release of free cyanide from the rumen is possible.

An evaluation of 41 potential chemopreventive agents using the inhibition of carcinogen-induced aberrant crypt foci (ACF) in the rat colon as the measure of efficacy found that sodium thiosulfate was one of 18 agents that significantly reduced the incidence of ACF.

5. *Chronic toxicity*. Long term treatment of patients with a variety of illnesses has shown that ingestion of low levels of sodium thiosulfate is a non-toxic and safe therapeutic agent. A patient with renal tubular acidosis I was treated for 9 years with sodium thiosulfate, 15–20 mmol daily (orally), to control nephrocalcinosis. During this time period, there were no treatment-related adverse effects, nephrocalcinosis did not worsen, and renal function improved. Thirty-four patients received daily oral doses of sodium thiosulfate (10 mmol twice daily with meals) for 3 to 4 years in the treatment of recurrent calcium urinary lithiasis. Sodium thiosulfate was well tolerated by all patients for over 4 years with no apparent toxic or side effects. It was also found that the patients only absorbed 20–25% of the oral dose, excreting four to five mmol as urinary thiosulfate. Higher oral dose levels of sodium thiosulfate resulted in watery stools in some patients so higher oral dose levels were not used in this clinical trial.

Three patients undergoing maintenance hemodialysis for more than 4 years developed calcified masses.

To reduce the symptoms, each patient was given 20 mmol of sodium thiosulfate IV at the end of each hemodialysis for the next 6 to 12 months. A considerable regression of calcified masses with concurrent clinical improvement was observed in two of the patients while the third patient showed a softening in the mass but no regression in size due to encapsulation prior to starting sodium thiosulfate treatment. For all patients, there were no new calcified masses observed during sodium thiosulfate treatment, sodium thiosulfate was well tolerated, and no apparent side effects were observed.

6. *Animal metabolism.* Thiosulfate is a normal constituent of mammalian urine. In humans, urinary thiosulfate excretion averages approximately 30 mole per 24 hours, which is less than 1% of the total urinary sulfur load. Sodium thiosulfate is not well absorbed when administered orally as it is broken down in the acidic gastric juices to form sulfite and sulphur. Research has shown that 20–25% of a chronic low level dose is excreted in the urine as urinary thiosulfate.

When sodium thiosulfate is given intravenously, it is distributed throughout the extracellular fluid and renal excretion occurs by glomerular filtration and secretion. The serum half-life of thiosulfate in humans (after bolus injections) is around 15 to 20 minutes. When sodium thiosulfate is administered during sodium nitroprusside therapy, the plasma half life of thiosulfate is reported to be as short as 15 minutes to as long as 3 hours. Depending on the dosage, around 10 to 50% of exogenous thiosulfate is eliminated unchanged via the kidneys. Endogenous levels of plasma and urinary thiosulfate concentrations, determined from healthy volunteers are 1.13 ± 0.11 milligrams/deciliter (mg/dL) and 0.28 ± 0.02 mg/dL, respectively. Clearance of endogenous thiosulfate in normal males was 0.26 ± 0.04 mL/min, with net excretion accounting for only 0.17% of the filtered load. The majority of endogenous thiosulfate is actively reabsorbed and endogenous levels are regulated by the kidney through secretion into and reabsorption out of tubules.

Sodium thiosulfate is known to be a strong diuretic. Following IV administration of sodium thiosulfate, peak thiosulfate concentrations were obtained 5 minutes after injection. The half-life of the distribution phase was 23 minutes while that of the elimination phase was 182 minutes. Urine concentration, clearance and rate of thiosulfate excretion increased markedly after injection. Total excretion was $42.6 \pm 3.5\%$ of the injected dose at 180 minute. Total excretion increased to only $47.4 \pm 2.4\%$ at 18 hours after injection. Sodium thiosulfate kinetics were also studied in patients undergoing cancer treatment. Sodium thiosulfate was eliminated from the plasma by first-order kinetics. On the average approximately 28% of the dose was recovered unchanged in the urine. In these patients, 95% of the total recoverable thiosulfate was excreted within 4 hours after termination of infusion. When sodium thiosulfate is coadministered with cisplatin (a chemotherapeutic agent that often causes nephrotoxicity), inactive mobile metabolites of cisplatin are formed by a direct reaction between cisplatin and sodium thiosulfate in the systemic circulation, which results in a reduction in the amount of cisplatin in the kidney. The strong diuretic action of sodium thiosulfate also increases elimination of both compounds, thus minimizing the time the remaining cisplatin is in the kidneys.

Sodium thiosulfate has been used to estimate extracellular water in cattle and was found to reach equilibrium with extracellular water in 5 to 10 minutes after infusion. Sodium thiosulfate was cleared from venous blood in a two part fashion: First, it was cleared from the plasma into the interstitial fluid, then secondly through renal clearance from the extracellular water. A first-order clearance of the sodium thiosulfate was demonstrated 15 to 20 minutes after infusion. When combined with urea, sodium thiosulfate gave reasonable estimates of empty body water, extracellular water, intracellular water and lean body mass. No adverse effects were noted in any of the steers.

7. *Metabolite toxicology.* None of the metabolites of sodium thiosulfate are considered to be of toxicological significance. Thiosulfate is a normal body constituent as are the other breakdown products from the reaction of sodium thiosulfate in chlorinated water: Sodium chloride, water, sulfur and sulfate.

8. *Endocrine disruption.* Sodium thiosulfate does not affect the endocrine system, except as a detoxifying agent of compounds that have been shown to adversely affect the endocrine system (i.e. chlorine and other reactant species).

C. Aggregate Exposure

1. *Dietary exposure.* The proposed use of sodium thiosulfate to remove chlorine and other reactive species from tank water ensures that there is no dietary exposure to sodium thiosulfate. Due to the breakdown of sodium thiosulfate in water to sodium chloride, water, sulfur and sulfate, there are no residues of sodium thiosulfate applied to the plants and thus there are no residues in food.

i. *Food.* The proposed use will not result in any dietary exposure beyond what is currently present in salt and alcohol.

ii. *Drinking water.* There is no exposure to sodium thiosulfate through drinking water. Any sodium thiosulfate that gets into water is quickly broken down to the following non-toxic compounds: Sodium chloride, water, sulfur and sulfate.

2. *Non-dietary exposure.* The only anticipated human exposure to non-dietary sources of sodium thiosulfate would be through medical treatment, occupational exposure, or aquaculture (hobbyists).

D. Cumulative Effects

Studies have shown that excess sodium thiosulfate beyond endogenous levels of thiosulfate is rapidly cleared from the body and there are no cumulative effects. It should also be noted that with the exception of possible occupational exposure of the mixer/loader/applicator, the proposed uses of sodium thiosulfate will not result in exposure to any other persons or any non-target organisms.

E. Safety Determination

1. *U.S. population.* EDEN Bioscience Corporation believes that the use of sodium thiosulfate as an adjuvant added to tank mixes does not pose a safety concern for the U.S. population due to the non-toxic nature of the compound and the absence of exposure.

2. *Infants and children.* Infants and children will not be exposed to sodium thiosulfate from its use as an adjuvant in conjunction with formulated products.

F. International Tolerances

There are no known international tolerances for sodium thiosulfate.

[FR Doc. 03–29320 Filed 11–25–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0350; FRL–7332–8]

Bacillus Thuringiensis VIP3A Insect Control Protein as Expressed in Event COT102; Notice of Filing a Pesticide Petition to Establish an Exemption from the Requirement of a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2003–0350, must be received on or before December 26, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Leonard Cole, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *leonard.cole@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2003–0350. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's 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'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.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's 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.

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 ID 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. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, 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. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0350. 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 e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0350. 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 mailing address identified in Unit 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: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0350.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0350. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit 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. 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 listed under **FOR FURTHER INFORMATION CONTACT**.

E. 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 copies of 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 the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 12, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Syngenta Seeds, Incorporated

PP 3F6756

EPA has received a pesticide petition (3F6756) from Syngenta Seeds, Incorporated, P.O. Box 12257, 3054 Cornwallis Road, Research Triangle Park, NC 27709–2257, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the plant-pesticide *Bacillus*

thuringiensis VIP3A Insect Control Protein as Expressed in Event COT102 and the genetic material necessary for its production in or on cotton.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Syngenta Seeds, Incorporated has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Syngenta Seeds, Incorporated and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Syngenta has developed a new cotton line that expresses an insect control protein designated VIP3A. It has been genetically incorporated into a cotton plant product identified as *Bacillus thuringiensis* (Bt) VIP3A Insect Control Protein as Expressed in Event COT102. VIP3A is one of a novel class of recently discovered insecticidal proteins that occur naturally in *Bacillus thuringiensis*. The VIPs (vegetative insecticidal proteins) are produced during vegetative bacterial growth.

Other than its demonstrated insecticidal activity, VIP3A is not known to have any other biological or catalytic function. Although VIP3A protein shares no homology with known Cry proteins, extensive testing has established that VIP3A is similarly very specific in its activity, and has demonstrated toxicity only to the larvae of certain lepidopteran species, including key pests of cotton. Further, because VIP3A appears to target a different receptor than Cry proteins in sensitive species, it represents a potentially useful tool in the prevention or management of pest resistance to Cry proteins.

Upon commercial introduction, the use of transgenic VIP3A cotton plants is expected to offer an important new option in lepidopteran pest control and integrated pest management programs. Moreover, VIP3A cotton will be an attractive, biologically based alternative to the use of foliar insecticides. The use of VIP3A cotton plants is expected to offer substantial environmental and worker safety benefits associated with the reduced need for broad-spectrum insecticides. Additionally, benefits to cotton growers will likely include greater profitability, convenience and predictability in producing a high-yielding cotton crop.

VIP3A expressing cotton plants derived from transformation event COT102 have been field tested under U.S. Department of Agriculture (USDA) Notifications and in compliance with the guidelines for USDA regulated plantings in 2000, 2001, and 2002. The overall results of those trials have indicated that cotton plants derived from event COT102 have significant and specific insecticidal activity against several lepidopteran pests including, but not limited to, *Helicoverpa zea* (cotton bollworm), *Heliothis virescens* (tobacco budworm), and *Pectinophora gossypiella* (pink bollworm).

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues*. Cotton, *Gossypium hirsutum*, has been genetically modified to be resistant to selected lepidopteran insect pests. Insect protection was accomplished by the insertion of the VIP3A(a) gene, which was cloned from *Bacillus thuringiensis* strain AB88. The identity of the active pesticidal ingredient in cotton plants derived from transformation event COT102 includes the protein VIP3A and the genetic material necessary for its production in cotton. Research has demonstrated the specific insecticidal properties of VIP3A to certain lepidopteran insects in cotton as well as its lack of effects on nontarget organisms such as mammals, birds, fish, and beneficial insects.

2. *Magnitude of residue at the time of harvest and method used to determine the residue*. A determination of the magnitude of residue at harvest is not required for residues exempt from tolerances. However, the petitioner has provided data on the quantity of VIP3A protein measured in various plant parts including seeds of VIP3A cotton, as measured by enzyme linked immunosorbent assay (ELISA). Additionally, the petitioner has provided data on the quantity or presence of VIP3A protein in processed cottonseed products.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed*. An analytical method is not required because this petition requests an exemption from tolerances. However, the petitioner has submitted an analytical method for detection of the VIP3A protein in cottonseed by ELISA analysis.

C. Mammalian Toxicological Profile

The *VIP3A(a)* gene expressed in Event COT102 cotton is very similar (ca. 99% homology) to *VIP3A* or *VIP3A*--like genes that appear to occur commonly in Bt strains from a variety of sources. In addition, it has been determined that the VIP3A protein demonstrates insect specific toxicity and must be ingested to be active. Once in the insect gut, the VIP3A protein binds to specific receptors (different from those bound by Cry1A proteins), inserts into the membrane and forms ion-specific pores. These events disrupt the digestive processes and cause death of the insect. The lack of mammalian toxicity has been confirmed in numerous safety studies conducted in laboratory animals, which are traditional experimental surrogates for humans. These studies, summarized herein, demonstrate the lack of toxicity of the VIP3A protein following high-dose acute oral exposures to mice, rapid degradation of VIP3A upon exposure to simulated gastric fluid, and the lack of amino acid sequence similarity of the VIP3A protein to proteins known to be mammalian toxins or human allergens. It can be concluded from these studies that the VIP3A protein will be non-toxic to humans.

When proteins are toxic, they are known to act via acute mechanisms and at very low doses (Sjoblad, R.D., J.T. McClintock and R. Engler (1992) ''Toxicological Considerations for Protein Components of Biological Pesticide Products.'' *Regulatory Toxicol. Pharmacol.* 15: 3–9). Therefore, when a protein demonstrates no acute oral toxicity in high-dose testing using a standard laboratory mammalian test species, this supports the determination that the protein will be non-toxic to humans and other mammals, and will not present a hazard under any realistic exposure scenario, including long-term exposures.

Studies conducted to assess the mammalian safety of VIP3A protein have demonstrated no toxicity. Four acute oral toxicity studies in mice have been completed. Three of the VIP3A test substances used were produced via microbial expression systems and one prepared by extracting protein from leaves of VIP3A event Pacha-derived corn plants. The four test substances contained VIP3A protein that differed from the VIP3A protein expressed in event COT102 by zero to two amino acids. At maximum dosage the microbially expressed test substance was administered at a level of 5,000 milligrams/kilogram (mg/kg) with an estimated acute lethal dose $(LD)_{50}$ by gavage determined to be >3,675 mg VIP3A/kg (mg/kg body weight). Because toxicity was not observed at this dose, it can be concluded that the LD_{50} for

pure VIP3A protein is >3,675 mg/kg body weight. The VIP3A protein in both the microbial and plant derived test substance was determined to be substantially equivalent to VIP3A produced in event COT102 derived cotton plants, as measured by biological activity, protein size, immunreactivity, mass spectral analysis of amino acid sequence, and apparent lack of post-translational modifications.

The amino acid sequence of VIP3A is not homologous to that of any known or putative allergens described in public databases. The VIP3A protein is not derived from a known source of allergens and does not display characteristics commonly associated with allergens, including glycosylation or stability to heat and food processing. Additionally, VIP3A is susceptible to gastric digestion by pepsin and did not provoke an allergic response in an experimental atopic dog model of human food allergy.

VIP3A protein appears to be present in multiple commercial formulations of Bt microbial insecticides at concentrations estimated to be *ca.* 0.4, 32 ppm. This conclusion is based on the presence of proteins of the appropriate molecular weight and immunoreactivity (by SDS-PAGE and western blot), and quantitation by ELISA. Therefore, it is conceivable that small quantities of VIP3A protein are present in the food supply because VIP3A (or a very similar protein, based on size and immunoreactivity) appears to be present in currently registered insecticide products used on food crops, including fresh market produce. These commercial Bt products are all exempt from food and feed tolerances.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Food products derived from cotton (refined cottonseed oil and cellulose ''linters'' fiber) are highly processed and are essentially devoid of any proteins. Moreover, no VIP3A protein was detected in refined cottonseed oil or cotton fiber produced from event COT102-derived VIP3A cotton plants. Therefore, no human dietary exposure to VIP3A protein is expected to occur *via* VIP3A cotton. Even if dietary exposure to VIP3A protein were to occur, data derived from bioinformatic analyses as well as direct *in vitro* and *in vivo* testing collectively indicate that the VIP3A protein is unlikely to have allergenic potential. The amino acid sequence of VIP3A is not homologous to that of any known or putative allergens described in public databases. The VIP3A protein is not derived from a known source of allergens and does not display characteristics commonly associated with allergens, including glycosylation or stability to heat and food processing. Additionally, VIP3A is susceptible to gastric digestion by pepsin and did not provoke an allergic response in an experimental atopic dog model of human food allergy.

ii. *Drinking water.* No exposure to VIP3A and the genetic material necessary for its production in cotton via drinking water is expected. The proteins are incorporated into the plant and will not be available. However, if exposure were to occur by this route, no risk would be expected because the VIP3A protein is not toxic to mammals

2. *Non-dietary exposure.* Non-dietary exposure is not anticipated, due to the proposed use pattern of the product. Exposure *via* dermal or inhalation routes is unlikely because the plant-incorporated protectant is contained within plant cells. However, if exposure were to occur by non-dietary routes, no risk would be expected because the VIP3A protein is not toxic to mammals.

E. Cumulative Exposure

Because there is no indication of mammalian toxicity to the VIP3A protein, it is reasonable to conclude that there are no cumulative effects for this plant-incorporated protectant.

F. Safety Determination

1. *U.S. population.* The lack of mammalian toxicity at high levels of exposure to the VIP3A protein demonstrates the safety of the product at levels well above possible maximum exposure levels anticipated *via* consumption of processed food products produced from VIP3A cotton. Moreover, little to no human dietary exposure to VIP3A protein is expected to occur *via* VIP3A cotton. Due to the lack of toxicity of the VIP3A protein and its very low potential for allergenicity, dietary exposure is not anticipated to pose any harm for the U.S. population. No special safety provisions are applicable for consumption patterns or for any population sub-groups.

2. *Infants and children.* The plant-incorporated protectant active ingredient, *Bacillus thuringiensis* VIP3A insect control protein and the genetic material necessary for its production in cotton, demonstrates no mammalian toxicity. Thus, there are no threshold effects of concern and, consequently, there is no need to apply an additional margin of safety.

G. Effects on the Immune and Endocrine Systems

The safety data submitted show no adverse effects in mammals, even at very high dose levels, and support the prediction that the VIP3A protein would be non-toxic to humans. Therefore no effects on the immune or endocrine systems are predicted. When proteins are toxic, they are known to act *via* acute mechanisms and at very low dose levels. Sjoblad, Roy D., *et al.* ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' *Regulatory Toxicology and Pharmacology* 15, 3–9 (1992). Further, the VIP3A protein is derived from a source that is not known to exert an influence on the endocrine system.

H. Existing Tolerances

There are no existing tolerances for the Bt VIP3A protein and the genetic material necessary for its production. Other Bt-based pesticide products are exempt from tolerances.

I. International Tolerances

There are no existing international tolerances or exemptions from tolerance for the Bt VIP3A protein and the genetic material necessary for its production.

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ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0358; FRL–7334–7]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted or denied emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions or denials took place during the period April 1, 2003 to September 30, 2003 to control unforseen pest outbreaks.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption or denial for the name of a contact person. The following information applies to all contact persons: Team Leader, Emergency Response Team, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9366.

SUPPLEMENTARY INFORMATION: EPA has granted or denied emergency exemptions to the following State and

Federal Agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific. EPA has also listed denied emergency exemption requests in this notice.

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a Federal or State government agency involved in administration of environmental quality programs (i.e., Departments of Agriculture, Environment, etc.). Potentially affected entities may include, but are not limited to:

- Federal or State Government Entity, (NAICS 9241), i.e., Department of Agriculture, Environment, etc.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0358. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

Under FIFRA section 18, EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A ''specific exemption'' authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.

2. ''Quarantine'' and ''public health'' exemptions are a particular form of specific exemption issued for quarantine or public health purposes. These are rarely requested.

3. A ''crisis exemption'' is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in ''a reasonable certainty of no harm'' to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the ''reasonable certainty of no harm standard'' of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption or denial, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, and the duration of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any.

III. Emergency Exemptions and Denials

A. U.S. States and Territories

Alabama

Department of Agriculture and Industries

Specific. EPA authorized the use of diuron on catfish to control algae; June 1, 2003 to November 1, 2003. Contact: (Libby Pemberton).

Arkansas

State Plant Board

Crisis. On May 2, 2003, for the use of fomesafen on snap beans to control broad leaf weeds. This program ended on May 9, 2003. Contact: (Andrea Conrath).

On May 29, 2003, for the use of sodium chlorate on wheat to control weeds. This program ended on June 12, 2003. Contact: (Libby Pemberton.)

Denial. On August 26, 2003 EPA denied the use of flumioxazin on cotton to control broad leaf weeds. This request was denied because the criteria for an emergency situation were not met. Contact: (Libby Pemberton).

Specific. EPA authorized the use of diuron on catfish to control algae; April 4, 2003 to November 30, 2003. Contact: (Libby Pemberton.)

EPA authorized the use of fomesafen on snap beans to control broad leaf weeds; May 9, 2003 to September 15, 2003. Contact: (Andrea Conrath).

EPA authorized the use of methoxyfenozide on soybeans to control armyworms; August 13, 2003 to October 30, 2003. Contact: (Dan Rosenblatt)

California

Environmental Protection Agency, Department of Pesticide Regulation.

Crisis. On April 3, 2003, for the use of oxytetracycline on apples to control fire blight. This program ended on August 1, 2003. Contact: (Andrea Conrath).

Specific. EPA authorized the use of tebuconazole on garlic to control garlic rust; April 16, 2003 to July 3, 2003. Contact: (Andrea Conrath).

EPA authorized the use of imidacloprid on garden beets to control aphids; April 18, 2003 to March 1, 2004. Contact: (Andrew Ertman).

EPA authorized the use of myclobutanil on peppers (bell and non-bell) to control powdery mildew; June 25, 2003 to May 31, 2004. Contact: (Barbara Madden).

EPA authorized the use of avermectin on basil to control leafminers; July 1, 2003 to October 31, 2003. Contact: (Barbara Madden).

EPA authorized the use of fludioxonil on pomegranates to control gray mold;

August 1, 2003 to December 15, 2003. Contact: (Andrew Ertman).

EPA authorized the use of myclobutanil on artichokes to control powdery mildew; August 18, 2003 to August 17, 2004. Contact: (Barbara Madden).

EPA authorized the use of thiophanate methyl on mushroom spawn to control green mold; September 11, 2003 to September 10, 2004. Contact: (Andrea Conrath).

EPA authorized the use of tebufenozide on garden beets to control armyworms; September 15, 2003 to September 10, 2004. Contact: (Stacey Groce).

EPA authorized the use of imidacloprid on almonds to control the glassy-winged sharpshooter; September 16, 2003 to June 22, 2004. Contact: (Andrew Ertman).

EPA authorized the use of imidacloprid on blueberries to control the glassy-winged sharpshooter; September 16, 2003 to December 31, 2003. Contact: (Andrew Ertman).

EPA authorized the use of fenhexamid on kiwifruit to control gray mold; September 23, 2003 to December 1, 2003. Contact: (Stacey Groce)

Colorado

Department of Agriculture

Crisis. On February 18, 2003, for the use of lambda-cyhalothrin on alfalfa/grass mixed stands, pasture land and range land, and grass grown for seed to control army cutworms. This program ended on June 15, 2003. Contact: (Andrew Ertman).

Specific. EPA authorized the use of tetraconazole on sugarbeets to control cercospora; April 28, 2003 to September 30, 2003. Contact: (Andrea Conrath).

Connecticut

Department of Environmental Protection

Specific. EPA authorized the use of triazamate on Christmas trees to control root aphids; April 4, 2003 to September 30, 2003. Contact: (Barbara Madden).

EPA authorized the use of propiconazole on blueberries to control mummy berry disease; May 2, 2003 to June 30, 2003. Contact: (Andrea Conrath).

EPA authorized the use of azoxystrobin on tobacco to control blue mold; May 27, 2003 to December 12 2003. Contact: (Libby Pemberton).

EPA authorized the use of thymol and eucalyptus oil on beehives to control varroa mites; August 27, 2003 to December 31, 2003. Contact: (Stacey Groce).

Delaware

Department of Agriculture

Specific. EPA authorized the use of imidacloprid on peaches, nectarines, plums and apricots to control aphids; April 2, 2003 to October 15, 2003. Contact: (Andrew Ertman).

EPA authorized the use of terbacil on watermelons to control annual broad leaf weeds; April 28, 2003 to June 15, 2003. Contact: (Barbara Madden).

EPA authorized the use of fomesafen on snap beans to control broad leaf weeds; May 9, 2003 to October 1, 2003. Contact: (Andrea Conrath).

Florida

Department of Agriculture and Consumer Services

Specific. EPA authorized the use of thiophanate methyl on fruiting vegetables to control white mold (*sclerotinia sclerotiorum)*; July 2, 2003 to March 31, 2004. Contact: (Andrea Conrath).

EPA authorized the use of carfentrazone-ethyl on fruiting vegetables (except cucurbits) to control paraquat resistant nightshade, common groundsel, and morning glory; July 17, 2003 to May 31, 2004. Contact: (Andrew Ertman).

EPA authorized the use of fenbuconazole on blueberries to control leaf spot; September 15, 2003 to September 14, 2004. Contact: (Andrea Conrath).

Georgia

Department of Agriculture

Specific. EPA authorized the use of indoxacarb on collards to control diamondback moth; April 20, 2003 to April 20, 2004. Contact: (Barbara Madden).

Hawaii

Department of Agriculture

Specific. EPA authorized the use of hydramethylnon on pineapple to control big-headed and Argentine ants; June 6, 2003 to June 24, 2004. Contact: (Libby Pemberton).

Idaho

Department of Agriculture

Crisis. On April 15, 2003, for the use of thiamethoxam on succulent and dry bean seed to control leaf hoppers. This program is expected to end on May 15, 2003. Contact: (Andrew Ertman).

On June 6, 2003, for the use of zinc phosphide on barley, wheat, potatoes, and sugarbeets to control meadow voles and field mice. This program is expected to end on October 1, 2003. Contact: (Libby Pemberton).

On June 10, 2003, for the use of diflubenzuron on alfalfa to control grasshoppers and crickets. This program ended on October 31, 2003. Contact: (Andrea Conrath).

On June 13, 2003, for the use of diflubenzuron on wheat and barley to control grasshoppers. This program ended on June 27, 2003. Contact: (Andrea Conrath).

Specific. EPA authorized the use of lambda-cyhalothrin on barley to control the Russian wheat aphid, and cereal leaf beetle; April 4, 2003 to July 30, 2003. Contact: (Andrew Ertman).

EPA authorized the use of myclobutanil on hops to control powdery mildew; May 1, 2003 to September, 2003. Contact: (Barbara Madden).

EPA authorized the use of cymoxanil on hops to control downy mildew; May 2, 2003 to September 15, 2003. Contact: (Libby Pemberton).

EPA authorized the use of sulfentrazone on chickpeas to control Russian thistle; May 13, 2003 to June 20, 2003. Contact: (Andrew Ertman).

EPA authorized the use of sulfentrazone on potatoes to control ALS-inhibitor and triazine resistant kochia, common lambsquarters and pigweed; May 16, 2003 to June 15, 2003. Contact: (Andrew Ertman).

EPA authorized the use of thiabendazole on lentils to control ascochyta blight; May 19, 2003 to June 1, 2003. Contact: (Andrea Conrath).

EPA authorized the use of fluroxypyr on field corn and sweet corn to control volunteer potatoes; May 20, 2003 to August 1, 2003. Contact: (Andrew Ertman).

EPA authorized the use of zinc phosphide on alfalfa to control meadow voles and field mice; May 23, 2003 to May 23, 2004. Contact: (Libby Pemberton).

EPA authorized the use of fenpyroximate on hops to control spider mites; May 27, 2003 to September 15, 2003. Contact: (Andrea Conrath).

EPA authorized the use of quinoxyfen on hops to control powdery mildew; July 1, 2003 to September 15, 2003. This request was granted because the Agency has determined that the onset of the powdery mildew pest problem has created an urgent and non-routine situation which will result in a significant economic losses for hops growers. Contact: (Barbara Madden).

EPA authorized the use of zinc phosphide on potatoes, sugarbeets, wheat, and barley to control meadow voles and field mice; July 29, 2003 to October 1, 2003. Contact: (Libby Pemberton).

EPA authorized the use of myclobutanil on sugarbeets to control powdery mildew; July 31, 2003 to October 15, 2003. Contact: (Stacey Groce).

EPA authorized the use of flufenacet on wheat to control grass weeds; September 1, 2003 to June 30, 2004. Contact: (Andrew Ertman).

EPA authorized the use of flufenacet on triticale to control grass weeds; September 1, 2003 to June 30, 2004. Contact: (Andrew Ertman).

Illinois

Department of Agriculture

Specific. EPA authorized the use of sulfentrazone on horseradish to control broad leaf weeds; April 15, 2003 to July 15, 2003. Contact: (Andrew Ertman).

EPA authorized the use of fomesafen on snap beans to control broad leaf weeds; May 9, 2003 to August 31, 2003. Contact: (Andrea Conrath).

EPA authorized the use of thymol and eucalyptus oil on beehives to control varroa mites; August 27, 2003 to December 31, 2003. Contact: (Stacey Groce).

Indiana

Office of Indiana State Chemist

Specific. EPA authorized the use of fenbuconazole on blueberries to control mummy berry disease; April 24, 2003 to July 31, 2003. Contact: (Andrea Conrath).

EPA authorized the use of thiophanate methyl on blueberries to control various fungal diseases; May 5, 2003 to September 30, 2003. Contact: (Andrea Conrath).

EPA authorized the use of fomesafen on snap beans to control broad leaf weeds; May 9, 2003 to September 1, 2003. Contact: (Andrea Conrath).

EPA authorized the use of thymol and eucalyptus oil in beehives to control varroa mites; May 23, 2003 to December 31, 2003. Contact: (Barbara Madden).

Iowa

Department of Agriculture and Land Stewardship

Specific. EPA authorized the use of thymol and eucalyptus oil on beehives to control varroa mites; August 27, 2003 to December 31, 2003. Contact: (Stacey Groce).

Kansas

Department of Agriculture

Crisis. On June 11, 2003, for the use of fluroxypyr on grain sorghum to control acetolactate synthase and triazine resistant kochia. This program ended on July 30, 2003. Contact: (Libby Pemberton).

Specific. EPA authorized the use of fluroxypyr on grain sorghum to control acetolactate synthase and triazine resistant kochia; June 19, 2003 to July 30, 2003. Contact: (Libby Pemberton).

Louisiana

Department of Agriculture and Forestry

Crisis. On June 19, 2003, for the use of flumioxazin on sweet potatoes to control weeds. This program ended on July 15, 2003. Contact: (Libby Pemberton).

Denial. On August 26, 2003 EPA denied the use of flumioxazin on cotton to control broad leaf weeds. This request was denied because the criteria for an emergency situation were not met. Contact: (Libby Pemberton).

Specific. EPA authorized the use of s-metolachlor on sweet potatoes to control sedge weeds; May 1, 2003 to July 15, 2003. Contact: (Andrew Ertman).

EPA authorized the use of bifenthrin on sweet potatoes to control soil beetles, and sweet potato weevil; May 19, 2003 to November 30, 2003. Contact: (Andrea Conrath).

EPA authorized the use of methoxyfenozide on soybeans to control saltmarsh caterpillar, soybean loopers, and armyworms; May 30, 2003 to September 30, 2003. Contact: (Barbara Madden).

EPA authorized the use of tebufenozide on sweet potatoes to control armyworms; June 19, 2003 to October 31, 2003. Contact: (Andrew Ertman).

Maine

Department of Agriculture, Food, and Rural Resources

Specific. EPA authorized the use of thymol and eucalyptus oil in beehives to control varroa mites; May 23, 2003 to December 31, 2003. This request was granted because not only will beekeepers be adversely impacted if varroa mites are not adequately controlled but that the impact on much of agriculture in the United States could be dire. Over 150 crops have been identified that require bees for pollination. Contact: (Barbara Madden).

Maryland

Department of Agriculture

Specific. EPA authorized the use of terbacil on watermelons to control annual broad leaf weeds; April 29, 2003 to June 15, 2003. Contact: (Barbara Madden).

EPA authorized the use of fomesafen on snap beans to control broad leaf weeds; May 9, 2003 to September 15, 2003. Contact: (Andrea Conrath).

Massachusetts

Massachusetts Department of Food and Agriculture

Specific. EPA authorized the use of fenbuconazole on blueberries to control mummy berry disease; April 24, 2003 to June 30, 2003. Contact: (Andrea Conrath).

EPA authorized the use of indoxacarb on cranberries to control weevils; May 9, 2003 to September 30, 2003. Contact: (Andrea Conrath).

EPA authorized the use of azoxystrobin on tobacco to control blue mold; May 27, 2003 to December 31, 2003. Contact: (Libby Pemberton).

EPA authorized the use of thymol and eucalyptus oil on beehives to control varroa mites; August 27, 2003 to December 31, 2003. Contact: (Stacey Groce).

Michigan

Michigan Department of Agriculture

Crisis. On April 30, 2003, for the use of oxytetracycline on apples to control fire blight. This program ended on June 30, 2003. Contact: (Andrea Conrath).

Specific. EPA authorized the use of mancozeb on ginseng to control alternaria leaf and stem blight and phytophthora leaf blight; April 1, 2003 to October 15, 2003. Contact: (Libby Pemberton).

EPA authorized the use of fenbuconazole on blueberries to control mummy berry disease; April 24, 2003 to September 1, 2003. Contact: (Andrea Conrath).

EPA authorized the use of dimethenamid-p on dry bulb onions grown on muck soils to control yellow nutsedge; May 1, 2003 to July 30, 2003. Contact: (Barbara Madden).

EPA authorized the use of thiophanate methyl on blueberries to control various fungal diseases; May 5, 2003 to September 30, 2003. Contact: (Andrea Conrath).

EPA authorized the use of tebuconazole on wheat to control fusarium head blight; May 6, 2003 to June 15, 2003. Contact: (Libby Pemberton).

EPA authorized the use of fomesafen on snap beans to control broad leaf weeds; May 9, 2003 to August 30, 2003. Contact: (Andrea Conrath).

EPA authorized the use of fomesafen on dry beans to control broad leaf weeds; May 9, 2003 to August 15, 2003. Contact: (Andrea Conrath).

EPA authorized the use of tetraconazole on sugarbeets to control cercospora; June 6, 2003 to September 30, 2003. Contact: (Andrea Conrath).

EPA authorized the use of imidacloprid on blueberries to control

Japanese beetle grubs and adults; June 15, 2003 to September 30, 2003. Contact: (Andrew Ertman).

EPA authorized the use of sulfentrazone on strawberries to control broad leaf weeds; June 25, 2003 to December 15, 2003. Contact: (Andrew Ertman).

EPA authorized the use of thymol and eucalyptus oil on beehives to control varroa mites; August 27, 2003 to December 31, 2003. Contact: (Stacey Groce).

Minnesota

Department of Agriculture

Crisis. On August 7, 2003, for the use of propiconazole on drybeans to control rust. This program ended on August 21, 2003. Contact: (Libby Pemberton).

Denial. On June 13, 2003 EPA denied the use of sulfentrazone on potatoes to control nightshade. This request was denied because yield losses were not supported by the submitted data. Contact: (Andrew Ertman).

Specific. EPA authorized the use of tetraconazole on sugarbeets to control cercospora; April 28, 2003 to September 30, 2003. Contact: (Andrea Conrath).

EPA authorized the use of 2,4-D on wild rice to control common water plantain; May 1, 2003 to July 31, 2003. Contact: (Andrew Ertman).

EPA authorized the use of tebuconazole on wheat and barley to control fusarium headblight; May 7, 2003 to September 1 2003. Contact: (Libby Pemberton).

EPA authorized the use of fomesafen on dry beans to control broad leaf weeds; May 9, 2003 to August 15, 2003. Contact: (Andrea Conrath).

EPA authorized the use of thymol and eucalyptus oil in beehives to control varroa mites; May 23, 2003 to December 31, 2003. Contact: (Barbara Madden).

Mississippi

Department of Agriculture and Commerce

Denial. On August 26, 2003 EPA denied the use of flumioxazin on cotton to control broad leaf weeds. This request was denied because the criteria for an emergency situation were not met. Contact: (Libby Pemberton).

Specific. EPA authorized the use of diuron on catfish to control algae; April 20, 2003 to November 30, 2003. Contact: (Libby Pemberton).

EPA authorized the use of s-metolachlor on sweet potatoes to control sedge weeds; May 5, 2003 to July 15, 2003. Contact: (Andrew Ertman).

EPA authorized the use of methoxyfenozide on soybeans to control saltmarsh caterpillar, soybean loopers, and armyworms; May 15, 2003 to September 30, 2003. Contact: (Barbara Madden).

EPA authorized the use of bifenthrin on sweet potatoes to control soil beetles; May 19, 2003 to September 30, 2003. Contact: (Andrea Conrath).

EPA authorized the use of thymol and eucalyptus oil in beehives to control varroa mites; May 23, 2003 to December 31, 2003. Contact: (Barbara Madden).

EPA authorized the use of tebufenozide on sweet potatoes to control beet armyworms and fall armyworms; July 15, 2003 to October 15, 2003. Contact: (Barbara Madden).

Missouri

Department of Agriculture

Specific. EPA authorized the use of fomesafen on snapbeans to control broad leaf weeds; May 9, 2003 to September 10, 2003. Contact: (Andrea Conrath).

EPA authorized the use of thymol and eucalyptus oil on beehives to control varroa mites; August 27, 2003 to December 31, 2003. Contact: (Stacey Groce).

Montana

Department of Agriculture

Crisis. On May 21, 2003, for the use of lambda-cyhalothrin on barley to control cutworms and cereal leaf beetles. This program ended on July 30, 2003. Contact: (Andrew Ertman).

On June 12, 2003, for the use of diflubenzuron on wheat and barley to control grasshoppers. This program ended on July 15, 2003. Contact: (Andrea Conrath).

On June 17, 2003, for the use of tebuconazole on barley and wheat to control fusarium head blight. This program ended on July 20, 2003. Contact: (Libby Pemberton).

Specific. EPA authorized the use of tetraconazole on sugarbeets to control cercospora; April 28, 2003 to September 30, 2003. Contact: (Andrea Conrath).

EPA authorized the use of thiabendazole on lentils to control ascochyta blight; May 19, 2003 to June 1, 2003. Contact: (Andrea Conrath).

EPA authorized the use of lambda-cyhalothrin on barley to control the Russian wheat aphid, cereal leaf beetles, and cutworms; June 8, 2003 to July 30, 2003. Contact: (Andrew Ertman).

EPA authorized the use of azoxystrobin on safflower to control alternaria leaf spot; July 1, 2003 to August 15, 2003. Contact: (Libby Pemberton).

Nebraska

Department of Agriculture

Crisis. On June 17, 2003, for the use of fluroxypyr on grain sorghum to control acetolactate synthase and triazine resistant kochia. This program ended on July 15, 2003. Contact: (Libby Pemberton).

Specific. EPA authorized the use of tetraconazole on sugarbeets to control cercospora; April 28, 2003 to September 30, 2003. Contact: (Andrea Conrath).

EPA authorized the use of fomesafen on dry beans to control broad leaf weeds; May 9, 2003 to August 5, 2003. Contact: (Andrea Conrath).

EPA authorized the use of fluroxypyr on grain sorghum to control acetolactate synthase and triazine resistant kochia; June 19, 2003 to July 30, 2003. Contact: (Libby Pemberton).

EPA authorized the use of thymol and eucalyptus oil on beehives to control varroa mites; August 27, 2003 to December 31, 2003. Contact: (Stacey Groce).

Nevada

Department of Agriculture

Crisis. On June 6, 2003, for the use of bifenazate on timothy to control banks grass mite. This program ended on August 30, 2003. Contact: (Andrea Conrath).

On June 13, 2003, for the use of diflubenzuron on alfalfa to control grasshoppers and crickets. This program ended on October 31, 2003. Contact: (Andrea Conrath).

New Hampshire

Department of Agriculture

Specific. EPA authorized the use of propiconazole on blueberries to control mummy berry disease; May 16, 2003 to June 15, 2003. Contact: (Andrea Conrath).

New Jersey

Department of Environmental Protection

Crisis. On August 21, 2003, for the use of propamocarb hydrochloride on tomatoes to control late blight. This program ended October 3, 2003. Contact: (Liby Pemberton).

Public Health. EPA authorized the use of fipronil in a rodent bait box system to control immature blacklegged ticks which are vectors for lyme disease; May 24, 2003 to December 31, 2003. Lyme disease is caused by the bacterium, *borrelia burgdorferi*. These bacteria are transmitted to humans by the bite of infected deer ticks. Contact: (Barbara Madden).

Specific. EPA authorized the use of fenbuconazole on blueberries to control mummy berry disease; April 24, 2003 to June 30, 2003. Contact: (Andrea Conrath).

EPA authorized the use of thiophanate methyl on blueberries to control various fungal diseases; June 2, 2003 to July 31, 2003. Contact: (Andrea Conrath).

EPA authorized the use of thymol and eucalyptus oil in beehives to control varroa mites; June 17, 2003 to December 31, 2003. Contact: (Barbara Madden).

EPA authorized the use of thiophante methyl on tomatoes to control white mold (*sclerotinia sclerotiorum*); July 2, 2003 to July 31, 2003. Contact: (Andrea Conrath).

New Mexico

Department of Agriculture

Specific. EPA authorized the use of spinosad on onions to control thysanoptera feeding pests; July 3, 2003 to November 1, 2003. Contact: (Andrew Ertman).

EPA authorized the use of myclobutanil on peppers (bell and chile) to control powdery mildew; July 25, 2003 to October 15, 2003. Contact: (Stacey Groce).

EPA authorized the use of spinosad on alfalfa to control lepidopteran pests; August 1, 2003 to November 1, 2003. Contact: (Andrew Ertman).

New York

Department of Environmental Conservation

Public Health. EPA authorized the use of fipronil in a rodent bait box system to control immature blacklegged ticks which are vectors for lyme disease; May 9, 2003 to December 31, 2003. Lyme disease is caused by the bacterium, *borrelia burgdorferi*. These bacteria are transmitted to humans by the bite of infected deer ticks. Contact: (Barbara Madden).

Specific. EPA authorized the use of fenbuconazole on blueberries to control mummy berry disease; April 24, 2003 to June 30, 2003. Contact: (Andrea Conrath).

EPA authorized the use of dimethenamid on dry bulb onion to control yellow nutsedge; May 1, 2003 to July 30, 2003. Contact: (Barbara Madden).

EPA authorized the use of thiophanate methyl on blueberries to control various fungal diseases; May 5, 2003 to September 30, 2003. Contact: (Andrea Conrath).

EPA authorized the use of fomesafen on dry and snap beans to control broad leaf weeds; May 9, 2003 to August 30, 2003. Contact: (Andrea Conrath).

EPA authorized the use of desmedipham on red (table) beets to control several important broad leaf weeds, including hairy galinsoga, common ragweed, redroot pigweed, common lambsquarters, velvetleaf, nightshade spp., and wild mustard; May 15, 2003 to August 15, 2003. Contact: (Libby Pemberton).

EPA authorized the use of lambda-cyhalothrin on alfalfa/clover/grass mixed stands to control the potato leafhopper; June 1, 2003 to August 31, 2003. Contact: (Andrew Ertman).

North Carolina

Department of Agriculture

Specific. EPA authorized the use of thymol and eucalyptus oil in beehives to control varroa mites; June 25, 2003 to December 31, 2003. Contact: (Barbara Madden).

EPA authorized the use of s-metolachlor on sweet potatoes to control pigweed; July 2, 2003 to August 15, 2003. Contact: (Andrew Ertman).

EPA authorized the use of tebufenozide on sweet potatoes to control beet armyworms and fall armyworms; July 25, 2003 to December 31, 2003. Contact: (Andrew Ertman).

North Dakota

Department of Agriculture

Crisis. On May 29, 2003, for the use of zeta-cypermethrin on mustard to control crucifer flea beetles. This program ended on June 13, 2003. Contact: (Libby Pemberton).

On July 3, 2003, for the use of zeta-cypermethrin on flax to control grasshoppers. This program ended on September 30, 2003. Contact: (Libby Pemberton).

On August 7, 2003, for the use of propiconazole on dry beans to control rust. This program ended on August 22, 2003. Contact: (Libby Pemberton).

Denial. On June 13, 2003 EPA denied the use of sulfentrazone on potatoes to control nightshade. This request was denied because yield losses were not supported by the submitted data. Contact: (Andrew Ertman).

Specific. EPA authorized the use of thiabendazole on lentils as a seed treatment to control Ascochyta blight; April 8, 2003 to June 1, 2003. Contact: (Andrea Conrath).

EPA authorized the use of tetraconazole on sugarbeets to control cercospora; April 28, 2003 to September 30, 2003. Contact: (Andrea Conrath).

EPA authorized the use of tebuconazole on wheat and barley to control fusarium head blight; May 7, 2003 to September 1, 2003. Contact: (Libby Pemberton).

EPA authorized the use of fomesafen on dry beans to control broad leafweeds; May 9, 2003 to August 15, 2003. Contact: (Andrea Conrath).

EPA authorized the use of tebuconazole on sunflower to control rust; June 8, 2003 to September 5, 2003. Contact: (Andrea Conrath).

EPA authorized the use of azoxystrobin on safflower to control alternaria leaf spot; July 1, 2003 to August 15, 2003. Contact: (Libby Pemberton)

EPA authorized the use of sethoxydim on no till or reduced tillage safflower to control wild oats; June 21, 2003 to July 31, 2003. Contact: (Libby Pemberton).

EPA authorized the use of zeta-cypermethrin on flax to control grasshoppers; August 29, 2003 to September 30, 2003. Contact: (Libby Pemberton).

EPA authorized the use of thymol and eucalyptus oil on beehives to control varroa mites; August 27, 2003 to December 31, 2003. Contact: (Stacey Groce).

Ohio

Department of Agriculture

Crisis. On July 14, 2003, for the use of thiophanate methyl on fruiting vegetables to control sclerotinia. This program ended on September 30, 2003. Contact: (Andrea Conrath).

Specific. EPA authorized the use of sulfentrazone on strawberries to control common groundsel; June 20, 2003 to December 15, 2003. Contact: (Andrew Ertman).

EPA authorized the use of dimethenamid-p on dry bulb onions to control yellow nutsedge; June 25, 2003 to July 30, 2003. Contact: (Barbara Madden).

Oklahoma

Department of Agriculture

Crisis. On April 29, 2003, for the use of fomesafen on snap beans to control broad leaf weeds. This program ended on May 9, 2003. Contact: (Andrea Conrath).

Specific. EPA authorized the use of fomesafen on snap beans to control broad leaf weeds; May 9, 2003 to September 10, 2003. Contact: (Andrea Conrath).

EPA authorized the use of thymol and eucalyptus oil on beehives to control varroa mites; August 27, 2003 to December 31, 2003. Contact: (Stacey Groce).

Oregon

Department of Agriculture

Crisis. On April 2, 2003, for the use of oxytetracycline on apples to control fire blight. This program ended on August 1, 2003. Contact: (Andrea Conrath).

Specific. EPA authorized the use of sulfentrazone on strawberries to control broad leaf weeds; April 1, 2003 to February 28, 2004. Contact: (Andrew Ertman).

EPA authorized the use of bifenthrin on orchardgrass grown for seed to control the orchardgrass billbug; April 4, 2003 to November 15, 2003. Contact: (Andrea Conrath).

EPA authorized the use of thiabendazole on lentils as a seed treatment to control ascochyta blight; April 8, 2003 to June 1, 2003. Contact: (Andrea Conrath).

EPA authorized the use of triazamate on Christmas trees to control root aphids; April 15, 2003 to October 31, 2003. Contact: (Barbara Madden).

EPA authorized the use of ethoprop on baby hops to control garden symphylan; April 15, 2003 to May 31, 2003. Contact: (Barbara Madden).

EPA authorized the use of myclobutanil on hops to control powdery mildew; May 1, 2003 to September 2003. Contact: (Barbara Madden).

EPA authorized the use of cymoxanil on hops to control downy mildew; May 2, 2003 to September 15, 2003. Contact: (Libby Pemberton).

EPA authorized the use of myclobutanil on hops to control powdery mildew; May 1, 2003 to September 2003. Contact: (Barbara Madden).

EPA authorized the use of two unregistered pheromones, (Z,E)-3,13-octadecadienyl and (Z,Z)-3,13-octadecadienyl on hybrid poplars grown for pulp and saw timber to control western poplar clearwing moths (WPCM); May 27, 2003 to October 1, 2003. This request was granted because the situation is urgent and non-routine based on the sudden population explosion of the WPCM and the apparent change in the habitat preferences for young healthy trees. Contact: (Barbara Madden).

EPA authorized the use of quinoxyfen on hops to control powdery mildew; June 15, 2003 to September 15, 2003. This request was granted because the Agency has determined that the onset of the powdery mildew pest problem has created an urgent and non-routine situation which will result in a significant economic losses for hops growers. Contact: (Barbara Madden).

EPA authorized the use of myclobutanil on sugarbeets to control powdery mildew; July 31, 2003 to October 15, 2003. Contact: (Stacey Groce).

EPA authorized the use of ethoprop on baby mint to control garden symphylans; August 1, 2003 to September 15, 2003. Contact: (Libby Pemberton).

EPA authorized the use of flufenacet on wheat to control grass weeds; September 1, 2003 to June 30, 2004. Contact: (Andrew Ertman).

EPA authorized the use of flufenacet on triticale to control grass weeds; September 1, 2003 to June 30, 2004. Contact: (Andrew Ertman).

EPA authorized the use of propiconazole on filberts to control eastern filbert blight; February 15, 2003 to May 30, 2003. Contact: (Dan Rosenblatt).

Pennsylvania

Department of Agriculture

Specific. EPA authorized the use of imidacloprid on stone fruit to control green peach aphid; April 26, 2003 to October 15, 2003. Contact: (Andrew Ertman).

EPA authorized the use of thiophanate methyl on blueberries to control various fungal diseases; May 5, 2003 to September 30, 2003. Contact: (Andrea Conrath).

EPA authorized the use of thymol and eucalyptus oil on beehives to control varroa mites; August 19, 2003 to December 31, 2003. Contact: (Stacey Groce).

Rhode Island

Department of Environmental Management

Specific. EPA authorized the use of fenbuconazole on blueberries to control mummy berry disease; April 24, 2003 to June 30, 2003. Contact: (Andrea Conrath).

South Carolina

Clemson University

Specific. EPA authorized the use of thymol and eucalyptus oil in beehives to control varroa mites; May 23, 2003 to December 31, 2003. This request was granted because not only will beekeepers be adversely impacted if varroa mites are not adequately controlled but that the impact on much of agriculture in the United States could be dire. Over 150 crops have been identified that require bees for pollination. Contact: (Barbara Madden).

South Dakota

Department of Agriculture

Specific. EPA authorized the use of sulfentrazone on sunflowers to control kochia; April 1, 2003 to June 30, 2003. Contact: (Andrew Ertman).

EPA authorized the use of tebuconazole on wheat and barley to control fusarium head blight; June 1, 2003 to August 31, 2003. Contact: (Libby Pemberton).

EPA authorized the use of sulfentrazone on flax to control kochia and ALS-resistant kochia; May 16, 2003 to June 30, 2003. Contact: (Andrew Ertman).

Tennessee

Department of Agriculture

Specific. EPA authorized the use of sulfentrazone on succulent beans to control hophornbeam copperleaf; May 15, 2003 to September 30, 2003. Contact: (Andrew Ertman).

Texas

Department of Agriculture

Crisis. On July 16, 2003, for the use of fluroxypyr on grain sorghum to control kochia and other broad leaf weed species. This program ended on July 31, 2003. Contact: (Libby Pemberton).

Specific. EPA authorized the use of spinosad on pastureland and rangeland to control armyworms; May 22, 2003 to September 1, 2003. Contact: (Andrew Ertman).

EPA authorized the use of spinosad on alfalfa to control lepidopteran pests; August 1, 2003 to November 1, 2003. Contact: (Andrew Ertman).

EPA authorized the use of fenbuconazole on grapefruit to control greasy spot; August 20, 2003 to August 20, 2004. Contact: (Dan Rosenblatt).

Utah

Department of Agriculture

Specific. EPA authorized the use of diflubenzuron on alfalfa to control the mormon cricket and various grasshopper species; April 11, 2003 to October 31, 2003. Contact: (Andrea Conrath).

EPA authorized the use of thymol and eucalyptus oil in beehives to control varroa mites; May 23, 2003 to December 31, 2003. Contact: (Barbara Madden).

Vermont

Department of Agriculture

Specific. EPA authorized the use of thymol and eucalyptus oil on beehives to control varroa mites; September 9, 2003 to December 31, 2003. Contact: (Stacey Groce).

Virginia

Department of Agriculture and Consumer Services

Specific. EPA authorized the use of terbacil on watermelons to control annual broad leaf weeds; April 1, 2003 to July 10, 2003. Contact: (Barbara Madden).

EPA authorized the use of imidacloprid on stone fruit to control aphids; April 26, 2003 to October 1, 2003. Contact: (Andrew Ertman).

EPA authorized the use of fomesafen on snap beans to control broad leaf weeds; May 9, 2003 to September 20, 2003. Contact: (Andrea Conrath).

EPA authorized the use of thiophanate methyl on tomatoes to control white mold (*sclerotinia sclerotiorum*); July 2, 2003 to September 30, 2003. Contact: (Andrea Conrath).

Washington

Department of Agriculture

Crisis. On April 2, 2003, for the use of oxytetracycline on apples to control fire blight. This program ended on August 1, 2003. Contact: (Andrea Conrath).

On April 16, 2003, for the use of thiamethoxam on succulent and dry bean seed to control leaf hoppers. This program is expected to end on May 15, 2003. Contact: (Andrew Ertman).

On June 7, 2003, for the use of diflubenzuron on wheat and barley to control grasshoppers. This program ended on June 21, 2003. Contact: (Andrea Conrath).

Specific. EPA authorized the use of triazamate on Christmas trees to control root aphids; April 15, 2003 to October 31, 2003. Contact: (Barbara Madden).

EPA authorized the use of thiabendazole on lentils as a seed treatment to control ascochyta blight; April 8, 2003 to June 1, 2003. Contact: (Andrea Conrath).

EPA authorized the use of myclobutanil on hops to control powdery mildew; May 1, 2003 to September 2003. Contact: (Barbara Madden).

EPA authorized the use of sulfentrazone on chickpeas to control Russian thistle; May 13, 2003 to June 20, 2003. Contact: (Andrew Ertman).

EPA authorized the use of two unregistered pheromones, (Z,E)-3,13-octadecadienyl and (Z,Z)-3,13-octadecadienyl on hybrid poplars grown for pulp and saw timber to control WPCM; May 27, 2003 to October 1, 2003. This request was granted because the situation is urgent and non-routine based on the sudden population explosion of the WPCM and the apparent change in the habitat preferences for young healthy trees. Contact: (Barbara Madden).

EPA authorized the use of fenpyroximate on hops to control spider mites; May 27, 2003 to September 15, 2003. Contact: (Andrea Conrath).

EPA authorized the use of quinoxyfen on hops to control powdery mildew; July 1, 2003 to September 15, 2003. This request was granted because the Agency has determined that the onset of the powdery mildew pest problem has created an urgent and non-routine situation which will result in a significant economic losses for hops growers. Contact: (Barbara Madden).

EPA authorized the use of mancozeb on ginseng to control alternaria leaf and stem blight and phytophthora leaf blight; July 29, 2003 to August 15, 2003. Contact: (Libby Pemberton).

EPA authorized the use of zinc phosphide on alfalfa/clover/timothy to control vole complex; August 5, 2003 to May 1, 2004. Contact: (Libby Pemberton).

EPA authorized the use of flufenacet on wheat to control grass weeds; September 1, 2003 to June 30, 2004. Contact: (Andrew Ertman).

EPA authorized the use of flufenacet on triticale to control grass weeds; September 1, 2003 to June 30, 2004. Contact: (Andrew Ertman).

West Virginia

Department of Agriculture

Specific. EPA authorized the use of imidacloprid on peaches and nectarines to control aphids; April 2, 2003 to November 30, 2003. Contact: (Andrew Ertman).

Wisconsin

Department of Agriculture, Trade, and Consumer Protection

Denial. On June 13, 2003, EPA denied the use of sulfentrazone on potatoes to control nightshade. This request was denied because yield losses were not supported by the submitted data. Contact: (Andrew Ertman).

Specific. EPA authorized the use of propiconazole on cranberry to control cottonball disease; April 15, 2003 to July 31, 2003. Contact: (Barbara Madden).

EPA authorized the use of thymol and eucalyptus oil in beehives to control varroa mites; June 17, 2003 to December 31, 2003. Contact: (Barbara Madden).

Wyoming

Department of Agriculture

Specific. EPA authorized the use of lambda-cyhalothrin on barley to control the Russian wheat aphid; April 10, 2003 to July 31, 2003. Contact: (Andrew Ertman).

EPA authorized the use of tetraconazole on sugarbeets to control cercospora; April 28, 2003 to September 30, 2003. Contact: (Andrea Conrath).

B. Federal Departments and Agencies

Environmental Protection Agency

Crisis. On June 13, 2003, for the use of hydrogen peroxide for decontamination of interior spaces and personal and office items on which *bacillus anthracis* may be present at the U.S. Department of State SA-32 Mail and Pouch Facility. This program is expected to end on June 28, 2003. Contact: (Barbara Madden).

List of Subjects

Environmental protection, Pesticides and pest.

Dated: November 18, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 03–29321 Filed 11–25–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0335; FRL–7330–3]

Pesticides: Procedural Guidance for EPA's Office of Pesticide Programs Procedures Concerning the Development, Modification, and Implementation of Policy Guidance Documents; Notice of Availability

AGENCY: Enironmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of a paper discussing procedural guidance for policy development in the Office of Pesticide Programs (OPP). These procedures have two goals: To increase public participation in the development, modification and implementation of OPP policy guidance documents; and to clarify that while such documents are non-binding policy statements and not legally binding rules, they nonetheless play an important role in helping to ensure a consistent starting point for OPP decision making. A draft of this document was made available for comment on March 12, 2003. A document summarizing EPA's response to public comments on the draft is also available in EPA's docket.

FOR FURTHER INFORMATION CONTACT: William L. Jordan, Senior Policy Adviser (7501C), Office of Pesticide

Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–1049; fax number: (703) 308–4776; e-mail address: jordan.william@*epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakholders, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides. The Agency has not attempted to describe all the persons or entities who may be interested in or affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0335. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to 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 ID number.

II. What Action is the Agency Taking?

EPA is making available a paper on procedures for developing, modifying, and implementing its policy guidance documents concerning the regulation of pesticides. These procedures have two goals. The first is to increase public participation in the development, modification, and implementation of OPP policy guidance documents; the second is to clarify that while such documents are not binding policy statements and are not legally binding rules, they nonetheless play an important role in helping to ensure a consistent starting point for OPP decision making.

EPA has considered comments received on this document, and has revised the paper in response to comments, as appropriate. EPA is also including in the docket for this action a response to all significant comments.

List of Subjects

Environmental protection, Pesticides, Policy guidance.

Dated: November 10, 2003.

James Jones

Director, Office of Pesticide Programs.

[FR Doc. 03–29187 Filed 11–25–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7591–7]

Notice of Tentative Approval and Solicitation of Request for a Public Hearing for Public Water System Supervision Program Revision for the State of West Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval and solicitation of requests for a public hearing.

SUMMARY: Notice is hereby given in accordance with the provision of section 1413 of the Safe Drinking Water Act as amended, and the rules governing National Primary Drinking Water Regulations that the State of West Virginia has revised its approved Public Water System Supervision Program. West Virginia has adopted a Filter Backwash Recycling Rule to require water systems to institute changes to return recycle flows of a plant's treatment process that may compromise pathogen treatment. EPA has determined that these revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has decided to tentatively approve these program revisions. All interested parties are invited to submit written comments on this determination and may request a public hearing.

DATES: Comments or a request for a public hearing must be submitted by December 26, 2003. This determination shall become effective on December 26, 2003, if no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, and if no comments are received which cause EPA to modify its tentative approval.

ADDRESSES: Comments or a request for a public hearing must be submitted to the U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Drinking Water Branch, Water Protection Division, U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.
- West Virginia Department of Health and Human Resources, Environmental Engineering Division, 815 Quarrier Street, Suite 418, Charleston, WV 25301.

FOR FURTHER INFORMATION CONTACT: Jason Gambatese, Drinking Water Branch (3WP22) at the Philadelphia address given above; telephone (215) 814–5759 or fax (215) 814–2318.

SUPPLEMENTARY INFORMATION: All interested parties are invited to submit written comments on this determination and may request a public hearing. All comments will be considered, and, if necessary, EPA will issue a response. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by December 26, 2003, a public hearing will be held.

A request for public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Dated: November 12, 2003.

Maria Parisi Vickers,

Acting Regional Administrator, EPA, Region III.

[FR Doc. 03–29590 Filed 11–25–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background.

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Clearance Officer–Cindy Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer–Joseph Lackey—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, with revision, of the following report:

1. Report title: The Government Securities Dealers Reports: The Weekly Report of Dealer Positions (FR 2004A), The Weekly Report of Cumulative Dealer Transactions (FR 2004B), The Weekly Report of Dealer Financing and Fails (FR 2004C), The Weekly Report of Specific Issues (FR 2004SI), The Daily Report of Specific Issues (FR 2004SD), and The Daily Report of Dealer Activity in Treasury Financing (FR 2004WI).

Agency form number: FR 2004

OMB Control number: 7100–0003

Frequency: Weekly, Daily

Reporters: Primary dealers in the U.S. government securities market

Annual reporting hours: 12,342 hours

Estimated average hours per response: FR 2004A, 1.5 hours; FR 2004B, 2 hours; FR 2004C, 1.25 hours; FR 2004SI, 2 hours; FR 2004SD, 2 hours; FR 2004WI, 1 hour.

Number of respondents: 22

General description of report: This information collection is voluntary (12 U.S.C. 248 (a)(2), 353–359, and 461(c)); however, primary dealers are expected to file the report with the Federal Reserve. Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. 552 (b)(4) and (b)(8)).

Abstract: The FR 2004A collects data as of Wednesday of each week on dealers' outright positions in Treasury and other marketable debt securities. The FR 2004B collects data cumulated for the week ended Wednesday on the volume of transactions made by dealers in the same instruments for which positions are reported on the FR 2004A. The FR 2004C collects data as of Wednesday of each week on the amounts of dealer financing and fails. The FR 2004SI collects data as of Wednesday of each week on outright, financing, and fails positions in current or on–the–run issues. Under certain circumstances the FR 2004SI data can also be collected on a daily basis for on–the–run and off–the–run securities. The FR 2004WI collects daily information on a next–business–day basis on positions in to–be–issued Treasury coupons securities, mainly the trading on a when–issued delivery basis.

Current actions: The Federal Reserve proposed to make the following modifications to the reporting series: 1) delete the columns for cumulative weekly volume and average weekly rates for repurchase agreements on the FR 2004C, 2) include a new column, FRBNY Security ID, on the FR 2004SI, 3) formalize the collection of the FR 2004SI daily data in the new reporting form, FR 2004SD, 4) publish all data collected on the FR 2004C, (5) change the data submission schedule to be uniform across the four weekly reports, and (6) adjust row and column headings to be uniform across reports and to more clearly identify the data to be reported. The revised reporting forms will be implemented as of January 7, 2004.

Board of Governors of the Federal Reserve System, November 19, 2003.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 03–29468 Filed 11–25–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 9, 2003.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Linda Harper, Manchester, Missouri; to retain voting shares of Gateway Bancshares, Inc., St. Louis, Missouri, and thereby indirectly retain voting shares of Gateway National Bank of St. Louis, St. Louis, Missouri.

Board of Governors of the Federal Reserve System, November 19, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–29470 Filed 11–25–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments

must be received not later than December 10, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. John M. Dudley Sr., Irrevocable Family Trust, John M. Dudley, Jr., and Leslie Green, Phenix City, Alabama, as trustees to retain voting shares of Phenix–Girard Bancshares, Inc., and thereby indirectly retain voting shares of Phenix-Girard Bank, Phenix City, Alabama.

B. Federal Reserve Bank of Chicago (Patrick Wilder, Managing Examiner) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Floyd H. Garrott, Battle Ground, Indiana, individually and as trustee of the John F. Garrott Trust; to retain voting shares of The Farmers State Bank, Brookston, Indiana.

C. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Kent Evans Nyberg, Grand Rapids, Minnesota, as trustee of the Louise Cameron Family Trust; to acquire control of First National Agency Company of Deer River, Deer River, Minnesota, and thereby indirectly acquire control of First National Bank of Deer River, Deer River, Minnesota.

Board of Governors of the Federal Reserve System, November 20, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–29587 Filed 11–25–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 19, 2003.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Managing Examiner) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Main Street Bancorp, Inc., Northville, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Main Street Bank, Northville, Michigan.

Board of Governors of the Federal Reserve System, November 19, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–29471 Filed 11–25–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://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 December 19, 2003.

A. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Gateway Bancorporation, Inc., Mendota, Heights, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Gateway Bank, Mendota Heights, Minnesota (in organization).

B. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Thunder Bancorp, Inc., Sylvan Grove, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Beverly State Bank, Kansas, which will become Thunder Bank, Sylvan Grove, Kansas.

In connection with this application, applicant has also applied to acquire The Sylvan Agency, Inc., and thereby engage in insurance agency activities in a town of less than 5,000, pursuant to section 225.28(b)(11)(iii)(A) of Regulation Y.

Board of Governors of the Federal Reserve System, November 20, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–29588 Filed 11–25–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages

either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 9, 2003.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Bayerische Hypo– und Vereinsbank AG, and Munchener Ruckversicherungs-Gesellschaft AG, both of Munich, Germany; to acquire through Indentrus, LLC, eFinance Corporation, San Francisco, California,and thereby engage in credit bureau services, including maintaining customers' credit history and providing that information to credit grantors, pursuant to section 225.28(b)(2)(v) of Regulation Y; furnishing general economic information and advice, general economic statistical forecasting services or industry studies, pursuant to section 225.28(6)(ii) of Regulation Y; and in management consulting services, pursuant to section 225.28(b)(9) of Regulation Y.

Board of Governors of the Federal Reserve System, November 19, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.03–29469 Filed 11–25–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS/OMH/CSS–0990–NEW]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary, Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New collection;

Title of Information Collection: Evaluation of the Office of Minority Health Resource Center;

Form/OMB No.: OS–0990-NEW;

Use: The evaluation will assess the extent to which programmatic improvements made after the previous evaulation have improved service delivery and the impacts that services like HIV/AIDS technical assistance have on minority communities.

Frequency: On occasion;

Affected Public: Individuals or households, business or other for-profit, State, local or tribal government;

Annual Number of Respondents: 1352;

Total Annual Responses: 1352

Average Burden Per Response: 10 minutes;

Total Annual Hours: 286.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OS document identifier, to *John.Burke@hhs.gov,* or call the Reports Clearance Office on (202) 690–8356. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: (OMB #0990–OMH/CSS), New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 18, 2003.

John P. Burke,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary, Department of Health and Human Services.

[FR Doc. 03–29493 Filed 11–25–03; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Solicitation of the Nomination of Candidates To Serve as Members of the National Vaccine Advisory Committee

AGENCY: Office of the Secretary HHS.

ACTION: Notice.

SUMMARY: The National Vaccine Program Office (NVPO), a program office within the Office of Public Health and Science, Department of Health and Human Services (DHHS), is soliciting nominations of qualified candidates to be considered for appointment as members to the National Vaccine Advisory Committee (NVAC). The activities of this Committee are governed by the stipulations of the Federal Advisory Committee Act (FACA).

DATES: All nominations must be received and/or postmarked no later than December 18, 2003.

ADDRESSES: All nominations should be sent to: Bruce G. Gellin, M.D., M.P.H., Director, National Vaccine Program Office, Office of Public Health and Science, Department of Health and Human Services, 200 Independence Avenue, SW., Room 725H, Washington, DC 20201.

FOR FURTHER INFORMATION, CONTACT: Ms. Carolin Commodore, Staff Assistant, National Vaccine Program Office, Department of Health and Human Services, 200 Independence Avenue SW., Room 725H, Washington, DC 20201; (202) 690–1253.

SUPPLEMENTARY INFORMATION:

Committee Function: Consistent with the National Vaccine Plan, the Committee advises and makes recommendations to the Assistant Secretary for Health in his/her capacity as the Director of the National Vaccine Program (NVP) on matters related to the Program's responsibilities. Specifically, the Committee studies and recommends ways to encourage the availability of an adequate supply of safe and effective vaccination products in the United States; recommends research priorities and other measures to enhance the safety and efficacy of vaccines. The

Committee also advises the Assistant Secretary for Health in the implementation of sections 2102, 2103, and 2104 of the PHS Act; and identifies annually the most important areas of government and non-government cooperation that should be considered in implementing sections 2102, 2103, and 2104 of the PHS Act.

Qualifications and Information Required: Nominations are being sought for individuals who are engaged in vaccine research or the manufacture of vaccines, as well as individuals who are physicians, members of parent organizations concerned with immunizations, representatives of State or local health agencies or public health organizations. Individuals selected for appointment to the Committee will serve as voting members. Individuals selected for appointment to the Committee can be invited to serve terms with periods of up to four years.

Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.*, specific attributes which qualify the nominee for service in this capacity), and a statement that the nominee is willing to serve as a member of the Committee; (2) the nominator's name, address, and daytime telephone number, and the home and/or work address, telephone number, and email address of the individual being nominated; and (3) a current copy of the nominee's curriculum vitae. Applications cannot be submitted by facsimile. The names of Federal employees should not be nominated for consideration of appointment to this Committee.

The Department makes every effort to ensure that the membership of DHHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that a broad representation of geographic areas, females, ethnic and minority groups, and the disabled are given consideration for membership on DHHS Federal advisory committees. Appointment to this Committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

Dated: November 19, 2003.

Bruce G. Gellin,

Director, National Vaccine Program Office and Executive Secretary, National Vaccine Advisory Committee.

[FR Doc. 03–29582 Filed 11–25–03; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–09]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Thyroid Disease in Persons Exposed to Radioactive Fallout from Atomic Weapons Testing at the Nevada Test Site: Phase III (OMB No. 0920–0504)—Extension—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

In 1997, the National Cancer Institute (NCI) released a report entitled, Estimated Exposures and Thyroid Doses Received by the American People from I–131 in Fallout Following Nevada Nuclear Bomb Test. This report provided county-level estimates of the potential radiation doses to the thyroid gland of American citizens resulting from atmospheric nuclear weapons testing at the Nevada Test Site (NTS) in the 1950s and 1960s. The Institute of Medicine (IOM) conducted a formal peer review of the report at the request of the Department of Health and Human Services. In the review, IOM noted that the public might desire an assessment of the potential health impact of nuclear weapons testing on American populations. The IOM also suggested that further studies of the Utah residents who have participated in previous studies of radiation exposure and thyroid disease might provide this information.

CDC, National Center for Environmental Health proposes to conduct a study of the relation between exposure to radioactive fallout from atomic weapons testing and the occurrence of thyroid disease on an extension of a cohort study previously conducted by the University of Utah, Salt Lake City, Utah. This study is designed as a follow-up to a retrospective cohort study begun in 1965. This is the third examination (hence Phase III) of a cohort of individuals comprised of persons who were children living in Washington County, Utah, and Lincoln County, Nevada, in 1965 (Phase I) and who were presumably exposed to fallout from above-ground nuclear weapons testing at the Nevada Test Site in the 1950s. The cohort also includes a control group comprised of persons who were children living in Graham County, Arizona, in 1966 and presumably unexposed to fallout.

The study headquarters will be at the University of Utah in Salt Lake City, Utah. The field teams will spend the majority of their time in the urban areas nearest the original counties if the same pattern of migration holds that was found in Phase II. These urban areas include St. George, Utah; the Wasatch Front in Utah; Las Vegas, Nevada; Phoenix/Tucson, Arizona; and Denver, Colorado. In addition, some time will be spent in California as a number of subjects had relocated there at the time of Phase II. The purposes of Phase III are three fold. First, the participants in Phase II will be reexamined for occurrence of thyroid neoplasia and other diseases since 1986, and residents of the three counties who moved before they could be included in the original cohort will be located and examined. Second, disease incidence will be analyzed in addition to period prevalence as used in the Phase II analysis, incidence analysis will allow for greater power to detect increased

risk of disease in the exposed population through the use of person-time. Third, disease specific mortality rates for Washington County, Utah, and a control county, Cache County, Utah, will be compared for people who lived in these two counties during the time of above-ground testing. This comparison will determine if the risk of mortality in Washington County (the exposed group) is significantly greater than Cache County (the control group). CDC, NCEH is requesting a three-year clearance. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/respondent	Average burden per response (in hrs.)	Total burden hours
Telephone Location Script	3700	1	5/60	308
Telephone Location Script (Return Letter)	200	1	5/60	17
Refusal Telephone Script	150	1	5/60	13
Recruitment Next of Kin Telephone Script	225	1	5/60	19
Recruitment & Appointment Script	3700	1	5/60	308
Broken Appointment Telephone Script	120	1	5/60	10
Exposure Questionnaire	500	1	90/60	750
Questionnaire Preparation Booklet	3700	1	30/60	1850
Group Member Information	3700	1	5/60	308
Consent Forms	3700	1	10/60	617
Interview Booklet	500	1	30/60	250
Medical History Questionnaire (male)	1800	1	45/60	1350
Medical Records Release Telephone Script	120	1	5/60	10
Medical History Questionnaire (female)	1900	1	45/60	1425
Travel Form	240	1	20/60	80
Residence History	500	1	5/60	42
Refusal Questionnaire	24	1	5/60	2
Total hours in burden	24779	.....	.....	7359

Dated: November 18, 2003.

Laura Yerdon Martin,

Acting Director, Executive Secretariat, Centers for Disease Control and Prevention.

[FR Doc. 03–29522 Filed 11–25–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–08]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Evaluation of James A. Ferguson Emerging Infectious Diseases Fellowship Program—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

CDC is particularly concerned with the racial, ethnic, and gender health disparities in the distribution of infectious diseases in the U.S. To help address the health and well-being of minority and underserved populations, CDC endeavors to train a racially and ethnically diverse public health workforce. Since 1989, the James A. Ferguson Emerging Infectious Disease Summer Fellowship Program, which is administered by the Minority Health Professions Foundation (MHPF), has been providing an 8-week program of educational and experiential opportunities for racial and ethnic minority medical, dental, pharmacy, veterinary, and public health graduate students. The Fellows are given opportunities to explore the wide range of public health career options available to them once their formal training is completed. As of summer 2003, 311 Fellows have completed the program.

The purpose of this study is to conduct a multi-facet evaluation of the Ferguson Fellowship Program. The data from this study will be used to develop planning and decision making initiatives regarding expansion and funding. The study aims to evaluate and measure the success of the program for the dual purposes of program expansion and encouraging other organizations to implement similar mechanisms to increase the presence of racial and ethnic minorities in public health.

Data for this study will be collected from relevant documents, telephone interviews with key stakeholders, and a mail survey of Ferguson Fellows.

CDC proposes to conduct the study to (1) Examine the views and perspectives of the constituents and their experiences with the Ferguson Fellowship Program and (2) assess the impact of the program on strengthening and diversifying the workforce and addressing racial and ethnic health disparities in the field of Public Health. To minimize respondent burden, the mail survey questionnaire will be carefully developed with appropriate guidance from CDC to develop survey items that are relevant and succinct.

Prior to fielding the surveys, an evaluation contractor with guidance from CDC, will select nine Fellows from

the universe of 311 Fellows to participate in pilot interviews by telephone to determine the comprehensibility, appropriateness, and general usability of the survey instrument. These interviews will be conducted using verbal probing and concurrent ''think-aloud'' techniques in order to gain insight into the cognitive processes a respondent uses to answer survey questions. These interviews help minimize respondent burden by ensuring that each survey item is comprehensible and reliable.

The information obtained from this project will enable CDC to make important decisions regarding the program's future expansion and funding. Responses are voluntary. No proprietary items or questions of sensitive nature will be collected. There is no cost to respondents.

Form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Survey	311	1	30/60	156
Total				156

Dated: November 19, 2003.

Laura Yerdon Martin,

Acting Director, Executive Secretariat, Centers for Disease and Prevention.

[FR Doc. 03–29523 Filed 11–25–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–07]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: National Surveillance System for Hospital Health Care Workers (NaSH) (0920–0417)—Renewal—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

Background

CDC has developed a surveillance system now called the National Surveillance System for Health Care Workers (NaSH) that focuses on surveillance of exposures and infections among hospital-based health care workers (HCWs). NaSH includes standardized methodology for various occupational health issues. It is a collaborative effort of CDC, National Center for Infectious Diseases, Division of Healthcare Quality and Promotion, Division of Viral Hepatitis, Division of Tuberculosis (TB) Elimination; CDC, National Center for HIV, STD, and TB Prevention, National Immunization Program (NIP), and National Institute for Occupational Safety and Health (NIOSH). NaSH consists of modules for collection of data about various occupational issues. Baseline information about each HCW such as demographics and vaccination history is collected when the HCW is enrolled in the system. Results of routine tuberculin skin test (TST) are collected and entered in the system every time a TST is placed and read; follow-up information is collected for HCWs with a positive TST. When a HCW is exposed to blood/bloodborne pathogen, to a vaccine-preventable disease (VPD), or to an infectious TB patient/HCW, epidemiologic data are collected about the exposure. For HCWs exposed to a bloodborne pathogen (*i.e.*, HIV, HCV, or HBC) and for susceptible HCWs exposed to VPDs, additional data are collected during follow-up visits. Once a year, hospitals complete a survey to provide denominator data and every 2–5 years, the hospitals perform a survey to assess the level of underreporting of needlesticks (HCW Survey). Optionally, hospitals may collect information about HCW noninfectious occupational injuries such as acute musculoskeletal injuries. Data are entered into the software and transmitted on diskette to CDC. No HCW identifiers are sent to CDC. This system is protected by the Assurance of Confidentiality (308d).

Data collected in NaSH have assisted hospitals, HCWs, health care organizations, and public health agencies. This system has allowed CDC to monitor national trends, to identify newly emerging hazards for HCWs, to assess the risk of occupational infection, and to evaluate preventive measures, including engineering controls, work practices, protective equipment, and post-exposure prophylaxis to prevent occupationally acquired infections. Hospitals that volunteer to participate in this system benefit by receiving technical support and standardized methodologies, including software, for conducting surveillance activities on occupational health.

This system was developed and piloted in large teaching hospitals (RFP–200–94–0834(P) and RFP–200–96–0524(P)). The first pilot included four hospitals and the second, five. After the refinement pilot in an additional 13 hospitals (PA–786 and interagency agreements), participation in NaSH became voluntary. The system is being made available to all healthcare facilities in the United States wishing to participate voluntarily in the project. We anticipate no more than 75 hospitals participating by the end of fiscal year 2004 and potentially 85 by the end of fiscal year 2005. The burden estimate has been reduced from that projected 3 years ago because of a drop in the number of facilities actively participating in NaSH. To participate in NaSH, hospitals are required to provide information on all exposures to

infectious agents, baseline information on the exposed HCWs, as well as the underreporting and hospital surveys.

A new component of NaSH will be forms for collecting information on exposures and injuries associated with smallpox vaccination. It uses a reporting form based on the blood exposure form already approved for use in NaSH and a root-cause analysis form. This is a paper-based reporting system that can be used by NaSH and non-NaSH facilities.

A different number of facilities will be completing each of the separate forms listed in the table. The number of respondents is the number of facilities. The number of responses per respondent varies with the form.

The maximum total burden hours may reach 86,720. (The total estimated maximum cost to respondents may be $1,300,800 [$15 an hour for hospital personnel who will collect/input the data]). Since all of the data collection activities except the HCW survey, outlined in the modules are currently routinely done by infection control practitioners and employee health, personnel health, and/or occupational medicine personnel in hospitals with existing well established surveillance programs, the only additional burden for some hospitals participating in the NaSH system is the time needed for data entry and transmission of data to CDC. Thus, the real burden hours and burden cost could be significantly less. The only activity that may not be routinely performed by the hospitals is the survey to assess underreporting of needlesticks (HCW survey).

This study is scheduled for implementation in late 2003 and 2004. There are no costs to respondents.

Form	Number of respondents (hospitals)	Number of responses/respondent	Avg. burden/response (in hours)	Total burden (in hours)
Baseline Information	75	250	10/60	3,125
TST:				
TST Result	30	200	10/60	1,000
Positive TST	20	100	30/60	1,000
Exposure to Blood:				
Exposure	50	100	60/60	5,000
Exposure (NaSH ''Lite/abbreviated form)	10	20	30/60	100
Postexposure prophylaxis	50	80	20/60	1,333
Follow-up	50	60	15/60	750
Exposure during smallpox vaccination:				
Exposure event	20	1	10/60	3
Root cause analysis	20	1	60/60	20
Exposure to VPD:				
Summary	50	3	20/60	50
HCW	50	10	20/60	167
Exposure to TB	25	3	60/60	75
Noninfectious Injury	25	20	20/60	167
HCW Survey	25	500	10/60	2,083
Hospital Survey	75	1	2	150
Total	.....	.....	.....	14,986

Dated: November 18, 2003.

Laura Yerdon Martin,

Acting Director, Executive Secretariat, Centers for Disease Control and Prevention.

[FR Doc. 03–29524 Filed 11–25–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04003]

Health Promotion and Disease Prevention Research Centers; Notice of Availability of Funds; Amendment

A notice announcing the availability of fiscal year 2004 funds for Cooperative Agreements to support Health Promotion and Disease Prevention Research Centers was published in the **Federal Register** on March 27, 2003, Volume 68, Number 59, pages 14984–14990. A fully amended version of the original program announcement is posted on the Centers for Disease Control and Prevention (CDC) Web site at: *http://www.cdc.gov*. Click on ''Funding'' then ''Grants and Cooperative Agreements.''

The notice is amended as follows:

Page 14984, third column, ''Application Deadline: June 16, 2003'' should be removed and replaced with: ''Application Deadline: March 1, 2004.''

Page 14985, first column, Section C. Eligible Applicants, subsection First Round of Competition, delete this subsection. Second column, subsection, Second Round of Competition, delete the subsection header and the first paragraph.

Page 14985, second column, Section D. Funding, subsection Availability of Funds, line 1, delete the sentence, ''Approximately $14,000,000 will be available in FY 2004 to fund approximately 18 awards.'' Replace it with ''Approximately $9,000,000 is available in FY 2004 to fund approximately 12 awards.''

Page 14985, second column, Section D. Funding, insert a second paragraph with heading and text as follows: Optional Funding In addition, special interest projects related to chronic disease prevention and health promotion will be announced and funded in fiscal year 2004. Award of these projects, which are funded by centers, institutes, or offices within CDC or by other federal agencies, can be made to Prevention Research Centers only. Thus, applicants selected to be funded as a Prevention Research Center under this announcement will be eligible to compete for this optional funding of new special interest projects whenever they are announced by CDC. However, all applicants to this announcement can simultaneously apply for special interest projects. Those applicants not selected as Prevention Research Centers will then automatically be excluded from the competition for special interest projects. Specific guidance related to fiscal year 2004 special interest projects will be published in a separate **Federal Register** announcement in March, 2004.

Page 14985, second column, Section D. Funding, insert the following heading ''Continuation of Funding'' before the paragraph that begins ''Continuation awards * * *''

Page 14985, third column, Section D. Funding, subsection Funding Preferences, delete the paragraph and replace it with, ''Funding preference will be based on selecting applicants in order to maintain an equitable geographic distribution of centers and for the distribution of centers among areas containing a wide range of population groups.''

Page 14985, third column, Section E. Program Requirements, subsection Recipient Activities, paragraph a., delete the word ''center-level'' and replace it with, ''center''.

Page 14985, third column, Section E. Program Requirements, subsection Recipient Activities, paragraph b., delete the paragraph and replace it with, ''Evaluate the center based on the center's logic model, particularly focusing on the critical components of the center's logic model. Describe how the center's evaluation will contribute to the CDC's national program evaluation, including the core performance indicators. (*See* Appendix D for a list of the indicators.)''

Page 14986, second column, Section F. Content, subsection Applications, insert the following paragraph, ''You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered in item 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm*

Page 14986, third column, Section F. Content, subsection Evaluation, delete the first paragraph, and replace with, ''An infrastructure of resources and personnel is required to support program evaluation at the center (see the glossary for a definition of program evaluation). Applicants should have the capacity to (1) establish a five-year evaluation plan; (2) conduct program evaluations; and (3) collaborate with national partners in the planning and implementation of national PRC Program evaluation strategies (see Appendix B for a description of Developing and Evaluation Framework: Insuring National Excellence (Project DEFINE).) To assure that applicants have this capacity, applicants should, at a minimum, address the following:''

Page 14986, third column, Section F. Content, subsection Evaluation, second paragraph (numbered ''1.'') delete the first sentence, and replace with, ''1. Create a logic model for the center, specifying the center's health priorities and expected outcomes.''

Page 14986, third column, Section F. Content, subsection Evaluation, third paragraph (numbered ''2.'') delete the paragraph, and replace with, ''2. Document experiences in conducting program evaluations in the past five years. Describe how the center will continue or enhance its evaluation expertise as it relates to program evaluation.''

Page 14986, third column, Section F. Content, subsection Evaluation, last paragraph (numbered ''3.'') delete the paragraph, and replace with, ''3. Create and describe a five-year evaluation plan, focusing on the critical components of the center's logic model. The plan should include the goals of the evaluation and evaluation questions to be addressed. The plan should also describe how the center has collaborated or will collaborate with the center's community committee for the evaluation (see the glossary for additional information regarding the center community committee.)''

Page 14987, second column, Section F. Content, subsection Collaborations/Partnerships, second paragraph (numbered ''3.''), delete sub-item (a), and replace it with, ''(a) past, current, and proposed partners, as applicable to the center;''

Page 14987, second column, Section F. Content, subsection Research, fourth paragraph (numbered ''3.''), delete the first sentence, and replace it with, ''3. Describe the center's five-year research agenda, including the five-year goals.''

Page 14988, second column, Section F. Content, subsection Infrastructure, fifth paragraph (numbered ''4.''), delete the first sentence, and replace it with, ''4. Describe the center's proposed strategies or activities to enhance its core capacity over the five-year period.''

Page 14989, first column, Section G. Submission and Deadline, subsection Letter of Intent (LOI) Submission, delete the phrase ''First Round of Competition.'' Delete the date April 10, 2003, and replace with January 7, 2004. Subsection Submission Date, Time, and Address, delete the phrase ''First Round of Competition.'' Delete the date June 16, 2003, and replace with March 1, 2004.

Page 14989, second column, Section H. Evaluation Criteria, subsection Application, sub-topic Evaluation, first paragraph (numbered ''1.''), first sentence, delete the word ''center-level'' and replace it with ''center''.

Page 14989, second column, Section H. Evaluation Criteria, subsection Application, sub-topic Evaluation, second paragraph (numbered ''2.''), delete the paragraph and replace it with, ''2. To what extent does the applicant sufficiently describe and justify how the components of the center's logic model relate to or differentiate from the national PRC Program conceptual framework?''

Page 14989, second column, Section H. Evaluation Criteria, subsection Application, sub-topic Evaluation, fourth paragraph (numbered ''4.''), delete the paragraph and replace it with, ''4. To what extent does the applicant adequately lay out a five-year evaluation plan, focused on the critical components of the center's logic model? To what extent does the plan include the goals and objectives for the evaluation and describe past or future collaboration with the center's community committee in the evaluation?

Page 14989, third column, Section H. Evaluation Criteria, subsection Application, sub-topic Collaborations/Partnerships, fourth paragraph (numbered ''4.''), delete the paragraph and replace it with, ''4. To what extent does the applicant adequately describe their partnerships (past, current, and proposed, as applicable), the roles of these partners, and the methods for establishing and maintaining the partnerships?''

Page 14989, third column, Section H. Evaluation Criteria, subsection Application, sub-topic Research, third paragraph (numbered ''3.''), second line, delete the words ''and objectives''.

Page 14990, second column, Section H. Evaluation Criteria, subsection Application, sub-topic Training/Education, second paragraph (numbered ''2.''), insert the words, ''goals and objectives,'' between the words ''including'' and ''how''.

Page 14990, third column, Section J. Where to Obtain Additional Information, after the paragraph that starts, ''For program technical assistance * * *'' insert the following:

A forum for questions and answers between CDC and applicants during the application process will be available as a LISTSERV, a system that allows for creating, managing, and controlling mailing lists on a network or the Internet. The mailing list, which will be titled PREV-CENTERS allows for

questions and answers via electronic mail, which are simultaneously sent to everyone on the list and delivered in seconds or, occasionally, minutes. PREV-CENTERS is a closed list available only to persons and entities associated with the application process for Announcement Number 04003.

To subscribe to the listserv, the applicant must send an E-mail message to *LISTSERV@LISTSERV.CDC.GOV* with the following command in the body of the message: SUBSCRIBE PREV-CENTERS. There is no need to write a ''Subject'' or anything else in the message. The subscriber will then receive a welcome E-mail message and instructions on how to use commands for the LISTSERV. After the applicant is subscribed, questions to the PREV-CENTERS LISTSERV may be sent to the following E-mail address: *PREV-CENTERS@listserv.cdc.gov.* Do not post confidential information on the listSERV because every member of the mailing list will receive the message and the reply. All confidential matters should be conducted through direct E-mail, paper correspondence, or telephone.

Please use the PREV-CENTERS LISTSERV exclusively for posting questions about the application process for Announcement Number 04003. Questions will be accepted until the application deadline. All subscribers to the list will be deleted after the application due date. Furthermore, a list of previously generated questions and answers regarding this Program Announcement can be found at the following Web site: *http://apps.nccd.cdc.gov/RFAQA/rfaqa.asp*

In addition, a pre-applications workshop will be held in Atlanta for all eligible applicants. The workshop will provide information on CDC's Prevention Research Centers Program and the contents of this Program Announcement. Specific information about the workshop can be found on the CDC Prevention Research Centers Web site: *http://www.cdc.gov/prc.*

Dated: November 20, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–29525 Filed 11–25–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Grant for Injury Control Research Center

Announcement Type: New.
Funding Opportunity Number: 04057.
Catalog of Federal Domestic Assistance Number: 93.136.
Key Dates:
Letter of Intent Deadline: December 26, 2003.
Application Deadline: February 23, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under sections 301(a) and 391(a)(1) of the Public Health Service Act, (42 U.S.C. 241(a)280b(a)(1)), as amended.

Purpose: The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2004 funds for a grant for an Injury Control Research Center (ICRC). This program addresses the ''Healthy People 2010'' focus area of Injury and Violence Prevention. A copy of ''Healthy People 2010'' is available at the following Internet address: *http://www.health.gov/healthypeople*.

The purposes of this program are:

1. To support an ICRC in a state predominately comprised of economically depressed rural communities where a relatively large portion of the work force is engaged in underground mining, family farming, and other rural occupations.

2. To support injury prevention and control research on priority issues as delineated in: ''Healthy People 2010''; ''Reducing the Burden of Injury: Advancing Prevention and Treatment''; and the research priorities published in the CDC Injury Research Agenda, located at *http://www.cdc.gov/ncipc*.

3. To integrate, in the context of a national program, the disciplines of epidemiology, medicine, biomechanics and other engineering, biostatistics, public health, law and criminal justice, and behavioral and social sciences in order to prevent and control injuries more effectively.

4. To define the injury problem; identify risk and protective factors; develop and evaluate prevention and control interventions and strategies; and ensure widespread adoption of effective interventions and strategies.

5. To provide technical assistance to injury prevention and control programs within a geographic region.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control: Conduct a targeted program of research to reduce injury-related death and disability.

Research Objectives: Center funding is to be designated for two types of activities. One type of activity is considered core and includes administration, management, general support services (*e.g.*, statistical, library, media relations, and advocacy for injury prevention and control) as well as activities associated with research development, technical assistance, and education (*e.g.*, seed projects, training activities, and collaborative and technical assistance activities with other groups). Funds may be allocated for trainee stipends, tuition remission, and trainee travel in accordance with the current rates for the United States Public Health Service agencies. Indirect costs for these trainee-related activities are limited to eight percent. Defined research projects constitute the second type of activity, and ICRCs are encouraged to work toward addressing the breadth of the field. Core activities and defined research projects may each constitute between 25 percent and 75 percent of the operating budget, and should be balanced in such a way that the ICRC demonstrates productivity in research as well as teaching and service. Applicants with less demonstrated expertise in research are encouraged to devote a larger percentage of funds to defined research projects in order to establish their capability as research centers of excellence.

At least 80 percent of the costs (total direct and indirect costs) of the approved small and large research projects must be in alignment with the ''CDC Injury Research Agenda,'' *http://www.cdc.gov/ncipc*.

Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application.

Activities: Awardee activities for this program are as follows:

1. Applicants must demonstrate expertise and experience in conducting and publishing injury research in at least one of the three phases of injury control (prevention, acute care, or rehabilitation) and are encouraged to be comprehensive.

2. Applicants must document ongoing injury control-related research projects and activities currently supported by other sources of funding.

3. Applicants must provide a director (Principal Investigator) who has specific authority and responsibility to carry out the project. The director must report to

an appropriate institutional official, *e.g.*, dean of a school, vice president of a university, or commissioner of health. The director must have no less than thirty percent effort devoted solely to this project with an anticipated range of thirty percent to fifty percent.

4. Applicants must provide evidence of working relationships, including consultation and technical assistance, with outside agencies and other entities in the region in which the ICRC is located which will allow for implementation and evaluation of any proposed intervention activities.

5. Applicants must provide evidence of involvement of specialists or experts in medicine, biomechanics and other engineering, epidemiology, law and criminal justice, behavioral and social sciences, biostatistics, and public health as needed to complete the plans of the center. These are considered the disciplines and fields for ICRCs.

6. Applicants must have established curricula and graduate training programs in disciplines relevant to injury control (*see* item 5.above.).

7. Applicants must disseminate injury control research findings, translate them into interventions (*i.e.*, programs or policies), and evaluate their effectiveness.

II. Award Information

Type of Award: Grant.

Fiscal Year Funds: FY 2004.

Approximate Total Funding: $905,500 (total of direct and indirect costs).

Approximate Number of Awards: One award.

Approximate Average Award: $905,500.

Floor of Award Range: None.

Ceiling of Award Range: Applicants will be allowed to apply for $1,055,500 ($150,000 above the expected award amount to allow for the inclusion of the description of an additional large project as described in Section IV. Application and Submission Information, Application 4.b. (2), but the award will be no more than $905,500 (total of direct and indirect costs).

Anticipated Award Date: September 1, 2004.

Budget Period Length: Twelve months.

Project Period Length: Three years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

1. *Eligible applicants:* This announcement will provide funding for applicants in regions that do not have funded Injury Control Research Centers (ICRCs) and for applicants in regions that have funded Centers that must re-compete for funding.

Eligible applicants are limited to organizations in Department of Health and Human Services (DHHS) Region II (New Jersey, New York, Puerto Rico, and Virgin Islands), Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia), and Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas).

Note: ICRC grant awards are made to the applicant institution/organization, not the Principal Investigator.

Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies, such as:

- Public nonprofit organizations
- Private nonprofit organizations
- For profit organizations
- Small, minority, women-owned businesses
- Universities
- Colleges
- Research institutions
- Hospitals
- Community-based organizations
- Faith-based organizations
- Federally recognized Indian tribal governments
- Indian tribes
- Indian tribal organizations
- State and local governments or their Bona Fide Agents (this includes the District of Columbia)
- Political subdivisions of States (in consultation with States)

A *Bona Fide* Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

2. *Cost Sharing or Matching:* Matching funds are not required for this program.

3. *Other Eligibility Requirements:* If you request a funding amount greater than the ceiling of the award range ($1,055,500), your application will be considered non-responsive and will not be entered into the review process. You will be notified that you did not meet the submission requirements.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

1. Address to Request Application Package: To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2004). Forms and instructions are available in an interactive format on the CDC web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) staff at: (770) 488–2700. Application forms can be mailed to you.

2. Content and Form of Application Submission:

Letter of Intent (LOI): CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, your LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review. Your LOI must be written in the following format:

- Maximum number of pages: Two
- Font size: 12-point unreduced
- Single Spaced
- Paper size: 8.5 by 11 inches
- Page margin size: one inch
- Printed only on one side of page
- Written in English, avoid jargon

Your LOI must contain the following information:

- Descriptive title of the proposed research
- Name, address, email address, and telephone number of the Principal Investigator
- Names of other key personnel
- Participating institutions
- Number and title of this Program Announcement (PA)

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact GrantsInfo, Telephone (301) 435–0714, E-mail: *GrantsInfo@nih.gov.*

Your research plan should address activities to be conducted over the entire project period.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered in item 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

The Program Announcement title and number must appear in the application. Use the information in Section I. Funding Opportunity Description, Activities; Section V. Application Review Information; and Section VI. Award Administration Information, Administration and National Policy Requirements to develop the application content. Applications should include the following information, detailing activities to be conducted for the first budget year, while briefly addressing activities to be conducted over the entire three-year project period.

1. Face page.

2. Description (abstract) and personnel.

3. Table of contents.

4. Detailed budget for the initial budget period: The budget should reflect the composite figures for the grant. In addition, separate budgets (direct and indirect costs) and justifications should be provided for the following categories of activities:

a. Core activities, including management and administrative functions, other non-research activities (*e.g.*, education/training, consultation, technical assistance, translation/dissemination, program and policy development and evaluation, advocacy, and media activities, etc.), and small seed projects of less than $25,000 (total of direct and indirect costs) for one year or less.

b. Research Studies:

(1) Small studies of $25,000–150,000/year (total of direct and indirect costs) for one to three years duration. These projects might be expansions of seed projects, either further developing methods or hypotheses in preparation for a larger investigation leading to the submission of an RO1 level proposal, or might be stand-alone investigations sufficient to yield results worthy of publication in a peer-reviewed journal and/or a technical report for a legislative body, governmental agency, or injury control program.

(2) Larger scale studies with annual budgets exceeding $150,000/year (total of direct and indirect costs) and lasting up to three years. These projects typically will test hypotheses and employ more sophisticated methodologies and/or larger sample sizes than small studies.

For seed projects, only modest budget descriptions are required within the application. More detailed budget descriptions, commensurate with costs, are required for both small studies and large research projects.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application that are made available to outside reviewing groups. To exercise this option: On the original and two copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; the subtotals must still be shown. In addition, the applicant must submit an additional copy of page four of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

5. Budget for entire proposed project period including budgets pertaining to consortium/contractual arrangements.

6. Biographical sketches of key personnel, consultants, and collaborators, beginning with the Principal Investigator and core faculty.

7. Other support: This listing should include all other funds or resources pending or currently available. For each grant or contract include source of funds, amount of funding (indicate whether pending or current), date of funding (initiation and termination), and relationship to the proposed program.

8. Resources and environment.

9. *Research plan:*

a. ICRCs are to develop a range of research and other non-research activities that are designed to advance the field of injury control through development of new scientific or surveillance methods, creation of new knowledge, and translation of knowledge into training, program and policy development and evaluation activities or other applications that will ultimately reduce injuries or their effects. ICRC applications should articulate how the activities of their program are integrated with each other.

b. A detailed research plan (design and methods), in accordance with NCIPC's performance goal as stated in the purpose section of this announcement, including hypothesis, expected outcome, value to the field, and measurable and time-framed objectives consistent with the activities for each project within the proposed grant.

(1) Initial seed projects require a short write-up describing the injury control context of the study, the objective, the design, the setting and participants, the intervention being addressed, main outcome measurements, expected results, time lines, cost (total of direct and indirect costs), plans for translation/dissemination, and clear definition of procedures used to select the projects. Clear definitions of procedures used to select future out-year seed projects are also required.

(2) Small research projects require a ten to fifteen page summary describing the accomplishment of all the steps, including a description of the significance of the project, the development and testing of methods and instruments, and the collection of preliminary data needed to take an innovative approach and develop it to the level of a larger investigation leading to the submission of an RO1 level proposal or a stand-alone investigation sufficient to yield results worthy of publication in a peer-reviewed journal and/or a technical report for a legislative body, governmental agency, or injury control program.

(3) Large research projects require an RO1 level summary as described in the PHS 398 (Revised 5/01 and updated 6/28/02) guidelines. The summary should be included as an appendix of the application.

In the research plan section of the application include a description for each small and large research project:

a. Title of Project.

b. Project Director/Lead Investigator.

c. Institution(s).

d. Categorization as Prevention, Acute Care, Rehabilitation, or Biomechanics.

e. Categorization as to which NCIPC research agenda priority area the project addresses. Also, a brief description on how it addresses that priority area. If a priority area is not addressed, provide an explanation of why it is important.

f. Categorization as Seed Project, Small Project, or Large Project.

g. Categorization as New or Ongoing Project

h. Cost/Year (total of direct and indirect costs).

i. Research Training: Names, Degrees of Persons Trained or in Training.

j. Key Words.

k. Brief Summary of Project including Intended Application of Finding (Abstract).

c. A description of the core faculty and their roles in implementing and evaluating the proposed programs. The applicant should clearly specify how disciplines will be integrated to achieve the ICRC's objectives.

d. Charts showing the proposed organizational structure of the ICRC and its relationship to the broader institution of which it is a part and, where applicable, to affiliate institutions or collaborating organizations. These charts should clearly detail the lines of authority as they relate to the center, both structurally and operationally. ICRC directors should report to an appropriate organizational level (*e.g.* dean of a school, vice president of a university, or commissioner of health), demonstrating strong institution-wide support of ICRC activities and ensuring oversight of the process of interdisciplinary activity.

e. Documentation of the public health agencies and other public and private sector entities to be involved in the proposed program, including letters that detail commitments of support and a clear statement of the role, activities, and participating personnel of each agency or entity.

3. *Submission Dates and Times:*

LOI Deadline Date: December 26, 2003.

Application Deadline Date: February 23, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

4. *Intergovernmental Review:* Executive Order 12372 does not apply to this program.

5. *Funding restrictions:* Restrictions, which must be taken into account while writing your budget are as follows:

Grant funds will not be made available to support the provision of direct care. Studies may be supported which evaluate methods of acute care and rehabilitation for potential reductions in injury effects and costs. Studies may be supported which identify the effect on injury outcomes and cost of systems for pre-hospital, hospital, and rehabilitative care and independent living.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement must be less than 12 months of age.

Awards will not allow reimbursement of pre-award costs.

6. *Other Submission Requirements:*

LOI Submission Address: Submit your LOI by express delivery service, fax, or e-mail to (only one submission is required): Robin Forbes, Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Hwy., NE, Mailstop K–62, Atlanta, GA 30341, *Telephone:* 770–488–4037, *Fax:* 770–488–1662, *Email: CIPERT@cdc.gov*.

Application Submission Address: Submit the original and five copies of your application by mail or express delivery service to: Technical Information Management-PA# 04057, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

1. *Review:* You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

2. *Review and Selection Process:* Applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the previous heading Application and Submission Information. Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration.

Applications which are complete and responsive will be subjected to a preliminary evaluation (streamline review) by the Initial Review Group (IRG) to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRG. Applications that are determined noncompetitive will not be considered, and NCIPC will promptly notify the investigator/program director and the official signing for the applicant organization. Applications determined to be competitive will be evaluated by a dual review process.

Awards will be made based on priority scores assigned to applications by the IRG, programmatic priorities and needs determined by a secondary review committee (the Advisory Committee for Injury Prevention and Control), and the availability of funds.

1. Review by IRG

An initial streamline peer-review of ICRC grant applications will be conducted by the IRG. The IRG may recommend the application for a site visit review. For those applications recommended for a site visit review, a team of peer reviewers, including members of the IRG, will conduct on-site visits at each applicant institution, generate summary statements for the visits, and report the assessment to the IRG.

Factors to be considered by the IRG include:

a. The specific aims of the application, *e.g.*, the long-term objectives and intended accomplishments. Approval of small and large research projects (including new research projects proposed during the three-year funding cycle), in accordance with NCIPC's performance goal as stated in section ''B. Purpose'', is subject to peer review.

(1) Seed projects will be evaluated collectively on the mechanism for solicitation of projects and on their technical/scientific merit review. Evaluation criteria have equal value.

(2) Small projects will be evaluated individually on the significance of the

project, the innovative approach, and the proposed methods for achieving an investigation sufficient to support a submission of an RO1 level proposal and/or worthy of publication in a peer-reviewed journal and/or a technical report for a legislative body, governmental agency, or injury control program.

(3) Large projects will be evaluated individually according to existing RO1 level project standards as described in the PHS 398 (Revised 5/01 and updated 6/28/02) guidelines. The application must have a minimum of one large research project approved in order to be recommended for further consideration.

(4) At least 80 percent of the costs (total direct and indirect costs) of the approved small and large research projects must be in alignment with the ''CDC Injury Research Agenda,'' *http://www.cdc.gov/ncipc* in order to be recommended for further consideration.

b. The scientific and technical merit of the overall application, including the significance and originality (*e.g.*, new topic, new method, new approach in a new population, or advancing understanding of the problem) of the proposed research.

c. The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of stated objectives. Does the application specify how the effectiveness of the program will be measured?

d. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities.

e. The soundness of the proposed budget in terms of adequacy of resources and their allocation.

f. In addition to conducting defined research projects, ICRCs are expected to devote substantial attention to advancing the field through other activities that are designed to improve research capabilities and translate research into practice. Examples of activities include: consultation and technical assistance that are responsive to regional, State, national, or international priorities; professional training for researchers and practitioners; program development; and evaluation endeavors. The degree of effort devoted to these aspects of an ICRC's program should be clearly stated in the justification and the budget. The degree of effort may be varied and should reflect the specific focus and goals of the ICRC.

g. Details of progress in the most recent funding period should be provided in the application if the applicant is submitting a re-competing application. Documented examples of success include: Development of pilot projects; completion of high quality research projects; publication of findings in peer reviewed scientific and technical journals; number of professionals trained; awards received; ongoing provision of consultation and technical assistance; integration of disciplines; translation of research into implementation; and impact on injury control outcomes including legislation, regulation, treatment, and behavior modification interventions.

h. Does the application adequately address the requirements of title 45 CFR part 46 for the protection of human subjects?

i. Does the applicant meet the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes:

(1) The proposed plan for the inclusion of both sexes, racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community or communities and recognition of mutual benefits.

j. Does the application adequately address the requirements of the ''PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions?'

k. Does the application include measures that are in accordance with CDC's performance plans?

2. Review by the CDC Advisory Committee for Injury Prevention and Control (ACIPC)

Secondary review of ICRC grant applications with a priority score of 350 or better from the initial peer-review by the IRG will be conducted by the Science and Program Review Section (SPRS) of the ACIPC. The SPRS consists of ACIPC members, Federal Ex Officio participants, and organizational liaisons. The Federal Ex Officio participants will be responsible for identifying proposals in overlapping areas of research interest so that unwarranted duplication in federally funded research can be avoided. The NCIPC Division Associate Directors for Science (ADS) or their designees will address the SPRS to assure that research priorities of the announcement are understood and to provide background regarding current research activities. The SPRS recommendations will be presented to the entire ACIPC in the form of a report by the Chairman of the SPRS. The ACIPC will vote to approve, disapprove, or modify these recommendations for funding consideration.

Factors to be considered by the ACIPC include:

a. The results of the peer-review.

b. The significance of the proposed activities as they relate to national program priorities, geographic balance, and the achievement of national objectives.

c. The overall balance of the ICRC program in addressing the three phases of injury control (prevention, acute care, and rehabilitation); the control of injury among populations who are at increased risk, including racial/ethnic minority groups, the elderly and children; the major causes of intentional and unintentional injury; and the major disciplines of injury control.

d. Budgetary considerations. The ACIPC will recommend annual funding levels as detailed in Section II. Award Information, Approximate Average Award of this announcement.

These recommendations, based on the results of the peer review by the IRG, the relevance and balance of the proposed research relative to the NCIPC programs and priorities, and the assurance of no duplication of federally-funded research, are presented to the Director, NCIPC, for funding decisions.

At the discretion of the Director, NCIPC, additional consideration may be given to re-competing ICRCs. These centers represent a long-term investment for NCIPC and an established resource for injury control-related issues for their States and regions.

3. Continued Funding

Continuation awards for new awards to this announcement after federal fiscal year 2004 and within the project period will be made on the basis of the availability of funds and the following criteria:

a. The accomplishments of the current budget period show that the applicant's objectives as prescribed in the yearly work plans are being met.

b. The objectives for the new budget period are realistic, specific, and measurable.

c. The methods described will clearly lead to achievement of these objectives.

d. The evaluation plan allows management to monitor whether the methods are effective by having clearly defined process, impact, and outcome objectives, and the applicant demonstrates progress in implementing the evaluation plan.

e. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of grant funds.

VI. Award Administration Information

1. *Award Notices:* If your application is to be funded, you will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

2. *Administrative and National Policy Requirements:* 45 CFR parts 74 and 92.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–3 Animal Subjects Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
- AR–20 Conference Support
- AR–21 Small, Minority, and Women-Owned Business
- AR–22 Research Integrity
- AR–25 Release and Sharing of Data

Starting with the December 1, 2003 receipt date, all NCIPC funded investigators seeking more than $250,000 in total costs in a single year are expected to include a plan describing how the final research data will be shared/released or explain why data sharing is not possible. Details on data sharing/release, including the timeliness and name of the project data steward, should be included in a brief paragraph immediately following the Research Plan Section of the PHS 398 form. References to data sharing/release may also be appropriate in other sections of the application (*e.g.* background and significance, human subjects requirements, etc.) The content of the data sharing/release plan will vary, depending on the data being collected and how the investigator is planning to share the data. The data sharing/release plan will not count towards the application page limit and will not factor into the determination scientific merit or priority scores. Investigators should seek guidance from their institutions, on issues related to institutional policies, local IRB rules, as well as local, state and Federal laws and regulations, including the Privacy Rule.

Further detail on the requirements for addressing data sharing in applications for NCIPC funding may be obtained by contacting NCIPC program staff or visiting the NCIPC Internet Web site: at *http://www.cdc.gov/ncipc/osp/sharing_policy.htm.*

Additional information on these requirements can be found on the CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

3. Reporting:

You must provide CDC with an original, plus two copies of the following reports:

1. Interim progress report, (PHS 2590, OMB Number 0925–0001, rev. 5/2001) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, PA #04057, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For scientific/research program technical assistance, contact:

Tom Voglesonger, Program Manager, Office of the Associate Director for Science, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, (K02), Atlanta, GA 30341–3724, *Telephone:* (770) 488–4823, *Email: tdv1@cdc.gov.*

For questions about peer review, contact: Gwendolyn Cattledge, PhD, Scientific Review Administrator, Office of the Associate Director for Science, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, (K02), Atlanta, GA 30341–3724, *Telephone:* (770) 488–1430, *E-mail: gxc8@cdc.gov.*

For financial, grants management, or budget assistance, contact: Van King, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Atlanta, GA 30341, *Telephone:* (770) 488–2751, *E-mail: vbk5@cdc.gov.*

Dated: November 20, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–29526 Filed 11–25–03; 8:45 am

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health Meeting

The National Institute for Occupational Safety and Health (NIOSH) announces the following meeting:

Name: NIOSH B Reader Certification Program: Looking to the Future.

Date and Time: 1–5 p.m., March 4, 2004.

Place: Fairfax Ballroom, Courtyard Marriott, 1960–A Chain Bridge Road, McLean, Virginia.

Status: This meeting is hosted by NIOSH and will be open to the public, limited only by the space available. The meeting room will accommodate approximately 100 people. An opportunity to provide comments regarding the NIOSH B Reader Program will be given.

Requests to make comments at this public meeting must be made by completing the online registration form or by sending the completed form by fax to (304) 285–6058. The registration form may also be obtained on the NIOSH homepage at *http://www.cdc.gov/niosh* by selecting Conferences and then the event, or by calling (304) 285–5724. All requests to speak should include the name, mailing and e-mail addresses, telephone number, relevant business affiliations of the speaker, and a brief outline of the content of the comments. No audio-visual aids (other than a microphone) will be available, however,

speakers may wish to provide printed copies of their presentations for distribution. Presentations will be strictly limited to a maximum of 5 minutes. After reviewing all requests, NIOSH will notify each speaker of the order and approximate timing of the presentations. Speakers who are not ready when the preceding speaker has finished will be skipped, and the remaining speakers will be heard in order. At the conclusion of the meeting, as time permits, an attempt will be made to include presentations by scheduled speakers who missed their assigned slot. Attendees who wish to speak but did not submit a prior request also may be given this opportunity at the conclusion of the meeting, at the discretion of the presiding officer.

Interested parties may make hotel reservations directly with the Courtyard Marriott, 1960–A Chain Bridge Road, McLean, VA, 22102, telephone, (703) 790–0207, before the cut-off date of February 1, 2004. A special rate has been negotiated for meeting guests of $150.00 per night. The NIOSH B Reader Meeting must be referenced to receive these special rates.

Comments on the topics presented in this notice and at the meeting should be mailed to the NIOSH Docket Office, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone: (513) 533–8303, fax: (513) 533–8285. Comments may also be submitted by e-mail to *niocindocket@cdc.gov.* E-mail attachments should be formatted as WordPerfect 6/7/8/9 or Microsoft Word. Comments should be submitted no later than April 5, 2004, and should reference Docket Number NIOSH–015, B Reader Program, in the subject heading.

Purpose: Chest radiographic imaging is a widely applied and important tool for assessing lung health in clinical medicine, research investigations, hazard evaluations, and medical monitoring of workers exposed to silica, asbestos, coal, beryllium, and other dusts capable of producing occupational pneumoconiosis. Valid reproducible categorization of chest radiographic images requires close adherence to standard methods of radiograph classification and adoption of procedures for quality assurance. The International Labour Office (ILO) (Geneva) has for many years provided a standardized system for classification of chest radiographs for pneumoconiosis, including specification of procedures for obtaining images. The ILO system has been widely used by physicians and epidemiologic researchers in the investigation of work-related respiratory hazards.

Under the U.S. Code of Federal Regulations [42 CFR part 37], since 1970, chest radiographic examinations have been provided to underground coal miners at approximate five year intervals. As part of this mandated Coal Workers' Health Surveillance Program (CWHSP), NIOSH arranges for the determination of the presence and degree of dust-related changes on those films by physicians who have demonstrated proficiency in the ILO system. NIOSH developed and currently administers the B Reader Certification Program, a unique quality assurance program for training and certifying physicians who classify chest radiographs of pneumoconiosis. Under this Program, physicians who wish to obtain B Reader Certification must successfully complete an extensive initial examination. To demonstrate ongoing competence and maintain certification, every four years each individual who passed the initial examination must complete a recertification examination. Because the B Reader Certification Program objectively documents proficiency in the evaluation of lung images for occupational disease, it has attained high visibility in the U.S. and throughout the world. The Program continues to have important impacts on occupational lung disease research, surveillance, clinical practice, regulation, and litigation. Numerous research studies and hazard evaluations have relied upon the classification of chest radiographs by certified B Readers as a useful health outcome in the investigation and assessment of occupational health risks. State-based surveillance programs have utilized B Reader classifications as a criterion for identifying silicosis cases. The Occupational Safety and Health Administration (OSHA) asbestos standard (§ 1910.1001, App. E) requires that roentgenograms be interpreted and classified only by a B Reader, a board eligible/certified radiologist, or an experienced physician with known expertise in pneumoconioses. OSHA also specifies B Readers and the ILO classification in its safety and health standards for general industry (§ 1910.1001, App. E), construction (§ 1926.1101, App. E), and shipyard employment (§ 1915.1001, App. E).

The ILO, with NIOSH involvement and support, has recently completed a revision of the classification system (ILO 2000). Additionally, in the years since the development of the B Reader Certification process, the field of professional competency testing, as well as the field of radiology, have experienced considerable advances in knowledge, techniques, and methodology. The B Reader Certification Program has not been substantially revised since its first development, and would benefit from critical evaluation and modification in order to assure optimal test validity, reliability, and efficiency, and overall effectiveness of the Program. In order for NIOSH to maintain the B Reader Program as a contemporary, relevant, and effective quality assurance program for the classification of chest radiographs for occupational lung disease research and prevention, and to assure the Program is adherent to the ILO 2000 system, ongoing refinements and modifications are required to the B Reader examinations and related training activities and materials. This open meeting is intended to serve as an important additional step in the continuing evolution and improvement of the NIOSH B Reader Program.

FOR FURTHER INFORMATION CONTACT: CWHSP, 1095 Willowdale Road, Morgantown, West Virginia 26505–2888, *Telephone:* (304) 285–6263/5724, *Fax:* (304) 285–6058, *E-mail: CWHSP@cdc.gov.*

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 the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 21, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–29630 Filed 11–25–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0513]

Electronic Submissions of Food Contact Notifications; Notice of Pilot Project

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is seeking volunteers to participate in the Food Contact Notification (FCN) Electronic Submissions Pilot Project developed by

the Office of Food Additive Safety (OFAS) in the Center for Food Safety and Applied Nutrition (CFSAN). The purpose of the project is to test the efficiency and practicality of a prototype procedure for filing FCNs in electronic format as an alternative to the current paper-based process. FDA believes that this pilot will assist the agency in developing a draft guidance under its good guidance practice (GGP) procedures.

DATES: Submit written requests to participate in the pilot project by December 26, 2003. Comments on this pilot project may be submitted at any time. The pilot is anticipated to last 180 days beginning January 26, 2004.

ADDRESSES: Submit written requests to participate and comments regarding the pilot project to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Kenneth McAdams, Center for Food Safety and Applied Nutrition (HFS–275), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3392, e-mail: *kenneth.mcadams@cfsan.fda.gov*, or

Kimberly Smeds, Center for Food Safety and Applied Nutrition (HFS–275), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3424, e-mail: kimberly.smeds@cfsan.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In 1997, the Food and Drug Administration Modernization Act of 1997 (FDAMA) amended section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348) to establish a premarket notification process as the primary method for authorizing new uses of food additives that are ''food contact substances.'' A food contact substance is defined in section 409(h)(6) of the act as ''any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food.'' The act further states that the notification process is to be utilized for authorizing the marketing of food contact substances except in instances where the Secretary of Health and Human Services determines that the submission and review of a food additive petition would be necessary to provide adequate assurance of safety, or where FDA and any manufacturer or supplier agree that a petition may be submitted. In the **Federal Register** of May 21, 2002 (67 FR 35724), the agency issued a final rule on premarket notification for food contact substances (21 CFR 170.100 through 170.106).

The FCN process has improved the efficiency of the FDA premarket approval of new food contact substances. More than 200 FCNs have become effective since the process began. FDA FORM 3480 currently provides the format by which information submitted in an FCN is organized to facilitate review by the agency. In order to further improve the efficiency of the FDA premarket approval of new food contact substances, FDA is developing a procedure to allow for the submission of FCNs in electronic format. This procedure includes the use of a software tool to assist a notifier in assembling an FCN. The present pilot project represents the final phase of the agency's development of the software tool for FCN submissions prior to FDA's announcing the availability of such a tool and accompanying guidance in accordance with the agency's GGPs under 21 CFR 10.115. FDA is initiating this pilot to obtain useful feedback during this initial phase in order to maximize efficiency and practicality of the electronic submission process before making it available to the general public for comment.

After completion of the pilot, FDA expects to issue guidance to the public for the electronic filing of FCNs in accordance with GGPs under 21 CFR 10.115.

II. Pilot Project Description

Due to the fact that a limited number of voluntary participants will be needed for the pilot, FDA will use its discretion in selecting the volunteers based on their previous experience in filing FCNs and on the number of FCNs they expect to file during the pilot. The sponsors who participate in the pilot will be asked to submit at least four FCNs in an electronic format during the pilot, using the procedure being tested. Existing regulatory requirements for the submission of FCNs will not be waived, suspended, or modified for the purposes of this pilot project.

The procedure uses an electronic fillable portable document format (PDF) version of FDA FORM 3480 that serves as an organizational backbone to which notifiers may attach studies, data, and other information in electronic format via a software package provided by the agency. It is designed to enable the notifier to submit all the items that constitute a complete FCN in a prescribed structure, removing the need for pagination and providing definitive locations within a set file structure for each type of information, so that the agency in turn can more efficiently review the submission. Pilot participants will be asked to use the procedure and software tool to submit FCNs electronically, and to provide feedback on the process to FDA. Because the process of receiving electronic submissions will be under development during the pilot, FDA will require that participants submit a signed paper copy of each submission along with the electronic version. The paper copy will serve as the official copy under existing regulations during the pilot project. FDA will provide written instructions to individual participants on using the software tool, on assembling and submitting an electronic FCN, and on how to provide feedback. Feedback from pilot participants will assist the agency in improving the software tool and completing development of the procedure.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–29462 Filed 11–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003E–0150]

Determination of Regulatory Review Period for Purposes of Patent Extension; ABILIFY

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ABILIFY and is publishing this notice of that determination as required by law. FDA has made the determination

because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ABILIFY (aripiprazole). ABILIFY is indicated for the treatment of schizophrenia. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ABILIFY (U.S. Patent No. 5,006,528) from Otsuka Pharmaceutical Co., Ltd., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 16, 2003, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ABILIFY represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ABILIFY is 3,416 days. Of this time, 3,035 days occurred during the testing phase of the regulatory review period, while 381 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: July 11, 1993. The applicant claims July 10, 1993, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was July 11, 1993, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: October 31, 2001. FDA has verified the applicant's claim that the new drug application (NDA) for ABILIFY (NDA 21–436) was initially submitted on October 31, 2001.

3. *The date the application was approved*: November 15, 2002. FDA has verified the applicant's claim that NDA 21–436 was approved on November 15, 2002.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written comments and ask for a redetermination by January 26, 2004. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 24, 2004. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 30, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–29464 Filed 11–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–03–8001]

Memorandum of Understanding Between the Food and Drug Administration and the Centers for Disease Control

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the Food and Drug Administration (FDA) and the Centers for Disease Control. The purpose of the MOU is to provide a framework for coordination and cooperation between the two agencies and to provide the principles and procedures by which information exchanges shall take place.

DATES: The agreement became effective June 19, 2003.

FOR FURTHER INFORMATION CONTACT: Ellen F. Morrison, Emergency Operations Center (HFC–160), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5660.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: November 13, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

225-03-8001 (formerly 225-00-8000)

MEMORANDUM OF UNDERSTANDING

Between the

FOOD AND DRUG ADMINISTRATION

And the

CENTERS FOR DISEASE CONTROL AND PREVENTION

I. PURPOSE

This Memorandum of Understanding (MOU) between the Food and Drug Administration (FDA) and the Centers for Disease Control and Prevention (CDC) provides a framework for coordination and collaborative efforts between these two agencies which are both components of the Department of Health and Human Services. This MOU also provides the principles and procedures by which information exchanges between FDA and CDC shall take place.

This memorandum supersedes the Memorandum of Understanding Between the Centers for Disease Control and the Food and Drug Administration, dated 6/26/00, regarding the exchange of information and coordination of actions.

II. BACKGROUND

FDA and CDC are sister agencies within the Department of Health and Human Services. Both FDA and CDC exist and work to protect the public health but have different statutory mandates and responsibilities.

FDA is a regulatory agency responsible for protecting the public health through the regulation of food, cosmetics, and medical products, including human drugs, biological products, animal drugs, and medical devices. FDA administers the Federal Food, Drug, and Cosmetic Act and relevant sections of the Public Health Service Act, among other statutes. Among its duties, FDA approves pre-market applications, conducts inspections of manufacturing facilities, and monitors post-marketing adverse events. FDA also initiates civil and criminal litigation to enforce applicable laws and regulations.

CDC is charged with protecting the public health by providing leadership and direction in the prevention and control of diseases and other preventable conditions and by responding to public health emergencies. CDC administers relevant sections of the Public Health Service Act, the Occupational Safety and Health Act, the Clinical Laboratory Improvement Act, and the Federal Mine Safety and Health Act. CDC, among other activities, administers national programs for the prevention and control of communicable and vector-borne diseases, enforces quarantine regulations, and works

to monitor and control disease outbreaks.

CDC's and FDA's respective missions to protect the public health may overlap in a variety of ways depending upon the subject matter. Each agency has a responsibility to work collaboratively to protect and improve public health. It may sometimes be the case that FDA or CDC will be in possession of information that could be useful to the other agency in that agency's performance of its responsibilities. Timely sharing of information between CDC and FDA is therefore critical to protecting the public health.

III. SUBSTANCE OF AGREEMENT AND RESPONSIBILITIES OF EACH AGENCY

A. Coordination and Collaboration Relative to Public Health Activities

It is mutually agreed that:

1. Each agency will coordinate and collaborate with the other agency to protect and improve the public health. To achieve this, each agency will utilize the expertise, resources, and relationships of the other agency in order to increase its own capability and readiness to respond to emergency situations. In addition, each agency will designate central contact points where communications from the other agency, dealing with matters covered by this agreement, should be referred.

2. Each agency will participate in periodic joint meetings to promote better communication and understanding of regulations, policies, and statutory responsibilities, and to serve as a forum for questions and problems that may arise.

3. Each agency will notify the other agency as soon as possible when issues of mutual concern become evident.

4. Each agency will collaborate with the other agency in all investigations of mutual concern. Such collaboration may include providing alerts to the other agency regarding disease outbreaks encountered as part of its activities; providing technical advice in areas of recognized expertise; providing results of analysis; making available expert witnesses; and exchanging information as described in section III B.

5. Each agency will consult with the other before issuing press or scientific releases or publications that may have a significant impact on the other agency.

6. Each agency will refer its proposed regulations, guidances, or recommendations that may have a significant impact on the other agency for review and comment by that agency before publication.

7. This agreement does not preclude CDC or FDA from entering into other agreements which may set forth procedures for special programs which can be handled more efficiently and expertly by other agreements.

B. Principles and Procedures for the Exchange of Information That is Not Publicly Available

FDA and CDC agree that the following principles and procedures will govern the exchange of nonpublic information between the two agencies.

Although there is no legal requirement that FDA and CDC exchange information in all cases, FDA and CDC agree that there should be a presumption in favor of full and free sharing of information between FDA and CDC. As sister public health agencies within the Department of Health and Human Services, there are no legal prohibitions that preclude FDA or CDC from sharing with each other most agency records in the possession of either agency. Both agencies recognize and acknowledge, however, that it is essential that any confidential information that is shared between FDA and CDC must be protected from unauthorized public disclosure. See e.g., 21 U.S.C. sec. 331(j); 18 U.S.C. section 1905; 21 C.F.R. Parts 20 and 21; 42 C.F.R. Parts 5 and 5b, and 42 U.S.C. section 301(d). Safeguards are important to protect the interests of, among others, owners and submitters of trade secrets and confidential commercial information; patient identities and other personal privacy information; privileged and/or pre-decisional agency records; and information protected for national security reasons. Such safeguards also help guarantee FDA's and CDC's compliance with applicable laws and regulations.

To facilitate the sharing of information with each other, it is necessary that FDA and CDC implement procedures to ensure, at a minimum, that such sharing of information is indeed appropriate and that the recipient agency guards the confidentiality of all information received. [1] There are separate procedures, as described below, for routine requests for information and for emergency requests. It is incumbent upon both agencies to respond to requests for information in a timely manner. Any unauthorized disclosure of shared confidential information by the agency receiving the information shall be the responsibility of that agency.

1. Routine Requests for Information

a. The requesting agency must demonstrate, in writing, why it is necessary for it to obtain the requested information. This demonstration should consist of a summary that describes in detail the information requested (to facilitate identification of relevant records) and a brief statement of the purpose for which the information is needed. This request shall state which internal agency offices and/or individuals requested the
information. A model request letter is attached.

b. The agency receiving the request for information shall, based upon the

[1] It is assumed that each agency has implemented or will implement all data and information security requirements and has implemented or will implement, to the extent necessary and practicable, all data and information security recommendations.

sufficiency of the need-to-know demonstration described in section III B 1a above, determine whether it is appropriate to share the requested information with the requesting agency. The need-to-know threshold is a low one. As stated above, there is a presumption in favor of information exchange between FDA and CDC. An agency should only decide not to share information in response to a request if it has credible information and a reasonable belief that the requesting agency may not be able to comply with applicable laws or regulations governing the protection of non-public information or with the principles or procedures set forth in this MOU. If an agency decides that it is not appropriate to share information with the requesting agency, it shall describe to the requesting agency the reasons for such decision.

c. The requesting agency agrees that it shall comply with the following conditions:

– The requesting agency shall limit the dissemination of shared information it receives to internal agency offices and/or individuals that have been identified in its written request and/or have a need-to-know. The agency official who signs the request letter will be responsible for ensuring that there are no other recipients of the information.

– The requesting agency shall agree in writing not to publicly disclose any shared information in any manner including publications and public meetings. If the requesting agency wishes to disclose shared information, including information that it believes is publicly releasable, it shall first request and obtain the written permission of the agency that has shared the information. If the requesting agency receives a Freedom of Information Act (FOIA) request for the shared information, it will refer the request to the information-sharing agency for it to respond directly to the requester regarding the releasability of the information. In such cases, the agency making the referral will notify the requester that a referral has been made and that a response will issue directly from the other agency.

– The agency that shares information with the requesting agency shall include a transmittal letter, along with any agency records exchanged. The transmittal letter shall indicate the type of information (e.g., confidential commercial information, personal privacy, or pre-decisional). A model transmittal letter is attached.

– The requesting agency shall promptly notify the appropriate office of the information-sharing agency when there is any attempt to obtain shared information by compulsory process, including but not limited to, a FOIA request, subpoena, discovery request, or litigation complaint or motion.

– The requesting agency shall notify the information-sharing agency before

complying with any judicial order that compels the release of such information so that the agencies may determine the appropriate measures to take, including where appropriate the filing of a motion or an appeal with the court.

2. Emergency Requests for Confidential Information

In cases in which the requesting agency has a need to obtain certain information as soon as possible due to emergency circumstances, such as a foodborne illness outbreak, FDA and CDC may utilize the following procedures. These procedures are intended for use only in the case of an actual emergency situation and are not appropriate for routine requests for information.

a. The requesting agency shall indicate orally or in writing to the agency in possession of the relevant information that it has the need to obtain certain identifiable information as soon as possible due to the existence of emergency circumstances. The requesting agency shall also describe what the emergency circumstances are.

b. The requesting agency shall verbally agree to protect from unauthorized public disclosure any and all information that is shared, according to all applicable laws and regulations.

c. The existence of an actual emergency situation shall warrant, as determined by the agency in possession of the requested records, the waiver of the need-to-know demonstration and determination described above in section III B 1a and B 1b. However, once the requesting agency has obtained the information it seeks, it shall comply with those procedures set forth in section III B 1c above.

IV. NAME AND ADDRESS OF PARTICIPATING PARTIES

A. Food and Drug Administration
Department of Health and Human Services
5600 Fishers Lane
Rockville, Maryland 20857

B. Centers for Disease Control and Prevention
Public Health Service
Department of Health and Human Services
Atlanta, Georgia 30333

V. LIAISON OFFICERS

A. Contact for FDA:

Ellen F. Morrison, Director
Office of Crisis Management
Emergency Operations Center
Food and Drug Administration

Rockville, MD 20857
(301) 827-5660

B. Contact for CDC:

Associate Director for Science
Centers for Disease Control and Prevention
Atlanta, Georgia 30333
(404) 639-7240

VI. PERIOD OF AGREEMENT

This agreement becomes effective upon signature of both parties and will continue for three years. It may be modified by mutual consent or terminated by either party upon 120 days written notice.

Attachments
Model Request Letter
Model Transmittal Letter

APPROVED AND ACCEPTED FOR THE CENTERS FOR DISEASE CONTROL AND PREVENTION

By: _____
Julie Louise Gerberding, M.D., M.P.H.
Director, Centers for Disease Control and Prevention

Date: JUN 19 2003

APPROVED AND ACCEPTED FOR THE FOOD AND DRUG ADMINISTRATION

By: _____
Mark B. McClellan, M.D., Ph.D.
Commissioner of Food and Drugs

Date: June 17, 2003

Model Language for Request

The Centers for Disease Control and Prevention (CDC) has requested the following information from FDA for the following purposes: [Identify information and purpose]

or

CDC hereby requests the following information from FDA that it will use for the following purposes: [Identify information and purpose]

CDC agrees that it will not publicly disclose any such information that FDA shares with it without prior written permission from FDA and that it will comply with the principles and procedures set forth in the Memorandum of Understanding on information sharing between CDC and FDA. Applicable laws and regulations prohibit the disclosure of such information. See, e.g., 21 U.S.C. §331(j); 18 U.S.C. §1905, 21 C.F.R. Parts 20 and 21, 42 C.F.R. Parts 5 and 5b, and 42 U.S.C. §301(d).

CDC will limit dissemination of any shared information to the following CDC offices and/or employees: [Identify office(s) and/or employee(s)]

_____ _____

Name Date

[Signature and Date by CDC official with requisite responsibility and authority.]

Model Language for Request

The Food and Drug Administration (FDA) has requested the following information from the Centers for Disease Control and Prevention (CDC) for the following purposes: [Identify information and purpose]

or

FDA hereby requests the following information from CDC for the following purposes: [Identify information and purpose]

FDA agrees that it will not publicly disclose any such information that CDC shares with it without prior written permission from CDC and that it will comply with the principles and procedures set forth in the Memorandum of Understanding on information sharing between FDA and CDC. Applicable laws and regulations prohibit the disclosure of such information. See, e.g., 21 U.S.C. §331(j); 18 U.S.C. §1905, 21 C.F.R. Parts 20 and 21, 42 C.F.R. Parts 5 and 5b, and 42 U.S.C. §301(d).

FDA will limit dissemination of any shared information to the following FDA offices and/or employees: [Identify office(s) and/or employee(s)]

_____ _____

Name Date

[Signature and Date by FDA official with requisite responsibility and authority.]

[Model Transmittal letter from CDC to FDA]

This letter accompanies agency records that the Center for Disease Control and Prevention (CDC) is sharing with the Food and Drug Administration (FDA) in response to FDA's request, dated _____ . These agency records contain one or more of the following categories of non-public information, including information the public disclosure of which may be prohibited by law:

[CDC checks applicable numbers below]

__ trade secrets;
__ confidential commercial or financial information;
__ information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
__ information subject to the Privacy Act;
__ intra-agency records;
__ records or information compiled for law enforcement purposes; or
__ information protected for national security reasons.

FDA shall notify the appropriate office of the information-sharing agency if there are any attempts to obtain shared information by compulsory process, including but not limited to, Freedom of Information Act requests, subpoenas, discovery requests, and litigation complaints or motions.

FDA shall notify the information-sharing agency before complying with any judicial order that compels the release of such information so that FDA and/or CDC may take appropriate measures, including filing a motion with the court or an appeal.

FDA has agreed, by this letter or e-mail and by a signed request letter dated _____ , not to publicly disclose the above-described information without prior written permission of CDC. FDA acknowledges that applicable laws and regulations may prohibit the disclosure of such information. See, e.g., 21 U.S.C.§331(j); 18 U.S.C. §1905, 21 C.F.R. Parts 20 and 21, 42 C.F.R. Parts 5 and 5b, and 42 U.S.C. §301(d). FDA also agrees to comply with the principles and procedures set forth in the Memorandum of Understanding between FDA and CDC, *cite*.

[Model Transmittal letter from FDA to CDC]

This letter accompanies agency records that the Food and Drug Administration (FDA) is sharing with the Center for Disease Control and Prevention (CDC) in response to CDC's request, dated _____. These agency records contain one or more of the following categories of non-public information, including information the public disclosure of which may be prohibited by law:

[FDA checks applicable numbers below]

__ trade secrets;
__ confidential commercial or financial information;
__ information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
__ information subject to the Privacy Act;
__ intra-agency records;
__ records or information compiled for law enforcement purposes; or
__ information protected for national security reasons.

CDC shall notify the appropriate office of the information-sharing agency if there are any attempts to obtain shared information by compulsory process, including but not limited to, Freedom of Information Act requests, subpoenas, discovery requests, and litigation complaints or motions.

CDC shall notify the information-sharing agency before complying with any judicial order that compels the release of such information so that the FDA and/or CDC may take appropriate measures including filing a motion with the court or an appeal.

CDC has agreed, by this letter or e-mail and by a signed request letter dated _____, not to publicly disclose the above-described information without prior written permission of FDA. CDC acknowledges that applicable laws and regulations may prohibit the disclosure of such information. See, e.g., 21 U.S.C. §331(j); 18 U.S.C. §1905, and 21 CFR Parts 20 and 21, 42 C.F.R. Parts 5 and 5b, and 42 U.S.C. §301(d). CDC also agrees to comply with the principles and procedures set forth in the Memorandum of Understanding between FDA and CDC, *cite*.

[FR Doc. 03–29497 Filed 11–25–03; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0504]

Medical Devices; Guidance for Industry and FDA Staff; Bundling Multiple Devices or Multiple Indications in a Single Submission; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Bundling Multiple Devices or Multiple Indications in a Single Submission." This guidance describes FDA's policy on bundling multiple devices or multiple indications in a single premarket submission. Under the Medical Device User Fee and Modernization Act of 2002 (MDUFMA), the bundling policy takes on additional importance because of the fees that are now associated with certain submissions as well as the performance goals the agency has committed to meet. The guidance is being issued as final for immediate implementation with an

opportunity for public comment on the guidance after issuance.

DATES: Submit written or electronic comments on this guidance at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Bundling Multiple Devices or Multiple Indications in a Single Submission'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

For device evaluation issues: Bob Gatling, Office of Device Evaluation, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190, ext. 140.

For in vitro diagnostic device issues: Sousan Altaie, Office of In Vitro Diagnostic Device Evaluation and Safety, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3084, ext. 145.

For biologics issues: Sheryl Kochman, Center for Biologics Evaluation and Research (HFM–390), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6123

SUPPLEMENTARY INFORMATION:

I. Background

MDUFMA amended the Federal Food, Drug, and Cosmetic Act by authorizing FDA to collect user fees for certain premarket submissions (premarket approval applications, premarket reports, supplements, premarket notifications, biologics license applications, and efficacy supplements) received on or after October 1, 2002. A letter from the Secretary of Health and Human Services to Congress that accompanies the user fee legislation sets forth performance goals and policy and procedural provisions. One of these provisions is entitled ''Bundling Policy'' and states that FDA will consider, in consultation with its stakeholders, when bundling multiple devices in a single submission may be appropriate. *(http://www.fda.gov/cdrh/mdufma/pgoals.html)*.

This guidance describes FDA's policy on bundling multiple devices or multiple indications in a single premarket submission and is intended to help FDA staff and industry determine when bundling is appropriate. In developing this guidance, the agency has considered comments on the topic that were submitted to the public docket on MDUFMA Implementation (Docket No. 02N–0534). FDA has also included in the guidance many of the examples provided by stakeholders.

II. Significance of Guidance

This guidance document supersedes Section V, ''Bundling Multiple Devices in a Single Application'' of the February 2003 guidance entitled, ''Assessing User Fees: PMA Supplement Definitions, Modular PMA Fees, BLA and Efficacy Supplement Definitions, Bundling Multiple Devices in a Single Application, and Fees for Combination Products; Guidance for Industry and FDA.'' FDA announced the availability of that guidance in the **Federal Register** of February 25, 2003 (68 FR 8773). As discussed above, FDA reviewed the comments received on the issue of bundling. FDA also invites comments on this guidance document (see section V of this document).

This guidance document is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on bundling multiple devices or multiple indications in a single premarket submission. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. You can use an alternative approach if the approach satisfies the requirements of the applicable statutes and regulations. If you want to discuss an alternative approach, contact the FDA staff responsible for implementing this guidance. If you cannot identify the appropriate FDA staff, call one of the numbers listed above or on the title page of the guidance document.

III. Electronic Access

To receive ''Bundling Multiple Devices or Multiple Indications in a Single Submission'' by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1215) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance document may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Dockets Management Branch Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance document contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 USC 3501–3520) (the PRA). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E), OMB No. 0910–0120 and premarket approval applications (21 CFR part 814), OMB No. 0910–0231.

V. Comments

Interested persons may submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit two hard copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the Dockets

Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will review any comments we receive and revise the guidance document when appropriate.

Dated: November 19, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–29461 Filed 11–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1998D–0173]

Guidance for Industry and FDA Staff: Expedited Review of Premarket Submissions for Devices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Expedited Review of Premarket Submissions for Devices.'' This guidance describes how the agency is applying the statutory criteria and the additional criteria identified in a letter accompanying the user fee legislation to meet the new performance goals for expedited premarket approval applications (PMAs). This guidance also describes FDA's expedited review procedures for premarket notification submissions (510(k)s), product development protocols (PDPs), and *de novo* classification actions. This guidance document is immediately in effect, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies on a 3.5'' diskette of the guidance document entitled ''Expedited Review of Premarket Submissions for Devices'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

For questions regarding PMAs: Thinh Nguyen, Center for Devices and Radiological Health (HFZ–402), 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

For questions regarding 510(k)s, including the evaluation of automatic class III designation: Heather Rosecrans, Center for Devices and Radiological Health (HFZ–402), 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

For questions regarding devices regulated by the Center for Biologics Evaluation and Research: Sayah Nedjar, Center for Biologics Evaluation and Research (HFM–380), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3524.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 31, 1998 (63 FR 15427), FDA issued a guidance entitled ''PMA/510(k) Expedited Review Guidance for Industry and the Center for Devices and Radiological Health (CDRH) Staff'' in which the agency outlined its interpretation of the statutory criteria for expedited review of PMAs. No comments were received on the guidance.

The Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Public Law 107–250), was signed into law on October 26, 2002. Performance goals for expedited PMAs were referenced in the statute and apply to such applications when newly identified criteria are met by the applicant (*http://www.fda.gov/cdrh/mdufma/pgoals.html*). The new guidance entitled ''Expedited Review of Premarket Submissions for Devices'' supersedes and replaces the 1998 guidance document and explains the procedures that FDA intends to use to review and track expedited PMA applications against the MDUFMA performance goals when the PMA applicant meets the additional criteria. The new guidance also explains the procedures that FDA plans to use to expedite the review of PDPs, 510(k)s, and *de novo* classification actions.

Because the agency had to implement its program for meeting the expedited review performance goals as soon as the new law became effective. FDA has determined, under §10.115(g)(2) (21 CFR 10.115(g)(2)), that it was not feasible to obtain comments before issuing this guidance. Therefore, in accordance with FDA's GGP procedures, FDA is issuing this as a level 1 guidance that is immediately in effect and will accept comments on the guidance at any time.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (§10.115). The guidance represents the agency's current thinking on procedures for expedited review of PMAs, given the enhanced PMA performance goals for expedited applications. The guidance also discusses the expedited review procedures for 510(k)s, PDPs, and *de novo* classification actions. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

To receive ''Expedited Review of Premarket Submissions for Devices'' by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (108) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*.

Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (the PRA). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations for premarket approval applications (21 CFR part 814, OMB control number 0910–0231) and the regulations for premarket notification submissions (21 CFR part 807, OMB control number 0910–0120).

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–29463 Filed 11–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Data System for Organ Procurement and Transplantation Network and Associated Forms (OMB No. 0915–0157): Revision

Section 372 of the Public Health Service (PHS) Act requires that the Secretary, by contract, provide for the establishment and operation of an Organ Procurement and Transplantation Network (OPTN). The OPTN, among other responsibilities, operates and maintains a national waiting list of individuals requiring organ transplants, maintains a computerized system for matching donor organs with transplant candidates on the waiting list, and operates a 24-hour telephone service to facilitate matching organs with individuals included in the list.

Data for the OPTN data system are collected from transplant hospitals, organ procurement organizations, and tissue-typing laboratories. The information is used to match donor organs with recipients, to monitor compliance of member organizations with OPTN rules and requirements, and to report periodically on the clinical and scientific status of organ donation and transplantation in this country. Data are used in the development and revision of OPTN rules and requirements, operating procedures, and standards of quality for organ acquisition and preservation, some of which have provided the foundation for development of Federal regulations. The practical utility of the data collection is further enhanced by requirements that the OPTN data must be made available without restriction for use by OPTN members, the Scientific Registry of Transplant Recipients, the Department of Health and Human Services, and others for evaluation, research, patient information, and other important purposes.

Revisions in the 28 data collection forms and addition of 2 survey instruments are intended to clarify existing questions, to provide additional detail and categories to avoid confusion and be more inclusive, to remove obsolete data, and to comply with requests for more complete and precise data.

ESTIMATES OF ANNUALIZED HOUR BURDEN

Form	Number of respondents	Responses per respondents	Total responses	Hours per response	Total burden hours
Deceased Donor Registration	59	173	10,207	0.3	3,062.10
Death referral data	59	12	708	10	7,080.00
Living Donor Registration	692	10	6,920	0.2	1,384.00
Living Donor Followup	692	19	13,148	0.1	1,314.80
Donor Histocompatibility	152	87	13,224	0.1	1,322.40
Recipient Histocompatibility	152	163	24,776	0.1	2,477.60
Heart Candidate Registration	139	23	3,197	0.3	959.10
Lung Candidate Registration	70	28	1,960	0.3	588.00
Heart/Lung Candidate Registration	72	1	72	0.3	21.60
Thoracic Registration	139	24	3,336	0.3	1,000.80
Thoracic Followup	139	174	24,186	0.2	4,837.20
Kidney Candidate Registration	247	109	26,923	0.2	5,384.60
Kidney Registration	247	65	16,055	0.3	4,816.50
Kidney Followup *	247	493	121,771	0.2	24,354.20

ESTIMATES OF ANNUALIZED HOUR BURDEN—Continued

Form	Number of respondents	Responses per respondents	Total responses	Hours per response	Total burden hours
Liver Candidate Registration	123	82	10,086	0.2	2,017.20
Liver Registration	123	46	5,658	0.4	2,263.20
Liver Follow-up	123	299	36,777	0.3	11,033.10
Kidney/Pancreas Candidate Registration	139	12	1,668	0.2	333.60
Kidney/Pancreas Registration	139	7	973	0.4	389.20
Kidney/Pancreas Follow-up	139	64	8,896	0.3	2,668.80
Pancreas Candidate Registration	139	7	973	0.2	194.60
Pancreas Registration	139	4	0.3	166.80	556
Pancreas Follow-up	139	20	2,780	0.2	556.00
Intestine Candidate Registration	44	5	220	0.2	44.00
Intestine Registration	44	3	132	0.2	26.40
Intestine Follow-up	44	8	352	0.2	70.40
Immunosuppression Treatment	692	38	26,296	0.025	657.40
Immunosuppression Treatment Follow-up	692	281	194,452	0.025	4,861.30
Post Transplant Malignancy	692	5	3,460	0.05	173.00
Annual Unet Satisfaction Survey	750	1	750	0.03	22.50
Annual Organ Center Satisfaction Survey	750	1	750	0.03	22.50
Total	903		561,262		84,102.90

Includes an estimated 6,000 kidney transplant patients transplanted prior to the initiation of the data system

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 1445, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 19, 2003.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 03–29465 Filed 11–25–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for the opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Organ Procurement and Transplantation Network—New

The operation of the Organ Procurement and Transplantation Network (OPTN) necessitates certain recordkeeping and reporting requirements in order to perform the functions related to organ transplantation under contract to HHS. OMB requires review and approval of certain information collection requirements associated with the Final Rule that were not included in previous clearance requests. This is a request for approval of record keeping and reporting requirements associated with the processes for filing appeals in the case where applicants are rejected for membership or designation. To date, no appeals have been filed, and any forthcoming burden requirements for this process will be minimal. In the event of an appeal, the estimate of burden for this process consists of preparing a letter requesting reconsideration and compiling supporting documentation.

The estimated annual response burden is as follows:

Section	Number of respondents	Responses per respondent	Total responses	Burden hour per respondent	Total burden hour
42 CFR 121.3(b)(4) Appeal for OPTN membership	2	1	2	3	6
42 CFR 121.9(d) Appeal for designation	2	1	2	6	12
Total	4		4		18

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 19, 2003.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 03–29466 Filed 11–25–03; 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, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are 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 applications 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 applications.

Geldanamycin Derivatives With Methyl Substituted Hydrogen Atom at the N22 Position as Anti Cancer Agents

Yong-Sok Lee, Leonard Neckers, Monica Marcu (NCI).

U.S. Provisional Patent Application No. 60/508,752 filed 03 Oct 2003 (DHHS Reference Nos. E–169–2003/0–US–01).

Licensing Contact: George Pipia; 301/435–5560; *pipiag@mail.nih.gov.*

This invention is directed to an N22-methyl substituted derivatives of geldanamycin. Modeling studies have shown that providing a methyl substituent in the N22 position of geldanamycin derivatives stabilizes the cis-conformation of the compounds. From computer modeling and mutational studies inventors concluded that the active form of geldanamycin interacting with heat shock protein 90 (Hsp90) has the amid bond in *cis*-configuration, which is energetically less stable than in *trans*-configuration. Using computer-modeling investigators have further demonstrated that methyl substitution at the N22 position of geldanamycin stabilizes the cis-derivatives of geldanamycin. These compounds are currently being synthesized at NCI. These compounds are expected to have an increased binding to and inhibition of Hsp90. Inhibition of Hsp90 is being investigated in the treatment of many cancers.

Degradation and Transcriptional Inhibition of HIF-2alpha Protein by 17–AAG

Jennifer Isaacs, Leonard Neckers (NCI).

U.S. Provisional Patent Application No. 60/508,795 filed 03 Oct 2003 (DHHS Reference No. E–064–2003/0–US–01).

Licensing Contact: George Pipia; 301/435–5560; *pipiag@mail.nih.gov.*

The technology is directed to the use of 17-allylaminogeldanamycin (17–AAG) and, by analogy, other geldanamycin derivatives to inhibit the activity of hypoxia inducible factor-2a (HIF–2a). HIF–2a is thought to play an important role in tumor growth in the lung and endothelium, and is overexpressed in a majority of renal carcinomas. Accordingly, the technology suggests the use of 17–AAG and other geldanamycin derivatives to reduce levels of HIF–2a in cells that overexpress the protein, for example to treat cancer. According to the lead inventor, HIF–2a plays a central role behind the mechanism of action of geldanamycin in renal cancer. The inventors also predict that certain geldanamycin derivatives will have therapeutic benefit in tumors overexpressing HIF–2a, and that those derivatives could also find therapeutic utility in clinical conditions involving hypervascularization.

Dated: November 13, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–29492 Filed 11–25–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the 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 Eye Institute Special Emphasis Panel.

Date: December 9, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Crystal City, 2399 Jefferson Davis Hwy., Arlington, VA 22202.

Contact Person: Jeanette M Hosseini, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, Bethesda, MD 20892, (301) 451–2020.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: November 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–29478 Filed 11–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public, 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 Contract Person listed below in advance of the meeting.

Name of Committee: National Children's Study Advisory Committee.

Date: December 15–16, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: The goal of the meeting is to have Advisory committee members work with co-chairs of working groups within thematic areas to discuss concerns, answer questions, increase specificity about exposures and how measured, increase specificity about outcomes and how measured, and to identify gaps in hypothesis.
Place: Sheraton Atlanta Hotel, 165 Courtland Street, Atlanta, GA 30303.
Contact Person: Jan Leahey, Executive Secretary, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 7A07, Bethesda, MD 20892, (301) 435–8867, *leaheyj@mail.mnih.gov.*
(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 92.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 19, 2003.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 03–29473 Filed 11–25–03; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 Child Health and Human Development Special Emphasis Panel, DR. DON P. WOLF P01—CHARACTERIZATION OF PRIMATE PILURIPOTENT CELLS.
Date: December 15, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Jon M. Ranhand, PhD., Scientific Review Administrator, Scientific Review Program, National Institute of Child Health and Human Development NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, 301 435–6884,
(Catalogue of Federal Domestic Assistance Program Nos. 93.8864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 19, 2003.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 03–29474 Filed 11–25–03; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious diseases Special Emphasis Panel, Biodefense and Emerging Infectious Diseases Research Opportunities—SARS.
Date: December 17, 2003.
Time: 8 a.m. to 7 p.m.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.
Contact Person: Eleazar Cohen, PhD, Scientific Review Administrator, Scientific review program, NIAID/NIH, 6700B Rockledge Drive, Rm 2220, Bethesda, MD 20892, 301–496–2550, *ec17w@nih.gov.*
(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 19, 2003.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 03–29476 Filed 11–25–03; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Leptin Resistance in Age-Related Obesity.
Date: December 3–4, 2003.
Time: 6 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Alessandra M. Bini, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7708.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, IGF–1 and Aging.
Date: December 4–5, 2003.
Time: 6 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Penn Stater Conference Center Hotel, 215 Innovation Boulevard, State College, PA 16803.
Contact Person: William Cruce, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7704, *crucew@nia.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Survival.

Date: December 15–16, 2003.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alicja L. Markowska, PhD, DSC, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7703, *markowsa@nia.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: November 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–29477 Filed 11–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Nursing Research Special Emphasis Panel, November 12, 2003, 8 a.m. to November 13, 2003, 5 p.m., Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD, 20814 which was published in the **Federal Register** on October 3, 2003, FR67; 192;57473–57474.

The meeting will be held at the Bethesda Marriott Suites at 6711 Democracy Blvd., Bethesda, Maryland. The meeting is closed to the public.

Dated: November 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–29479 Filed 11–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Vaccine Development and Immunity: Adjuvants and TLR.

Date: December 16, 2003.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700–B Rockledge Drive, 3134, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Nancy B. Saunders, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 3134, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 435–3559, *ns120v@nih.gov.*

(Catalogue of Federal Domestic Assistant Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–29481 Filed 11–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Institutional Training Applications (T32s).

Date: December 17, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Leroy Worth, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, 919/541–0670, *worth@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: November 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–29482 Filed 11–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Malaria Vaccines: Clinical Research & Trial Sites in Endemic Areas.

Date: December 18, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Marriott Wardman Park Washington DC Hotel, 2660 Woodley Road, NW., Washington, DC 20008.

Contact Person: Lynn Rust, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *Ir228v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–29483 Filed 11–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed 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 Allergy and Infectious Diseases Special Emphasis Panel, Biodefense and Emerging Infectious Disease Research Opportunities.

Date: December 15, 2003.

Time: 10 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Hagit S. David, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–4596, *hdavid@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Biodefense and Emerging Infectious Disease Research Opportunities

Date: December 15, 2003.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Hagit S. David, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–4596, *hdavid@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–29484 Filed 11–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Unsolicited P01.

Date: December 12, 2003.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Cheryl K. Lapham, PhD., Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases, DEA/NIH/DHHS, 6700–B Rockledge Drive, MSC 7616, Room 3127, Bethesda, MD 20892–7616, 301–402–4598, *clapham@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–29485 Filed 11–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Tropical Disease Research Units.

Date: December 15–17, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Wardman Park Washington DC Hotel, 2660 Woodley Road, NW., Washington, DC 20008.

Contact Person: Adriana Costero, PhD., Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases/NIH/DHHS, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–2761, 301–451–4573, *acostero@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Unsolicited Renewal.

Date: December 15, 2003.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Wardman Park Washington DC Hotel, 2660 Woodley Road, NW., Washington, DC 20008.

Contact Person: Adriana Costero, PhD., Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases/NIH/DHHS, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–2761, 301–451–4573, *acostero@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–29486 Filed 11–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAID.

Date: December 8–10, 2003.

Time: December 8, 2003, 8 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: 12441 Parklawn Drive, Twinbrook II Conference Room, Rockville, MD 20852.

Time: December 9, 2003, 8 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: 12441 Parklawn Drive, Twinbrook II Conference Room, Rockville, MD 20852,

Time: December 10, 2003, 8 a.m. to 12 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: 12441 Parklawn Drive, Twinbrook II Conference Room, Rockville, MD 20852.

Contact Person: Thomas J. Kindt, Phd, Director, Division of Intramural Research, National Inst. of Allergy & Infectious Diseases, Building 10, Room 4A31, Bethesda, MD 20892, 301 496–3006, *tk9c@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–29487 Filed 11–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, AIDS Clinical Database.

Date: December 11, 2003.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Marc L. Lesnick, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616 (301) 496–6636, *ml436d@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–29488 Filed 11–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Pathogenesis of Polyomavirus-Associated Nephropathy.

Date: December 10, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Ambassador II, Bethesda, MD 20814.

Contact Person: Brenda Lange-Gustafson, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, *bjustafson@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistant Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–29489 Filed 11–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of 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 Center for Scientific Review Advisory Committee.

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: Center for Scientific Review Advisory Committee Workgroup.

Date: January 26–27, 2004.

Time: 8:30 a.m. to 1 p.m.

Agenda: Discussion of activities to evaluate organization and function of the Center for Scientific Review process.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Karl Malik, PhD., Executive Secretary, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3110, MSC 7776, Bethesda, MD 20892, (301) 594–6806, *malikk@csr.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://www.csr.nih.gov/drgac/drgac.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–29475 Filed 11–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Developmental Factors Associated with Cognition and Attention.

Date: November 20, 2003.

Time: 1:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20891, (Telephone Conference Call).

Contact Person: Luci Roberts, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20891, (301) 435–0692, *roberlu@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurobiology, Learning and Behavior.

Date: December 4, 2003.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dana Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7848, Bethesda, MD 20892, 031–435–2309, *pluded@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CNNT 02M: Member Conflict: Brain Disorders and Clinical Neurosciences IRG.

Date: December 5, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20891, (301) 435–1254, *benzingw@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Postpartum Smoking Relapse Prevention and ETS Control.

Date: December 5, 2003.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 3144, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee S. Mann, MA, JD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677, *mannl@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Perception, Memory and Cognitive Processes.

Date: December 8, 2003.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dana Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7848, Bethesda, MD 20892, 301–435–2309, *pluded@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, NAED Reviewer Conflicts.

Date: December 10, 2003.

Time: 11:45 a.m. to 1:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ADDT Special Emphasis Panel.

Date: December 12, 2003.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member SEP Applications.

Date: December 15, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265, *langm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Cancer Immunotherapy.

Date: December 18, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, (301) 435–1767, *gubanics@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP to Review AIDS Applications.

Date: December 19, 2003.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Kenneth A Roebuck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nihgov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP to Review AIDS Applications.

Date: December 19, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Kenneth A Roebuck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nihgov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP to Review AIDS Applications.

Date: December 19, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Kenneth A Roebuck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nihgov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–29480 Filed 11–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Adenovirus-based Vaccines Against Ebola, Marburg, and/or Lassa

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of world-wide exclusive license to practice the invention embodied in: (1) U.S. Serial Number 60/326,476, filed October 1, 2001, entitled ''Development of a Preventive Vaccine for Filovirus Infection in Primate''; PCT filed (PCT/US02/30251) on September 24, 2002; (2) U.S. Serial Number 60/068,655, filed December 23, 1997, entitled ''Immunization For Ebola Virus Infection'', PCT filed (PCT/US98/27364) on December 23, 1998, and U.S. Serial Number 09/913,909, filed August 17, 2001; (3) U.S. Serial Number 60/395,876, filed July 12, 2002, entitled ''Assays for Assembly of Ebola Virus Nucleocapsids Inhibitors of Viral Infection'', PCT filed on July 12, 2003 (PCT/US03/21757); and (4) U.S. Serial Number 60/491,933, filed August 1, 2003, entitled ''Accelerated Vaccination'', to Crucell Holland B.V., having a place of business in Leiden, The Netherlands. The patent rights in these inventions have been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before January 26, 2004, will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Susan Ano, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; E-mail: *anos@od.nih.gov;* Telephone: (301) 435–5515; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The above referenced technologies describe development of vaccines for Ebola, Marburg, and/or Lassa viruses using naked DNA constructs, DNA prime/adenovirus boost regimens, and one-dose administration of adenovirus vectors encoding the Ebola glycoprotein or nucleoprotein. Also described are assays for identification of compounds that inhibit the assembly of the nucleoprotein (NP) and virion associated proteins (VP) 35 and 24, all of which are required for Ebola nucleocapsid (or virion-like particle (VLP)) formation, or which inhibit glycosylation of NP, which is also necessary for nucleocapsid formation.

The field of use may be limited to development of Ebola, Marburg, and/or Lassa vaccines comprising at least an adenovirus-based component.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: November 19, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 03–29491 Filed 11–25–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Methods and Devices for Intramuscular Stimulation of Upper Airway and Swallowing Muscle Groups

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive worldwide license to practice the invention embodied in: E–181–2002; U.S. Provisional Patent Application 60/413,773 entitled ''Methods and Devices for Intramuscular Stimulation of Upper Airway and Swallowing Muscle Groups,'' to Medtronic, Inc., a corporation incorporated under the laws of the state of Minnesota and having a place of business at 710 Medtronic Parkway, Minneapolis, MN 55432 and its wholly owned affiliate Medtronic Xomed, Inc., a corporation incorporated under the laws of the state of Delaware and having a place of business at 6743 Southpoint Drive North, Jacksonville, FL 32216. The United States of America is an assignee to the patent rights of these inventions.

The contemplated exclusive license may be limited to the treatment of dysphagia using the Medtronic Implantable Pulse Generator (IPG) System but excluding the use of devices and systems described and claimed in U.S. Patent Nos. 6,185,452; 5,193,540; 5,193,539; 5,324,316; 5,358,514.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before January 26, 2004, will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Michael A. Shmilovich, J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5019; Facsimile: (301) 402–0220; E-mail: *shmilovichm@od.nih.gov*. A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

SUPPLEMENTARY INFORMATION: The patent application covers devices and methods for intramuscular stimulation (stimulation of the geniohyoid, mylohyoid, and thyrohyoid muscles) in patients with neuromuscular disorders. The invention provides autonomous control of both hyolaryngeal elevations, anterior hyoid motion and opening of the upper esophageal sphincter for swallowing, vocalization and speech. Primarily, the technology allows self-stimulation of swallowing and can return oral feeding to dysphagia patients. Electrodes are attached to the appropriate musculature of the neck and an electrode stimulator or subcutaneous signal generator modulates electrostatic pulses through the electrodes that cause the attached muscles to contract thus simulating natural swallowing or vocalization depending on placement.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: November 19, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 03–29490 Filed 11–25–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Notice of Intent To Request Approval From the Office of Management and Budget (OMB) for the Renewal of a Public Collection of Information; Aircraft Operator Security

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: TSA invites public comment on the information collection requirement abstracted below that will be submitted to OMB for renewal in compliance with the Paperwork Reduction Act of 1995.

DATES: Send your comments by January 26, 2004.

ADDRESSES: Conrad Huygen, Privacy Act Officer, Information Management Programs, TSA Headquarters, West Tower 412–S, TSA–17, 601 S. 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1954; facsimile (571) 227–2912.

FOR FURTHER INFORMATION CONTACT: See **ADDRESSES,** above.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501, *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for submission of clearance of the following information collection, TSA solicits comments in order to—

(1) Evaluate whether the proposed information requirement 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;

(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.

TSA is seeking to renew information collection request number 1652–0003, which was originally obtained by the Federal Aviation Administration (FAA) to ensure compliance with the standards that were developed and implemented at 14 CFR part 108. The Aviation and Transportation Security Act of 2001 (ATSA), Pub. L. 107–71, transferred the responsibility for civil aviation security from the FAA to TSA. In February 2002, TSA implemented aircraft operator security standards at 49 CFR part 1544, while 14 CFR part 108 was repealed. This regulation requires aircraft operators to maintain and update their security programs for inspection by TSA to ensure security, safety, and regulatory compliance. TSA estimates the 83 respondent air carriers will carry a burden of 43,160 hours per year and encourages all interested parties to comment on this burden estimate.

Issued in Arlington, Virginia, on November 21, 2003.

Susan T. Tracey,

Deputy Chief Administrative Officer.

[FR Doc. 03–29578 Filed 11–25–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Statement of Findings: Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act

AGENCY: Office of the Secretary, Interior

ACTION: Notice of statement of findings in accordance with Public Law 106–263.

SUMMARY: The Secretary of the Interior is causing this notice of Statement of Findings to be published as required by section 14 of the Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act (Settlement Act), Pub. L. 106–263, 114 Stat. 737, 746–47. The publication of this notice causes the waiver and release of certain claims to become effective as required to implement the Settlement.

DATES: In accordance with section 14 of the Settlement Act, the waiver and release of claims described in section 9(b) of the Settlement Act are effective on November 26, 2003.

ADDRESSES: Address all comments concerning this notice to Ms. Catherine Wilson, Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act Implementation Team Chairperson, Bureau of Indian Affairs, Western Regional Office, 400 North 5th Street, MS–420, Phoenix, Arizona, 85004.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Wilson, 602–379–6789.

SUPPLEMENTARY INFORMATION: The purposes of the Settlement Act are:

(1) To achieve a fair, equitable, and final settlement of all claims to water rights in the Santa Clara River for the Shivwits Band, and the United States for the benefit of the Shivwits Band;

(2) To promote the self-determination and economic self-sufficiency of the Shivwits Band, in part by providing funds to the Shivwits Band for its use in developing a viable reservation economy;

(3) To approve, ratify, and confirm the St. George Water Reuse Project Agreement, the Santa Clara Project Agreement, and the Settlement Agreement, and the Shivwits Water Right described therein;

(4) To authorize the Secretary of the Interior to execute the St. George Water Reuse Project Agreement, the Santa Clara Project Agreement, and the Settlement Agreement, and to take such actions as are necessary to implement these agreements in a manner consistent with the Settlement Act; and

(5) To authorize the appropriation of funds necessary for implementation of the St. George Water Reuse Project Agreement, the Santa Clara Project Agreement, and the Settlement Agreement.

Statement of Findings

As required by section 14 of the Settlement Act, I find as follows:

1. The funds authorized by sections 11(b) and 11(c) of the Settlement Act have been appropriated and deposited into the Shivwits Band Trust Fund;

2. The funds authorized by section 10(f) of the Settlement Act have been appropriated;

3. The St. George Water Reuse Project Agreement has been modified, to the extent it was in conflict with the Settlement Act, and is effective and enforceable according to its terms;

4. The Santa Clara Project Agreement has been modified, to the extent it was in conflict with the Settlement Act, and is effective and enforceable according to its terms;

5. The Settlement Agreement has been modified, to the extent it was in conflict with the Settlement Act, and is effective and enforceable according to its terms;

6. The State Engineer of Utah has taken all actions and approved all applications necessary to implement the provisions of the St. George Water Reuse Agreement, the Santa Clara Project Agreement, and the Settlement Agreement, from which no further appeals may be taken; and

7. The District Court of the Fifth Judicial District in Washington County, Utah, has entered a judgment and decree confirming the Shivwits Water Right in the Virgin River Adjudication pursuant to Utah Rule of Civil Procedure 54(b), that confirms the Shivwits Water Right and is final as to all parties to the Santa Clara Division of the Virgin River Adjudication and from which no further appeals may be taken, which the United States and Utah find is consistent in all material aspects with the Settlement Agreement and with the proposed judgment and decree agreed to by the parties to the Settlement Agreement.

Dated: November 21, 2003.

Gale A. Norton,

Secretary.

[FR Doc. 03–29583 Filed 11–25–03; 8:45 am]

BILLING CODE 4310–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Revise a Comprehensive Conservation Plan and Associated Environmental Impact Statement for the Izembek National Wildlife Refuge, Cold Bay, AK

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to revise the Comprehensive Conservation Plan (Plan) and an associated Environmental Impact Statement, pursuant to the National Environmental Policy Act and its implementing regulations, for the Izembek National Wildlife Refuge, which includes the Unimak Island unit of the Alaska Maritime National Wildlife Refuge and the North Creek and Pavlof units of Alaska Peninsula National Wildlife Refuge, headquartered in Cold Bay, Alaska. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended, and with Service planning policy to advise other agencies and the public of our intentions and to obtain suggestions and information on the scope of issues to be addressed in the environmental documents.

Special mailings, newspaper articles, and other media announcements will inform people of opportunities to provide written input throughout the planning process. Public meetings will be held in communities near the Refuge (*e.g.*, Cold Bay, King Cove, False Pass, Sand Point, and Nelson Lagoon) and in the city of Anchorage. The Draft and Final Plans and associated Environmental Impact Statement will be available for viewing and downloading at www.r7.fws.gov/planning.

ADDRESSES: Address comments, questions, and requests to Maggi Arend, Planning Team Leader, U.S. Fish and Wildlife Service, 1011 East Tudor Rd. MS–231, Anchorage, AK 99503 or *fw7_Izembek_planning@fws.gov*.

FOR FURTHER INFORMATION, CONTACT: Maggi Arend, Planning Team Leader, US Fish and Wildlife Service, 1011 East Tudor Rd., MS–231, Anchorage, AK 99503 or *fw7_Izembek_planning@fws.gov*. Additional information concerning the Plan can be found at *http://www.r7.fws.gov/planning* and concerning the Refuge at *http://refuges.fws.gov*.

SUPPLEMENTARY INFORMATION: By Federal law (National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (Administration Act) [16 U.S.C. 668dd—668ee]), all lands within the National Wildlife Refuge System are to be managed in accordance with an approved Comprehensive Conservation Plan. Section 304(g) of the Alaska National Interest Lands Conservation Act (Pub. L. 96–487, 94 Stat. 2371) also directs that these plans be prepared. The Plan guides management decisions and identifies Refuge goals, long-range objectives, and strategies for achieving

Refuge purposes. During the planning process, the planning team reviews a wide range of Refuge administrative requirements, including conservation of the Refuge's fish and wildlife populations and habitats in their natural diversity; facilitation of subsistence use by local residents and access for traditional recreational activities; and conservation of resource values, including cultural resources, wilderness, and wild rivers. The final revised Plan will detail the programs, activities, and measures necessary to best administer the Refuge to protect these values and to fulfill Refuge purposes. The Comprehensive Conservation Plan and associated Environmental Impact Statement will describe and evaluate a range of reasonable alternatives and the anticipated impacts of each. Public input into the planning process is essential.

The Plan will provide other agencies and the public with information to facilitate understanding of the desired conditions for the Refuge and how the Service will implement management strategies.

The Service will prepare an Environmental Impact Statement in accordance with procedures for implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

The Izembek National Wildlife Refuge (417,533 acres) and the North Creek (8,452 acres) and Pavlof (1,447,264 acres) units of the Alaska Peninsula National Wildlife Refuge are located at the westernmost tip of the Alaska Peninsula. The 1,008,697-acre Unimak Island (the easternmost Aleutian Island of the Alaska Maritime National Wildlife Refuge) lies across the Isanotski Strait.

To the north of the Izembek Refuge is the Bering Sea; to the south is the Pacific Ocean. The Alaska Peninsula is dominated by the rugged Aleutian Range, part of the Aleutian arc chain of volcanoes. Landforms include mountains, active volcanoes, U-shaped valleys, glacial moraines, low tundra wetlands, lakes, sand dunes, and lagoons. Elevations range from sea level to the 9,372-foot Shishaldin Volcano. Several major lagoons are within the Refuge boundary. These lagoons contain some of the world's largest eelgrass beds. The lagoons are under the jurisdiction of the State of Alaska. Izembek Lagoon is designated the Izembek State Game Refuge. Birds from all over the Arctic funnel through Izembek Refuge each fall on their way to wintering grounds throughout the world. More than 98 percent of the world's Pacific black brant use Izembek Lagoon as a staging area for their fall migration to Mexico. Other birds that use the Refuge include golden plovers, ruddy turnstones, western sandpipers, tundra swans, Steller's eiders and emperor geese. The Refuge also is home to large concentrations of brown bears and other large mammals such as caribou and wolves. The red, pink, chum, and silver salmon that use the waters within the refuge enrich the entire ecosystem with the nutrients they bring from the sea. The Refuge also has a rich human history, from ancient settlements of Alaska Natives, through the 18th and 19th century Russian fur traders, to a World War II outpost.

The Alaska National Interests Land Conservation Act of 1980, Section 302(1) and 303(1 and 3) sets forth the following major purposes for which the Izembek Refuge was established and is to be managed:

[Izembek] To conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, waterfowl, shorebirds and other migratory birds, brown bears and salmonoids;

[Alaska Peninsula] To conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, brown bears, the Alaska Peninsula caribou herd, moose, sea otters and other marine mammals, shorebirds and other migratory birds, raptors, including bald eagles and peregrine falcons, and salmonoid and other fish;

[Alaska Maritime] To conserve fish and wildlife populations and habitats in their natural diversity, including, but not limited to, marine mammals, marine birds and other migratory birds, the marine resources upon which they rely, bears, caribou, and other mammals;

To fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

To provide, in a manner consistent with the purposes set forth above, the opportunity for continued subsistence uses by local residents; and

To ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth above, water quality and necessary water quantity within the Refuge; and

[Alaska Maritime] To provide, in a manner consistent with the purposes set forth above, a program of national and international scientific research on marine resources.

The Comprehensive Conservation Plan for Izembek National Wildlife Refuge was completed in 1985. It is being revised consistent with Section 304(g) of the Alaska National Interest Lands Conservation Act, the National Wildlife Refuge System Improvement Act of 1997, and U.S. Fish and Wildlife Service planning policy.

Dated: November 7, 2003.

Rowan Gould,

Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.

[FR Doc. 03–29304 Filed 11–25–03; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Revise a Comprehensive Conservation Plan and Associated Environmental Impact Statement for the Kanuti National Wildlife Refuge, Fairbanks, AK

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to revise the Comprehensive Conservation Plan (Plan) and to develop an Environmental Impact Statement, pursuant to the National Environmental Policy Act and its implementing regulations, for the Kanuti National Wildlife Refuge. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended, and with Service planning policy to advise other agencies and the public of our intentions and to obtain suggestions and information on the scope of issues to be addressed in the environmental documents.

Special mailings, newspaper articles, and other media announcements will inform people of opportunities to provide written input throughout the planning process. Public meetings will be held in communities near the refuge (*e.g.*, Bettles, Evansville, Allakaket, Alatna, Coldfoot, Hughes, and Fairbanks).

The draft and final Plans and associated Environmental Impact Statement will be available for viewing and downloading at *www.r7.fws.gov/planning*.

ADDRESSES: Address comments, questions, and requests for further information to Peter Wikoff, Planning Team Leader, U.S. Fish and Wildlife Service, 1011 East Tudor Rd. MS–231, Anchorage, AK 99503 or *fw7_kanuti_planning@fws.gov*.

FOR FURTHER INFORMATION, CONTACT: Peter Wikoff, Planning Team Leader, U.S. Fish and Wildlife Service, 1011 East Tudor Rd. MS–231, Anchorage, AK 99503 or *fw7_kanuti_planning@fws.gov*. Additional information concerning the plan can be found at *http://*

www.r7.fws.gov/planning and concerning the refuge at *http://refuges.fws.gov*.

SUPPLEMENTARY INFORMATION: By Federal law (National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (Administration Act) [16 U.S.C. 668dd-668ee]), the Service is to manage all lands within the National Wildlife Refuge System in accordance with an approved Comprehensive Conservation Plan. Section 304(g) of the Alaska National Interest Lands Conservation Act (Pub. L. 96–487, 94 Stat. 2371) also directs that these plans be prepared. The Plan guides management decisions and identifies Refuge goals, long-range objectives, and strategies for achieving Refuge purposes. During the planning process, the planning team reviews a wide range of Refuge administrative requirements, including conservation of the refuge's fish and wildlife populations and habitats in their natural diversity; facilitation of subsistence use by local residents and access for traditional recreational activities; and conservation of resource values, including cultural resources, wilderness, and wild rivers. The final revised Plan will detail the programs, activities, and measures necessary to best administer the Refuge to protect these values and to fulfill Refuge purposes. In this Comprehensive Conservation Plan and associated Environmental Impact Statement, the Service will describe and evaluate a range of reasonable alternatives and the anticipated impacts of each. Public input into the planning process is essential.

The Plan will provide other agencies and the public with information to facilitate understanding of the desired conditions for the Refuge and how the Service will implement management strategies.

The Service will prepare an Environmental Impact Statement in accordance with procedures for implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

The Kanuti National Wildlife Refuge lies on the Arctic Circle about 100 miles south of the Brooks Range and 150 miles northwest of Fairbanks, Alaska. The Refuge lies in a basin formed by the Koyukuk and Kanuti rivers and encompasses approximately 1.6 million acres. The Refuge landscape consists of rolling hills, wetlands, ponds, and streams. It supports waterfowl, furbearers, wolves, moose, caribou, and bears.

The Alaska National Interests Land Conservation Act (ANILCA) of 1980 (Section 302[4][B]) established the Refuge and stated that the purposes for which the Kanuti Refuge was established and would be managed include:

(i) To conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, white-fronted geese and other waterfowl and migratory birds, moose, caribou (including participation in coordinated ecological studies and management of the Western Arctic caribou herd), and furbearers;

(ii) To fulfill the international treaty obligation of the United Sates with respect to fish and wildlife and their habitats;

(iii) To provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents; and

(iv) To ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the refuge.

The Comprehensive Conservation Plan for Kanuti was completed in 1987. It is being revised consistent with Section 304(g) of the Alaska National Interest Lands Conservation Act, the National Wildlife Refuge System Improvement Act of 1997, and Service planning policy.

Dated: November 7, 2003.

Rowan Gould,

Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.

[FR Doc. 03–29302 Filed 11–25–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Revise a Comprehensive Conservation Plan and Associated Environmental Impact Statement for the Kenai National Wildlife Refuge, Soldotna, AK

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to revise the Comprehensive Conservation Plan (Plan) and an associated Environmental Impact Statement, pursuant to the National Environmental Policy Act and its implementing regulations, for the Kenai National Wildlife Refuge, Soldotna, Alaska. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended, and with Service planning policy to advise other agencies and the public of our intentions and to obtain suggestions and information on the scope of issues to be addressed in the environmental documents.

Special mailings, newspaper articles, and other media announcements will inform people of opportunities to provide written input throughout the planning process. Public meetings will be held in communities near the Refuge (*e.g.*, Cooper Landing, Soldotna, Seward, and Homer) and in the city of Anchorage. The Draft and Final Plans and associated Environmental Impact Statement will be available for viewing and downloading at *http://www.r7.fws.gov/planning*.

ADDRESSES: Address comments, questions, and requests to Rob Campellone, Planning Team Leader, U.S. Fish and Wildlife Service, 1011 East Tudor Rd., MS–231, Anchorage, AK 99503, or *fw7_kenai_planning@fws.gov*.

FOR FURTHER INFORMATION, CONTACT: Rob Campellone, Planning Team Leader, U.S. Fish and Wildlife Service, 1011 East Tudor Rd. MS–231, Anchorage, AK 99503 or *fw7_kenai_planning@fws.gov*. Additional information concerning the Plan can be found at *http://www.r7.fws.gov/planning* and concerning the Refuge at *http://refuges.fws.gov*.

SUPPLEMENTARY INFORMATION: By Federal law (National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (Administration Act) [16 U.S.C. 668dd–668ee]), all lands within the National Wildlife Refuge System are to be managed in accordance with an approved Comprehensive Conservation Plan. Section 304(g) of the Alaska National Interest Lands Conservation Act (Pub. L. 96–487, 94 Stat. 2371) also directs that these plans be prepared. During the planning process, the planning team reviews a wide range of Refuge administrative requirements, including conservation of the Refuge's fish and wildlife populations and habitats in their natural diversity; facilitation of subsistence use by local residents and access for traditional recreational activities; and conservation of resource values, including cultural resources, wilderness, and wild rivers.

The final revised Plan will detail the programs, activities, and measures

necessary to best administer the Refuge to protect these values and to fulfill Refuge purposes. The Comprehensive Conservation Plan and associated Environmental Impact Statement will describe and evaluate a range of reasonable alternatives and the anticipated impacts of each. Public input into the planning process is essential.

The Plan will provide other agencies and the public with information to facilitate understanding of the desired conditions for the Refuge and how the Service will implement management strategies.

The Service will prepare an Environmental Impact Statement in accordance with procedures for implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

The Kenai National Wildlife Refuge covers approximately two million acres, roughly equivalent to the states of Delaware and Rhode Island combined. It occupies much of the Kenai Peninsula and is readily accessible from the city of Anchorage, which contains 41.5 percent of the state's population. The Kenai Refuge consists of the western slopes of the Kenai Mountains and forested lowlands bordering Cook Inlet. The Kenai Mountains, with their glaciers, rise to more than 6,500 feet. Treeless alpine and subalpine habitats are the home of mountain goats, Dall sheep, caribou, wolverine, marmots, and ptarmigan. Boreal forests extend to 1,800 feet above sea level and are composed of spruce and birch forests intermingled with hundreds of lakes. Boreal forests are home to moose, wolves, black and brown bears, lynx, snowshoe hares, and numerous species of neotropical birds such as olive-sided flycatchers, myrtle warblers, and ruby-crowned kinglets. At sea level, the Refuge encompasses the last remaining pristine major salt water estuary on the Kenai Peninsula: the Chickaloon River Flats. The flats provide a major migratory staging area and nesting habitat for thousands of shorebirds and waterfowl throughout the spring, summer, and fall. The flats are also used as a haul-out area by harbor seals, and thousands of salmon migrate up the Chickaloon River system each year to spawn.

The Alaska National Interests Land Conservation Act of 1980 (Section 303[4]) sets forth the following major purposes for which the Kenai Refuge was established and is to be managed:

(i) To conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, moose, bear, mountain goats, Dall sheep, wolves and other furbearers, salmonoids and other fish, waterfowl and other migratory and nonmigratory birds;

(ii) To fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(iii) To ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the Refuge;

(iv) To provide in a manner consistent with subparagraphs (i) and (ii), opportunities for scientific research, interpretation, environmental education, and land management training; and

(v) To provide, in a manner compatible with these purposes, opportunities for fish and wildlife-oriented recreation.

The Comprehensive Conservation Plan for Kenai National Wildlife Refuge was completed in 1985. It is being revised consistent with Section 304(g) of the Alaska National Interest Lands Conservation Act, the National Wildlife Refuge System Improvement Act of 1997, and U.S. Fish and Wildlife Service planning policy.

Dated: November 7, 2003.

Rowan Gould,

Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.

[FR Doc. 03–29303 Filed 11–25–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Final Supplement and Amendment to the 1998 Final Revised Sonoran Pronghorn Recovery Plan—Recovery Criteria and Estimates of Time for Recovery Actions for the Sonoran Pronghorn

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of a Final Supplement and Amendment to the 1998 Final Revised Sonoran Pronghorn (*Antilocapra americana sonoriensis*) Recovery Plan (Recovery Plan). In the U.S., the species is currently known to occur on Federal lands in Maricopa, Pima, and Yuma counties in southwestern Arizona. The Final Supplement and Amendment reassesses recovery criteria from the Recovery Plan, relates recovery actions to the five listing factors of the Endangered Species Act of 1973, and assigns a timeline to recovery actions.

ADDRESSES: Persons wishing to obtain a copy of the Final Supplement and Amendment may do so by accessing the Service's Arizona Ecological Service Field Office internet web page at *Arizonaes.fws.gov* or contacting John Morgart, Cabeza Prieta National Wildlife Refuge, U.S. Fish and Wildlife Service, 1611 North Second Avenue, Ajo, Arizona 85321 (520/387–4989 Direct; 520/387–6483 Refuge Office; 520/387–5359 Fax; *john_morgart@fws.gov e-mail*).

FOR FURTHER INFORMATION CONTACT: John Morgart (*see* **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant species to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service prepares recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of species, including criteria for downlisting or delisting, and time and cost estimates for implementing the recommended recovery measures.

In a recent court decision (Civil Action No. 99–927 (ESH)), the judge ruled that the 1998 Final Revised Sonoran Pronghorn Recovery Plan ''* * * fails to establish (1) objective measurable criteria which, when met, would result in a determination that the pronghorn may be removed from the list of endangered species or, if such criteria are not practicable, an explanation of that conclusion and (2) estimates of the time required to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal where practicable, or, if such estimates are not practicable, an explanation of that conclusion.'' The Court ordered the Service to reconsider these portions of the Recovery Plan. The deadline for completion of this task was extended three times, with a final deadline of January 15, 2002.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and

comment be provided during recovery plan development. On September 25, 2001, a 60-day public review and comment period for the Draft Supplement and Amendment to the 1998 Final Revised Sonoran Pronghorn Recovery Plan was initiated. The Final Supplement and Amendment considers all information received during the public comment period. In addition, the Service and other Federal agencies will take these comments into account in the course of implementing recovery activities.

The Final Supplement and Amendment to the 1998 Final Revised Sonoran Pronghorn Recovery Plan updates selected biological sections of the Recovery Plan, addresses the five listing factors mandated by section 4(a)(1) of the Endangered Species Act of 1973, reassesses recovery criteria presented in the Recovery Plan, and where practicable, provides estimates of time necessary to carry out measures needed to effect recovery of Sonoran pronghorn as articulated in the Recovery Plan. The Final Supplement and Amendment to the 1998 Final Revised Recovery Plan was developed by the Service in coordination with an appointed Recovery Team that includes a group of scientists and agency biologists with expertise in Sonoran pronghorn ecology. The Final Supplement and Amendment to the Recovery Plan has undergone peer review by scientists, conservation biologists, range experts, and others experienced in reviewing recovery plans, and incorporates their comments where applicable.

Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: February 26, 2003.

David Yazzie,

Acting Regional Director.

Editorial Note: This document was received in the Office of the Federal Register on November 21, 2003.

[FR Doc. 03–29527 Filed 11–25–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Preparation of an Environmental Impact Statement for Issuance of an Incidental Take Permit Associated With a Habitat Conservation Plan for the San Diego County Water Authority, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, we, the U.S. Fish and Wildlife Service (Service) are advising the public that we intend to gather information necessary to prepare, in coordination with the San Diego County Water Authority (Authority), a joint programmatic Environmental Impact Report/Environmental Impact Statement (EIR/EIS) on the San Diego County Water Authority Subregional Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP) proposed by the Authority for portions of San Diego and Riverside County, California. The HCP is being prepared under section 10(a)(1)(B) of the Federal Endangered Species Act of 1973, as amended, (ESA); whereas the NCCP is being prepared under the State of California's Natural Community Conservation Planning Act.

The purpose of the EIR/EIS is to analyze the impacts of an incidental take permit which the Authority will request from the Service for 29 federally listed threatened or endangered species and 55 unlisted species, should they become listed under the ESA during the term of the permit. This analysis is needed under NEPA because the proposed Federal action of issuing an ESA permit may affect the human environment by authorizing take of listed species that could occur from development, operations, and maintenance activities over an approximately 2,034,787-acre planning area in roughly the coastal half of San Diego County and the extreme southwestern portion of Riverside County. The proposed NCCP/HCP would identify those actions necessary to maintain the viability of coastal sage scrub and other habitat types in the planning area.

We provide this notice to: (1) Advise other Federal and State agencies, affected Tribes, and the public of our intentions; (2) announce a public meeting and the initiation of a 30-day scoping period; and (3) obtain suggestions and information on the scope of issues to be included in the EIR/EIS. We invite written comments from interested parties to ensure that the full range of issues related to the permit request are identified.

DATES: The Service and the Authority will hold a joint public scoping meeting on December 11, 2003, from 10 a.m. until 12 noon. The Service will accept written comments at the meeting and for 30 days after the date of publication of this notice.

ADDRESSES: The meeting will be held at the San Diego County Water Authority Board Room, 4677 Overland Avenue, San Diego, California 92123. Comments should be sent to Mr. James Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92009; facsimile (760) 431–9624.

FOR FURTHER INFORMATION CONTACT: Sandra Marquez, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service (*see* **ADDRESSES**), telephone (760) 431–9440 for general information; or if you have questions about the meeting, contact Tim Cass, Senior Water Resources Specialist, San Diego County Water Authority, telephone (858) 522–6758.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Background material may be obtained by contacting Tim Cass by phone (*see* **FOR FURTHER INFORMATION CONTACT**) or by letter sent to the San Diego County Water Authority, 4677 Overland Avenue, San Diego, California 92123.

Background

Federal agencies are required to conduct NEPA analyses of their proposed actions to determine if the actions may affect the human environment. The Service expects to make a decision on issuance of an ESA section 10(a)(1)(B) permit application expected to be submitted by the Authority. Therefore, the Service is seeking public input on the scope of the required NEPA analysis, including the range of reasonable alternatives and associated impacts of any alternatives.

Section 9 of the ESA and Federal regulations prohibit the ''take'' of animal species listed as endangered or threatened. Take is defined under the ESA as follows: to harass, harm, pursue, hunt, shoot, wound, kill, capture or collect listed wildlife, or to attempt to engage in such conduct (16 U.S.C. 1538). Harm includes habitat modification that kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Under limited circumstances, the Service may issue permits for take of listed species that is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are found in 50 CFR 17.32 and 50 CFR 17.22.

If the Service decides to approve the NCCP/HCP, we would authorize incidental take of the California

gnatcatcher and 11other identified federally listed animal species through issuance of an ESA incidental take permit. The NCCP/HCP, coupled with an Implementation Agreement, could also form the basis for issuing an incidental take permit for identified non-listed animal species, should these identified species be listed during the term of the permit. Although take of plant species is not prohibited under the ESA, section 9, identified plant species, both listed and unlisted, would be included on the permit in recognition of the conservation benefit provided for the species if the Service finds these species are adequately covered under the NCCP/HCP.

On March 25, 1993, the Service issued a Final Rule declaring the California gnatcatcher to be a threatened species (50 FR 16742). The Final Rule was followed by a Special Rule on December 10, 1993 (50 FR 65088) to allow take of the California gnatcatcher pursuant to section 4(d) of the ESA. The Special Rule defined the conditions under which take of the coastal California gnatcatcher resulting from specified land use activities regulated by state and local government, would not violate section 9 of the ESA. In the Special Rule the Service recognized the significant efforts undertaken by the State of California through the Natural Community Conservation Planning Act of 1991 and encouraged holistic management of listed species, like the coastal California gnatcatcher, and other sensitive species. The Service declared its intent to permit incidental take of the California gnatcatcher associated with land use activities covered by an approved subregional NCCP prepared under the NCCP Program, provided the Service determines that the subregional NCCP meets the issuance criteria of an incidental take permit pursuant to section 10(a)(1)(B) of the ESA and 50 CFR 17.32(b)(2). The Authority currently intends to obtain the Service's approval of the NCCP/HCP through a section 10(a)(1)(B) permit.

Proposed Action

The Service will prepare a joint EIR/EIS with the Authority, lead agency for the NCCP/HCP. The Authority will prepare an EIR in accordance with the California Environmental Quality Act. The Authority will publish a separate Notice of Preparation for the EIR.

The purpose of this subregional NCCP/HCP is to establish a long-term plan for the conservation of covered species and the habitats associated with Authority activities. The proposed NCCP/HCP will give the Authority increased regulatory certainty, and give the Service and the CDFG increased certainty that lands will be conserved to provide regional habitat resource protection. The Authority proposes to approach project design, implementation, and maintenance in a systematic, ecologically sensitive manner which focuses on the avoidance and minimization of impacts to sensitive species and habitats that may be affected by Authority activities. Authority activities subject to the NCCP/HCP are anticipated to include certain specific development projects (such as expansion of existing reservoirs, relocation of pipelines, and construction of new pipelines and support facilities) and operation and maintenance activities necessary to ensure the proper functioning of existing and future Authority facilities.

Preliminary Alternatives

The EIR/EIS for the San Diego County Water Authority Subregional NCCP/HCP will assist the Service during its decision making process by enabling us to analyze the environmental consequences of the proposed action and a full array of alternatives identified during preparation of the NCCP/HCP. Although specific programmatic alternatives for the proposed action have not been prepared for public discussion, the range of alternatives preliminarily identified for consideration include:

Alternative 1, No Action/Project-by-Project Authorization

The Authority would continue to seek permits for activities that could affect listed species through continuing project-by-project review and permitting pursuant to the National Environmental Policy Act and sections 7 and 10 of the ESA and in accordance with existing habitat management efforts. The Authority would not participate in an existing NCCP/HCP nor prepare their own plan.

Alternative 2, Participation in an Existing NCCP/HCP

The Authority would participate in one or more of the existing land-use-based subregional NCCP/HCPs in the region, such as the Multiple Species Conservation Program in the southern and central portions of San Diego County, the draft Multiple Species Habitat Conservation Program in the northwestern portion of San Diego County, and/or the draft Multiple Species Habitat Conservation Plan in southwestern Riverside County.

Service Scoping

We invite comments from all interested parties to ensure that the full range of issues related to the permit request are addressed and that all significant issues are identified. We will conduct environmental review of the permit application in accordance with the requirements of the NEPA of 1969 as amended (42 U.S.C. 4321 *et seq.*), its implementing regulations (40 CFR parts 1500 through 1508), and with other appropriate Federal laws and regulations, policies, and procedures of the Service for compliance with those regulations. We expect a draft EIR/EIS for the San Diego County Water Authority NCCP/HCP to be available for public review during Summer 2004.

Dated: November 20, 2003.

D. Kenneth McDermond,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 03–29605 Filed 11–25–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1990–FA–24 1A]

OMB Approval Number 1004–0114; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has sent a request to extend the current information collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C.. 3501 et seq.). On January 15, 2003, the BLM published a notice in the **Federal Register** (68 FR 2071) requesting comment on this information collection. The comment period ended on March 17, 2003. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0114), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *Oira Docket@omb.eop.gov.* Please provide a copy of your comments to the Bureau Information Collection Clearance Officer

(WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information we collect; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Recreation of Location Notices and Annual Filings for Mining Claims, Mill Sites, and Tunnel Sites; Payment of Location and Maintenance Fees and Service Charges. (43 CFR parts 3730, 3810, 3820, 3830, and 3850).

OMB Approval Number: 1004–0114.

Bureau Form Number: 3830–2 and 3830–3.

Abstract: The Bureau of Land Management (BLM) collects an dudes the information to determine whether or not mining claimants have met statutory requirements. Mining claimants must record location notices of certificates of mining claims, mill sites, and tunnel sites with BLM within 90 days of their location. Claimants who do not pay the maintenance fee must make an annual filing by December 30. The mining claim or site is forfeited by operation of law if claimants fail to record the mining claim or site or to submit an annual filing when required.

Frequency: Once for notices and certificates of location, notice of intent to locate mining claims, and payment of location fees. Once each year for annual filing, payment of maintenance fees, or filing of waivers. As needed for recording of amendments to a previously recorded notice or certificate of location or transfer of interest.

Description of Respondents: Individuals, groups, or corporations.

Estimated Completion Time: Eight minutes for each document or payment (one hour for a Deferment Petition)

Annual Responses: 236,852.

Application Fee Per Response: We charge $10 for each new claims, $5 each for all other mining claims documents, and $25 for each notice of intent to locate mining claims and petitions for deferment of assessment work.

Annual Burden Hours: 31,585.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: September 5, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–29580 Filed 11–25–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Notice of Availability

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of a Draft Environmental Impact Statement for the Low Country Gullah Culture Special Resource Study.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332; 40 CFR 1503.1) the National Park Service announces the availability of a Draft Environmental Impact Statement (DEIS) for the Low Country Gullah Culture Special Resource Study. The document describes ways that the National Park Service can assist in preserving Gullah culture (more commonly known as Geechee in Georgia and Florida) by outlining four management alternatives for consideration by Congress, including a no-action alternative. The DEIS analyzes the environmental impacts of those alternatives considered for the future protection, interpretation, and management of Gullah cultural resources. The study area stretches along the southeastern United States coast roughly from the Cape Fear River in North Carolina to the St. John's River in Florida and approximately 30 miles inland.

DATES: There will be a 60-day comment period beginning with the Environmental Protection Agency's publication of its notice of availability in the **Federal Register.**

ADDRESSES: Copies of the DEIS are available by contacting Cynthia Porcher, Charles Pinckney National Historic Site, 1214 Middle Street, Sullivan's Island, South Carolina, 29482. An electronic copy of the DEIS is available on the Internet at *http://www.nps.gov/sero/ggsrs/gg_res.htm.*

SUPPLEMENTARY INFORMATION: The National Park Service held community and stakeholder meetings to gather advice and feedback on desired outcomes of the study. The meetings assisted the National Park Service in developing alternatives for managing associated cultural and natural resources and creating interpretive and educational programs. The alternatives were presented at community forums in October and November 2002. Responses from the meetings were incorporated into the four alternatives described in the study. Under Alternative A, three coastal centers would be established through partnerships with government agencies and nonprofit organizations. The centers would be dispersed along the southeastern U.S. coast where host and neighboring communities could provide support. The centers would interpret the history and evolving culture of the Gullah people from colonial times to the 21st Century and would provide learning opportunities for the casual visitor as well as residents of communities. Under Alternative B, existing national park units would collaborate with state and local park sites located in the project area to administer multi-partner interpretive and educational programs. Cooperative agreements among agencies would identify and delegate administrative, operational, and program functions for each partner. Under Alternative C, a National Heritage Area would be established to connect and associate Gullah resources. The National Park Service would provide startup and related administrative assistance for the heritage area. Overall management of the heritage partnership would eventually be administered by one or more local entities that would guide and oversee the goals and objectives of the heritage area. Under Alternative D, Alternatives A and C would be combined into a single alternative.

It is the practice of the National Park Service to make comments, including names and home addresses of respondents, available for public review during regular business hours. Anonymous comments will not be considered. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. However, individual respondents may request that we withhold their names and addresses from the public record, and we will honor such requests to the extent allowed by law. If you wish to withhold your name and/or address, you must state that request prominently at the beginning of your comment.

FOR FURTHER INFORMATION CONTACT: Cynthia Porcher, (803) 881–5516 or John Barrett, 404–562–3124, extension 637.

The responsible official for this draft Environmental Impact Statement is Patricia A. Hooks, Acting Regional Director, Southeast Region, National Park Service, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: October 22, 2003.

Wally Hibbard,

Acting Deputy Regional Director, Southeast Region.

[FR Doc. 03–29501 Filed 11–25–03; 8:45 am]

BILLING CODE 4310–66–P

DEPARTMENT OF THE INTERIOR

National Park Service

Boston Harbor Islands Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) that the Boston Harbor Islands Advisory Council will meet on Wednesday, December 3, 2003. The meeting will convene at 4 p.m. at the New England Aquarium Conference Center, Central Wharf, Boston, MA.

The Advisory Council was appointed by the Director of National Park Service pursuant to Public Law 104–333. The 28 members represent business, educational/cultural, community and environmental entities; municipalities surrounding Boston Harbor; Boston Harbor advocates; and Native American interests. The purpose of the Council is to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the development and implementation of a management plan and the operations of the Boston Harbor Islands national park area.

The Agenda for this meeting is as follows:

1. Call to Order, Introductions of Advisory Council members present.
2. Review and approval of minutes of the September meeting.
3. Outreach program.
4. Prepare for the March Elections.
5. Report from the NPS.
6. Public Comment.
7. Next Meetings.
8. Adjourn.

The meeting is open to the public. Further information concerning Council meetings may be obtained from the Superintendent, Boston Harbor Islands. Interested persons may make oral/written presentations to the Council or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Boston Harbor Islands NRA, 408 Atlantic Avenue, Boston, MA 02110, telephone (617) 223–8667.

Dated: April 30, 2003.

George E. Price, Jr.,

Superintendent, Boston Harbor Islands NRA.

[FR Doc. 03–29499 Filed 11–25–03; 8:45 am]

BILLING CODE 4510–86–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Arkansas Department of Parks and Tourism, Arkansas State Parks, Little Rock, AR, and Arkansas Archeological Survey, Fayetteville, AR

AGENCY: National Park Service.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of Arkansas Department of Parks and Tourism, Arkansas State Parks, Little Rock, AR, and in the possession of the Arkansas Archeological Survey, Fayetteville, AR. The human remains and associated funerary objects were removed from Toltec Mounds Archeological State Park, Lonoke County, AR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Arkansas Archeological Survey professional staff in consultation with representatives of the Quapaw Tribe of Indians, Oklahoma and Arkansas Department of Parks and Tourism, Arkansas State Parks, Little Rock, AR.

In 1979, 1989, 1998, and 1999, human remains representing 15 individuals were removed by the Arkansas Archeological Survey from site 3LN42 at Toltec Mounds Archeological State Park. No known individuals were identified. The two associated funerary objects are one plain shell-tempered ceramic bottle and one red-filmed shell-tempered ceramic bowl.

The remains of five individuals have been dated to the Plum Bayou Culture (A.D. 750 to 950), a local tradition that developed in the late Woodland period. The Plum Bayou Culture is characterized by common vessel shapes and a predominance of plainware; minor amounts of Larto Red, Officer Punctated, Coles Creek Incised (Keo variety), and French Fork Incised vessels; particular styles of lithic tools; and use of some lithic raw materials from central Arkansas sources. The Plum Bayou Culture has been extensively studied by Martha Rolingson, the archeologist at Toltec Mounds Archeological State Park since its establishment in 1976.

The remains of one individual and the two associated funerary objects have been dated to the Menard Complex (A.D. 1450 to 1700), a local tradition that developed along the lower Arkansas River during the Mississippian period. The Menard Complex is characterized by an increased prevalence of painted ware, and common vessel shapes including globular neck bottles and helmet bowls.

The remains of nine individuals cannot be precisely dated, but are believed to have been interred at some point during the late Woodland, Mississippian, or historic period.

Toltec Mounds Archeological State Park is located along an oxbow of the lower Arkansas River. Archeological evidence from the park indicates a continuity of human occupation from A.D. 750 into the historic period. French explorers documented Quapaw villages at the mouth of the Arkansas River around 1700. The Quapaw are known to have hunted and traveled along the central Arkansas River in the vicinity of Toltec Mounds Archeological State Park during the historic period. In 1818, the Quapaw ceded this portion of the central Arkansas River valley, including the land that became Toltec Mounds Archeological State Park, to the United States. The continuity of archeological and historical evidence supports a relationship of shared group identity between the prehistoric occupants of Toltec Mounds Archeological State Park and the Quapaw Tribe of Indians, Oklahoma.

The Quapaw Tribe of Indians, Oklahoma maintains a strong link to Toltec Mounds Archeological State Park, and has negotiated an agreement with the Arkansas State Parks to establish a Keepsafe Cemetery at the park for the reburial of Native American human remains and associated funerary objects recovered from the Arkansas River valley. Quapaw traditional religious leaders have sanctified an area of the site for reburial of human remains.

Officials of Arkansas State Parks and the Arkansas Archeological Survey have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 15 individuals of Native American ancestry. Officials of Arkansas State Parks and the Arkansas Archeological Survey also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the two objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of Arkansas State Parks and the Arkansas Archeological Survey have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Quapaw Tribe of Indians, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Patricia Murphy, Director, Historical Resources and Museum Services, Arkansas State Parks, One Capitol Mall, Little Rock, AR 72201, telephone (501) 682–3603, before December 26, 2003. Repatriation of the human remains and associated funerary objects to the Quapaw Tribe of Indians, Oklahoma may proceed after that date if no additional claimants come forward.

The Arkansas Archeological Survey in conjunction with Arkansas State Parks is responsible for notifying the Quapaw Tribe of Indians, Oklahoma, that this notice has been published.

Dated: October 28, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–29503 Filed 11–25–03; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: The Colorado College, Colorado Springs, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of The Colorado College, Colorado Springs, CO. The human remains were removed from historic Ute territory in El Paso, Rio Grande, and Costilla Counties, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by The Colorado College professional staff in consultation with representatives of the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

On November 13, 1969, human remains representing one individual were found along a tributary of Beaver Creek on the Bill Brown Ranch about 3 miles southwest of Monument, El Paso County, CO. Professor Michael Nowak of The Colorado College removed the human remains from the site in November 1969 and placed them in the Anthropology Department Archaeology Laboratory in Palmer Hall (Accession no. 1980.2.6). The human remains were moved in 1989 to the Biological Anthropology Research Laboratory of Barnes Science Center. No known individuals were identified. No associated funerary objects are present. A brass U.S. Army button was found with the human remains but cannot be located at this time.

Cranial morphology indicates that the remains are Native American. The burial site and context support this determination. The human remains are believed to have been interred between 1869 and 1919 based on the presence of the brass U.S. Army button found with the human remains. The Cheyenne and Arapahoe tribes had left Colorado by 1865, and only the Ute tribes remained after that date.

On June 10, 1981, human remains representing one individual were discovered at the Graeser Petroglyph site (5RN11) near Monte Vista, Rio Grande County, CO. State Archaeologist Emerson Pearson and two assistants removed the human remains on June 11, 1981, after the Rio Grande County Coroner determined that the remains were of historic, not forensic, interest. Mr. Pearson transferred the human remains to The Colorado College Anthropology Department for curation (Accession no. Rio Grande CCO 061181). No known individuals were identified. No associated funerary objects are present. Historic beads associated with the human remains were retained by the landowner.

Cranial morphology indicates that the human remains are Native American. The presence of historic beads and the location of the burial in historic Ute territory indicate that this individual is Ute. Mr. Eddie Box, Jr., Ute Mountain Tribal Council representative, confirmed this determination at the time of discovery.

In July 1984, human remains representing one individual were discovered at site 5CT121, along a cutbank of Ojito Creek, Costilla County, CO. On August 10, 1984, Mr. Van Button of the U.S. Department of the Interior, Bureau of Reclamation, and Mr. James Martinez of the local chapter of the Colorado Archaeological Society removed the human remains after the Costilla County Coroner determined that there was no forensic significance. The human remains were transferred to the The Colorado College Anthropology Department for study and curation (Accession no. Costilla Cty 081084). No known individuals were identified. No associated funerary objects are present.

Cranial morphology indicates that the remains are Native American.The Southern Ute Indian Tribe map ''Original Ute Domain'' identifies El Paso, Rio Grande, and Costilla Counties as a part of the original domain of the Ute. Mr. Neil Cloud, NAGPRA Representative, Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado, provided folklore, oral tradition, geographical, and historical evidence that the three individuals are most likely Ute.

Officials of The Colorado College have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of three individuals of Native American ancestry. Officials of The Colorado College also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Joyce Eastburg, Legal Assistant, The Colorado College, 14 East Cache La Poudre Street, Colorado Springs, CO 80903, telephone (719)

389–6703, before December 26, 2003. Repatriation of the human remains to the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado may proceed after that date if no additional claimants come forward.

The Colorado College is responsible for notifying the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah that this notice has been published.

Dated: October 24, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–29507 Filed 11–25–03; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: The Colorado College, Colorado Springs, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of The Colorado College, Colorado Springs, CO. The human remains were removed from Pueblo, El Paso, Fremont, Las Animas, and either Lincoln or Elbert Counties in eastern Colorado.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by The Colorado College professional staff in consultation with representatives of the Apache Tribe of Oklahoma; Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

In April 1960, human remains representing one individual were removed from Pueblo County, CO, by the Kenneth Englert family and donated to The Colorado College soon after (Accession no. 1980.2.3). In the summer of 1960, the human remains were sent to the University of Kansas for description and analysis and were then returned to The Colorado College. No known individual was identified. No associated funerary objects are present. Cranial morphology and burial context indicate that the human remains are Native American.

On April 14, 1966, human remains representing two individuals were discovered on Kelly Ranch along Horse Creek, approximately 60 miles east of Colorado Springs. It is not known whether Kelly Ranch was in southern Elbert County or in Lincoln County, CO. Horse Creek runs through both counties. Paul Kutsche of The Colorado College Anthropology Department retrieved the human remains and brought them back to the college. The human remains were curated in the Anthropology Department Archaeology Laboratory in Palmer Hall until 1989 and were then transferred to the Biological Anthropology Research Laboratory of Barnes Science Center (Accession no. 1980.2.4). No known individuals were identified. No associated funerary objects are present. Cranial morphology indicates that the human remains are Native American.

In spring of 1968, a young boy found human remains representing a minimum of one individual on a hillside south of Stratmoor Hills Golf Club, near the ''B'' Street entrance gate of Fort Carson, El Paso County, CO. The human remains were removed in July 1968 by Professor Michael Nowak of The Colorado College. The human remains were curated in the Anthropology Department Archaeology Laboratory in Palmer Hall until 1989 and then transferred to the Biological Anthropology Research Laboratory of Barnes Science Center (Accession no. 1980.2.5). No known individual was identified. No associated funerary objects are present. The burial site and context indicate that the human remains are Native American.

On May 3, 1989, human remains representing one individual were removed from site 5EP1175 on private land in Colorado Springs, El Paso County, CO. The discovery resulted from a construction project. After the county coroner and local police determined that the human remains were not of forensic significance, Ms. Kim Spurr of The Colorado College Anthropology Department took the human remains back to the college for study and curation (Accession no. El Paso Cty 050389). No known individual was identified. No associated funerary objects are present. Cranial morphology and the flexed position of the burial indicate that the human remains are Native American.

In 1985, human remains representing one individual were discovered on private land during operations at a gravel pit near Pikes Peak Meadows, south of Colorado Springs, El Paso County, CO. After investigation by the El Paso County Coroner's Office determined that there was no forensic significance, the human remains were transferred to the The Colorado College Anthropology Department in Palmer Hall for curation and educational purposes (Accession no. El Paso CCO 185A–235). In 1989, the human remains were moved to the Biological Anthropology Research Laboratory in Barnes Science Center. No known individual was identified. No associated funerary objects are present. Cranial morphology indicates that the human remains are Native American.

In 1989, human remains representing one individual were discovered eroding out of a cutbank along State Highway 115, Fremont County, CO. After investigation by the Fremont County Coroner's Office determined that there was no forensic significance, the human remains were transferred to the Biological Anthropology Research Laboratory, Barnes Science Center at The Colorado College for curation and educational purposes (Accession no. El Paso CCO 082989). No known individual was identified. No associated funerary objects are present. Cranial morphology indicates that the human remains are Native American.

In 1990, human remains representing one individual were discovered eroding from an embankment on private land in Las Animas County, CO. After investigation by the Las Animas County Coroner's Office determined that there was no forensic significance, the human remains were transferred to the Biological Anthropology Research Laboratory in Barnes Science Center at The Colorado College for curation and educational purposes (Accession no. CCO 071190). No known individual was identified. No associated funerary objects are present. Cranial morphology

indicates that the human remains are Native American.

The map ''Indian Land Areas Judicially Established 1978'' includes the eastern Colorado counties of Pueblo, El Paso, Fremont, Lincoln, and Elbert in the land aboriginally occupied by the Cheyenne and Arapaho tribes. The Colorado Office of Archaeology and Historic Preservation map ''Estimated Tribal Territories in Colorado During the Late Nineteenth Century'' shows the presence of the Apache, Arapaho, Cheyenne, Comanche, and Kiowa in all of eastern Colorado. The Southern Ute Indian Tribe map ''Original Ute Domain'' includes El Paso, Pueblo, Fremont, Las Animas, Lincoln, and Elbert Counties as a part of the original domain of the Ute. Official tribal representatives provided folklore, oral tradition, geographical, and historical evidence of cultural affiliation, all of which indicated that eastern Colorado is a part of their traditional territory.

Officials of The Colorado College have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains listed above represent the physical remains of eight individuals of Native American ancestry. Officials of The Colorado College also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Apache Tribe of Oklahoma; Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Joyce Eastburg, Legal Assistant, The Colorado College, 14 East Cache La Poudre Street, Colorado Springs, CO 80903, telephone (719) 389–6703, before December 26, 2003. Repatriation of the human remains to the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado may proceed after that date if no additional claimants come forward.

The Colorado College is responsible for notifying the Apache Tribe of Oklahoma; Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah that this notice has been published.

Dated: October 28, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–29508 Filed 11–25–03; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: The Colorado College, Colorado Springs, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of The Colorado College, Colorado Springs, CO. The human remains were removed from Cimarron County, OK, and Baca County, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by The Colorado College professional staff in consultation with representatives of the Apache Tribe of Oklahoma; Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

In October 1973, human remains representing one individual were removed from site 34CI267, feature NCE3 RS2, Cimarron County, OK, by archeology field school students under the direction of Professor Michael Nowak of The Colorado College Anthropology Department. The burial had been disturbed prior to discovery. The human remains were curated in the Anthropology Department Archaeology Laboratory in Palmer Hall and transferred in 1989 to the Biological Anthropology Research Laboratory of Barnes Science Center (Accession no. 1980.2.1). No known individuals were identified. No associated funerary objects are present. Cranial morphology indicates that the human remains are Native American.

In October 1979, human remains representing one individual were removed from site 5BA317, Baca County, CO, by archeology field school students under the direction of Professor Michael Nowak. The human remains were curated in The Colorado College Anthropology Department Archaeology Laboratory in Palmer Hall and were transferred in 1989 to the Biological Anthropology Research Laboratory of Barnes Science Center (Accession no. 1980.2.2). No known individuals were identified. No associated funerary objects are present. Cranial morphology indicates that the human remains are Native American.

The map ''Indian Land Areas Judicially Established 1978'' indicates that Cimarron County, OK, and Baca County, CO, were aboriginally occupied by the Apache, Comanche, and Kiowa tribes. The map ''Early Indian Tribes, Culture Areas, and Linguistic Stocks'' establishes the presence of the Kiowa in Cimarron and Baca Counties at the time of contact. The Southern Ute Indian Tribe map ''Original Ute Domain'' includes Cimarron and Baca Counties as a part of the hunting ground of the Ute, but Mr. Neil Cloud, NAGPRA representative, Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado stated that the area is too far east. Official tribal representatives from the Cheyenne-Arapaho Tribes of Oklahoma; Comanche Nation, Oklahoma; and Mescalero Apache Tribe of the Mescalero Reservation, New Mexico provided folklore, oral tradition, geographical, and historical evidence of cultural affiliation, all of which

indicated that Cimarron County, OK, and Baca County, CO, are part of their traditional territory.

Officials of The Colorado College have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of The Colorado College also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Apache Tribe of Oklahoma; Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; and Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Joyce Eastburg, Legal Assistant, The Colorado College, 14 East Cache La Poudre Street, Colorado Springs, CO 80903, telephone (719) 389–6703, before December 26, 2003. Repatriation of the human remains to the Apache Tribe of Oklahoma; Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; and Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana may proceed after that date if no additional claimants come forward.

The Colorado College is responsible for notifying the Apache Tribe of Oklahoma; Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah that this notice has been published.

Dated: October 28, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–29509 Filed 11–25–03; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Denver Art Museum, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of Native American associated funerary objects in the possession of the Denver Art Museum, Denver, CO. The associated funerary objects were removed from an unidentified location in Arizona.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the associated funerary objects was made by Denver Art Museum professional staff in consultation with representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

At an unknown date prior to 1972, one ceramic jar and six shell fragments were acquired by Ralph Ray of Wheatridge, CO. The ceramic jar is buff in color and made of micaceous clay. It measures 16.4 cm high and 17.3 cm in diameter and features one loop handle on the rim. The ceramic jar is similar to plainware types typically found at Hohokam sites in Arizona. The shell fragments represent as many as three different types of Glycymeris. The ceramic jar and shell fragments were donated to the Denver Art Museum in 1972. According to Denver Art Museum documentation, the jar originally held cremated human remains. No evidence shows that the human remains were ever accessioned by the Denver Art Museum. A rattlesnake rattle found inside the jar is thought to have been added after the jar was acquired by the Denver Art Museum.

Archeological evidence has demonstrated that pit or urn cremations were the predominant Hohokam burial practice prior to A.D. 1100. Extended supine inhumations then became more prevalent, completely replacing cremations by A.D. 1300. Officials of the Denver Art Museum recognize that while ceramic jars and shells had other uses within Hohokam culture, the assembly of this particular ceramic jar and shell fragments was made exclusively for burial purposes.

Archeological evidence has demonstrated a strong relationship of shared group identity between the Hohokam and the present-day O'odham (Pima and Papago) and Hopi. The O'odham people are currently represented by the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona. In 1990, representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona issued a joint policy statement claiming ancestral ties to the Hohokam cultural traditions.

Hopi oral tradition places the origins of their Patki, Sun, Sand, Corn, and Tobacco Clans south of the Colorado plateau. While the Hopi oral traditions do not identify specific locations, some of the descriptions are consistent with Hohokam settlements in central Arizona during the Classic period. O'odham oral traditions indicate that some of the Hohokam people migrated north and joined the Hopi. In 1994, representatives of the Hopi Tribe of Arizona issued a statement claiming cultural affiliation with Hohokam cultural traditions.

Zuni oral traditions mention Hawikuh, a Zuni community, as a destination of settlers from the Hohokam area. Zuni language, prayers, and rituals used by the Zuni Shu maakwe medicine society have descended from the Hohokam. In 1995, representatives of the Zuni Tribe of the Zuni Reservation, New Mexico issued a statement claiming cultural affiliation with the Hohokam cultural traditions.

Officials of the Denver Art Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the seven cultural items are reasonably believed to have been made exclusively for burial purposes or to contain human remains. Officials of the Denver Art Museum also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), there is a relationship of shared group identity that can be reasonably traced between the associated funerary objects and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the associated funerary objects should contact Nancy J. Blomberg, Curator of Native Arts, Denver Art Museum, 100 West 14th Avenue Parkway, Denver, CO 80204, telephone (720) 913–0161 before December 26, 2003. Repatriation of the associated funerary objects to the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Denver Art Museum is responsible for notifying the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: October 28, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–29506 Filed 11–25–03; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Illinois State Museum, Springfield, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of Illinois State Museum, Springfield, IL. The human remains were removed from Fort Robinson, Dawes County, NE.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Illinois State Museum professional staff in consultation with representatives of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; and Standing Rock Sioux Tribe of North & South Dakota.

Prior to 1962, human remains representing one individual were removed from Fort Robinson, Nebraska, by an unidentified person or persons. The remains were later donated to the Quincy Museum of Natural History and Art, Quincy, IL. In 1991, the Quincy Museum of Natural History and Art transferred possession and control of the human remains to the Illinois State Museum. The transfer inventory identifies the remains as ''Sioux female. Fort Robinson, Neb.'' No known individual was identified. No associated funerary objects are present.

The cranial morphology of the human remains indicates that the individual is likely to be Native American. Fort Robinson was an important military post in the Sioux territory. The Sioux Indians are represented by six present-day Indian tribes, the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; and Standing Rock Sioux Tribe of North & South Dakota.

Officials of the Illinois State Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Illinois State Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; and Standing Rock Sioux Tribe of North & South Dakota.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Robert E. Warren, Curator of Anthropology, Illinois State Museum, 1011 East Ash Street, Springfield, IL, telephone (217) 524–7903, before December 26, 2003. Repatriation of the human remains to the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; and Standing Rock Sioux Tribe of North & South Dakota may proceed after that date if no additional claimants come forward.

The Illinois State Museum is responsible for notifying the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; and

Standing Rock Sioux Tribe of North & South Dakota that this notice has been published.

Dated: September 10, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–29510 Filed 11–25–03; 8:45 am]

BILLING CODE ????–??–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Idaho, Alfred W. Bowers Laboratory of Anthropology, Moscow, ID

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Idaho, Alfred W. Bowers Laboratory of Anthropology, Moscow, ID. The human remains and associated funerary objects were removed from unknown locations in central and southern Arizona.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the University of Idaho, Alfred W. Bowers Laboratory of Anthropology professional staff in consultation with representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona.

At an unknown date, human remains representing a minimum of five individuals were removed from unknown locations in central and southern Arizona by unidentified persons. The human remains were gifted to the Museum of the Rockies in Bozeman, MT, by an unknown person at an unknown date. In 1988, the human remains were transferred to the University of Idaho, Alfred W. Bowers Laboratory of Anthropology. No known individuals were identified. The five associated funerary objects in which the cremated human remains were buried are one Gila Red ceramic vessel, two Tanque Verde Red-on-Brown ceramic vessels, and two Hohokam Plain ceramic vessels.

Archeological evidence indicates that the Gila Red, Tanque Verde Red-on-Brown, and Hohokam Plain pottery types are clearly associated with the Classic period (A.D. 1250–1350) of the Hohokam culture of central and southern Arizona. Archeological evidence indicates that pit or urn cremations were a common Hohokam burial practice. Archeological evidence and oral traditions demonstrate a strong relationship of shared group identity between the Hohokam and the present-day Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona.

Officials of the University of Idaho, Alfred W. Bowers Laboratory of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of five individuals of Native American ancestry. Officials of the University of Idaho, Alfred W. Bowers Laboratory of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the five objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Idaho, Alfred W. Bowers Laboratory of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Leah K. Evans-Janke, University of Idaho, Alfred W. Bowers Laboratory of Anthropology, Moscow, ID 83844–1111, telephone (208) 885–3733, before December 26, 2003. Repatriation of the human remains and associated funerary objects to the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona may proceed after that date if no additional claimants come forward.

The University of Idaho, Alfred W. Bowers Laboratory of Anthropology is responsible for notifying Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona that this notice has been published.

Dated: October 21, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–29504 Filed 11–25–03; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Idaho, Alfred W. Bowers Laboratory of Anthropology, Moscow, ID, and the U.S. Department of Agriculture, Forest Service, Wallowa-Whitman National Forest, Baker City, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Idaho, Alfred W. Bowers Laboratory of Anthropology, Moscow, ID, and in the control of the U.S. Department of Agriculture, Forest Service, Wallowa-Whitman National Forest, Baker City, OR. The human remains and associated funerary objects were removed from burial sites in Nez Perce County, ID.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human

remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the University of Idaho, Alfred W. Bowers Laboratory of Anthropology professional staff in consultation with representatives of the Nez Perce Tribe of Idaho.

On September 27–28, 1986, human remains representing a minimum of two individuals were removed from the Cottonwood Creek site (10NP182), Nez Perce County, ID, by Dr. Frank Leonardy. Dr. Leonardy's excavation was part of a criminal investigation of an illegal excavation of archeological resources on public land without a permit pursuant to the Archaeological Resources Protection Act, 16 U.S.C. 470cc (a). No known individuals were identified. The 29 associated funerary objects are 5 dentalia beads, 2 bags of dentalia fragments, 8 bags of ochre, 12 bags of unidentifiable bone fragments, and 2 bags of mixed dentalia and bone.

Archeological evidence indicates that the burials at the Cottonwood Creek site predate A.D. 1805. During consultation, a representative of the Nez Perce Tribe of Idaho indicated that the Nez Perce Tribe of Idaho is directly related to the people who were buried at the Cottonwood Creek site. The Cottonwood Creek site is located within the area ceded by the Nez Perce to the United States pursuant to the Nez Perce Treaty of June 9, 1863 (14 Stat. 647), and is located within the area recognized by a final judgment of the Indian Claims Commission as the aboriginal land of the Nez Perce Tribe of Idaho (18 Ind. Cl. Comm. 1, 1967).

Officials of the University of Idaho, Alfred W. Bowers Laboratory of Anthropology and Wallowa-Whitman National Forest have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the University of Idaho, Alfred W. Bowers Laboratory of Anthropology and Wallowa-Whitman National Forest also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 29 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Idaho, Alfred W. Bowers Laboratory of Anthropology and Wallowa-Whitman National Forest have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Nez Perce Tribe of Idaho.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Leah K. Evans-Janke, University of Idaho, Alfred W. Bowers Laboratory of Anthropology, Moscow, ID 83844–1111, telephone (208) 885–3733, before December 26, 2003. Repatriation of the human remains and associated funerary objects to the Nez Perce Tribe of Idaho may proceed after that date if no additional claimants come forward.

The University of Idaho, Alfred W. Bowers Laboratory of Anthropology is responsible for notifying the Nez Perce Tribe of Idaho that this notice has been published.

Dated: October 22, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–29505 Filed 11–25–03; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Realty Action—Proposed Exchange of Federally Owned Land for Privately Owned Land, Both Within Kane County, UT, Glen Canyon National Recreation Area

SUMMARY: Pursuant to the authority contained in the Act of July 1, 2003, (Pub. L. 108–43, 117 Stat. 841), the Secretary of the Interior has been authorized to acquire certain lands by exchange and is authorized, upon completion of said exchange, to revise the boundaries of Glen Canyon National Recreation Area accordingly.

DATES: The effective date for this notice shall be the date of the **Federal Register** publication in which this notice appears.

FOR FURTHER INFORMATION CONTACT: Realty Officer, Land Resources Program Center, Intermountain Region, P.O. Box 728, Santa Fe, New Mexico, 87504–9728, 505–988–6810.

SUPPLEMENTARY INFORMATION: The above-cited Act authorizes the Secretary of the Interior to exchange certain privately owned lands adjacent to Glen Canyon National Recreation Area for federally owned lands within the recreation area boundary. Upon completion of this exchange, the boundaries of Glen Canyon National Recreation Area will be revised to add the parcel now adjacent to the recreation area and to exclude the parcel now inside the recreation area. Land added to the recreation area shall be administered as part of the park in accordance with the laws and regulations applicable thereto. The lands to be exchanged are generally described as follows:

Federally Owned Parcel

Tract No. 06–128, a parcel of land in Section 5, Township 44 South, Range 3 East, Salt Lake Base and Meridian, containing 312.50 acres, more or less.

Privately Owned Parcel

Tract No. 06–127, a parcel of land in Section 32, Township 43 South, Range 3 East, Salt Lake Base and Meridian, containing 122.93 acres, more or less.

The value of the properties exchanged shall be determined by a current fair market value appraisal. If they are not approximately equal, the following applies: In the event the federally owned property is higher in value than the privately owned property, the values shall be equalized by cash payment in order to complete the exchange. If the privately owned property is higher in value than the federally owned property, no cash payment to equalize values shall be made.

For a period of 45 calendar days from the date of this notice, interested parties may submit comments to the above address. Adverse comments will be evaluated, and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, this realty action will become the final determination of the Department of the Interior.

Dated: October 7, 2003.

Stephen P. Martin,

Regional Director, Intermountain Region, National Park Service.

[FR Doc. 03–29500 Filed 11–25–03; 8:45 am]

BILLING CODE 4312–ED–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Draft Site Progress Report to the World Heritage Committee, Yellowstone National Park

AGENCY: National Park Service, Interior.

SUMMARY: Pursuant to the Decision adopted by the 27th Session of the World Heritage Committee (Document: WHC–03/27.COM/7A.12) accepted by the United States Government, the National Park Service (NPS) announces the publication for comment of a Draft Site Progress Report to the World Heritage Committee for Yellowstone National Park, Wyoming and Montana.

DATES: There will be a 30-day public review period for comments on this document. Comments must be received on or before December 26, 2003.

ADDRESSES: The Draft Site Report is included in the supplementary information section of this notice. Copies are also available by writing to Suzanne Lewis, Superintendent, Yellowstone National Park, P.O. Box 168, Yellowstone National Park, WY 82190–0168; by telephoning 307–344–2002; by sending an e-mail message to *yell_world_heritage@nps.gov;* or by picking up a copy in person at the park's headquarters in Mammoth Hot Springs, Wyoming, 82190. The document is also posted on the park's Web site at *http://www.nps.gov/yell/publications/worldheritage/*.

FOR FURTHER INFORMATION CONTACT: Suzanne Lewis, Superintendent, Yellowstone National Park, P.O. Box 168, Yellowstone National Park, WY 82190–0168, or by calling 307–344–2002.

SUPPLEMENTARY INFORMATION:

A. The World Heritage Committee Decision

In 1995, the World Heritage Committee, with the agreement of the United States, placed Yellowstone National Park, a designated World Heritage site, on its List of World Heritage in Danger in response to specific threats it identified to the outstanding universal value of the park. At its 27th Session in July 2003, the Committee decided to remove the park from the Danger List. The decision (27 COM 7A.12) is conveyed below:

The World Heritage Committee,

1. *Notes* the detailed report by the State Party provided on April 17, 2003;

2. *Urges* the State Party to continue to report on Yellowstone's snowmobile phase-out and other efforts to ensure that winter travel facilities respect the protection of the Park, its visitors, and its wildlife;

3. *Recommends* that the State Party continue its efforts in ensuring the McLaren Mine tailings are not contaminating the property;

4. *Recognizes* the progress made in addressing all the key issues that led to Danger Listing of the property in 1995 and considers that the reasons for retaining the property on this List no longer exist;

5. *Congratulates* the State Party for the considerable efforts and suggests to use this as a model case for promoting success stories of the World Heritage Convention and for international co-operation with other States Parties facing similar problems in World Heritage properties;

6. *Decides* to remove the property from the List of World Heritage in Danger.

7. *Invites* the State Party:

(a) to continue its commitment to address the issues that have concerned the Committee in the past;

(b) to provide to the World Heritage Centre by 1 February 2004, existing recovery plans setting out targets and indicators for the 6 remaining long-term management issues (mining activities outside the park, threats to bison, threats to cutthroat trout, water quality issues, road impacts, visitor use impacts);

(c) to continue to report to the Committee on the condition of the original threats and the progress made towards resolving these issues until such time that the Committee decides that the reports are no longer needed. These reports shall include public input, including—but not limited to—independent experts, NGOs, and other key stakeholders.

B. The NPS's Draft Site Report

In accordance with the Committee's request included in its decision to remove the park from the Danger List, the NPS has prepared a Site Report to continue to provide information to the World Heritage Committee on the original threats and the progress made towards resolving these issues. The Site Report provides a synopsis of the current status of the six specific threats outlined in 7(b) of the Committee's decision. The full text of the draft Site Report is as follows.

Yellowstone National Park Site Progress Report to the World Heritage Committee, October 2003

Introduction

The World Heritage Committee (WHC) named Yellowstone National Park as a World Heritage Site in Danger on December 5, 1995. In its report, the committee cited specific threats and dangers that were already affecting, were beginning to affect, or had potential to seriously derogate the outstanding universal value for which Yellowstone National Park was established as the nation's first national park. At the Paris meeting in June 2003, the WHC recognized that significant progress at Yellowstone had been made to effectively address the issues that caused the park to be listed, and removed the park from the list.

In removing the park from the list of troubled sites, the WHC recognized this progress, but also acknowledged that more work needed to be done on each of these issues. They also acknowledged the park's problems were complex and had developed over a long period of time, and they were not going to be resolved easily or quickly.

This report is an additional status report on the progress Yellowstone National Park has made on the 1995 threats and dangers topics listed by the World Heritage Committee.

Mining Activities

Threat in 1995: The New World Mine was a major Crown Butte Mines, Inc. proposal to reopen an older mining area on patented and U.S. Forest Service lands to new gold and silver harvest. The site was adjacent to the Absaroka-Beartooth Wilderness area (Gallatin National Forest) and Yellowstone National Park and was perceived to be a major threat to the resources of both areas.

Outcome: The U.S. Government and Crown Butte Mines, Inc. signed an agreement in 1996 to refrain from mining these lands, and the Congress appropriated $65 million for the acquisition of lands and interests, including cleanup of toxic overburden and tailings left over from a century of previous mining activity.

Status: The new mining proposal was shelved and most of the property was transferred to public domain. Cleanup of toxic materials from past mining started in 2000 and is expected to take seven years, but post-project maintenance will be funded in perpetuity. The McLaren tailings were left out of the clean up agreement and while the tailings (which are outside Yellowstone) have stabilized and water quality inside the park has improved, the park continues to work with its state and federal neighbors to have the tailings removed and the site restored.

Threats to Bison

Threat in 1995: Some of Yellowstone's bison are infected with Brucella abortus, the agent that causes the disease Brucellosis, and bison occasionally roam outside park boundaries. These bison may potentially transmit brucella to livestock grazing outside the park, which could, in turn, jeopardize the ''Brucellosis Free'' status of bordering states. Accordingly, the states view the presence of brucella in park wildlife as a significant economic threat to the livestock industry. Sometimes when animals migrate out of the park they are lethally removed, especially when wildlife population numbers are high and the winters are severe.

Outcome: In 2000, Yellowstone National Park, State of Montana, U.S. Forest Service, and USDA Plant and Animal Health Inspection Service cosigned a joint bison management plan that agreed to maintain wildlife populations and manage the risk of transmission from bison to cattle within the State of Montana. It is a long-term plan that should manage risks currently, and set the stage for future discussions about eradication of the disease. It is also an incremental plan that becomes more wildlife-friendly and lowers transmission risk to cattle with each incremental success.

Status: This carefully crafted consensus-based plan has been serially and successfully implemented for three years, and while not universally supported, many believe it addresses the major issues regarding the risk of brucellosis transmission from wildlife to livestock. While those actions are being implemented, discussions and research are currently underway to consider ways to eventually eliminate brucellosis from wildlife in the Greater Yellowstone Area while maintaining wild and free-ranging wildlife herds. For example, planning for bison vaccination and the development of a remote delivery system is underway, and the agencies are actively discussing a quarantine system external to the park to make bison available for other suitable western areas, and to help reduce bison deaths at the boundary.

Threats to Cutthroat Trout

Threats in 1995: In 1994, voracious, predatory, non-native lake trout and exotic

trout whirling disease were discovered in Yellowstone Lake threatening the existence of the rare, endemic Yellowstone cutthroat trout, plus 42 other native birds and mammals that depend on cutthroats for their own survival. It could also potentially destroy a sport fishery that had a $36 million annual value.

Outcome: Experts on both fish species concluded that the risk of functional extinction of the native trout was real and substantial, but that no technology exists to eradicate lake trout from the lake nor treat or control the trout disease. In the near future, the best that could be hoped for was long-term suppression of lake trout, through the deployment of ''industrial strength gillnets,'' to restore the declining cutthroat trout population. This was implemented by NPS beginning in 1995 targeting the estimated 7,000 reproducing adult lake trout extant that year. In addition, a no-limit, no-live-release regulation for lake trout with sport anglers was also put into effect and continues to date. Considerable research and monitoring continues on the whirling disease dilemma.

Status: Gillnet fishing effort has increased each year and has resulted in the destruction of approximately 56,000 adult and juvenile lake trout. Catch-per-unit-effort declined in 2002, and again in 2003, and for the first time gave biologists hope exploitation was beginning to affect the population. Sport angling for lake trout has been actively promoted and the angler catch has represented a helpful 20 percent of the total harvest. Research continues to seek tools for combating whirling disease.

Water Quality Issues

Threats in 1995: Yellowstone National Park hosts almost five million visitor use days annually. Old, outdated waste treatment plants, lift stations, and underground lines, and older single wall fuel tanks were causing an unacceptable level of accidental overflows, ruptures, and spills affecting soils, ground and surface waters degrading localized wild lands. In 1995, the failing Norris wastewater treatment plant was closed after recommendations of the U.S. Public Health Service.

Outcome: All of the park's fuel storage tanks have been replaced with new double-walled liquid tanks or replaced with more environmentally friendly propane gas tanks. Congress appropriated monies to replace the Old Faithful, Madison, and Norris sewage treatment plants and those projects are underway or completed. Older or problematic lift stations, lines, grease traps have been replaced at many locations in the park. Yellowstone is a leader in sustainability through its ''Greening of Yellowstone'' program, which is identifying ways to accomplish its work at less cost and with fewer environmental impacts. A regional compost facility was opened in 2003, for example, and is tangible evidence of the effectiveness of the ''Greening'' initiative. In addition, the use of biodiesel and ethanol has been an increasing part of park transportation, which has a positive benefit on both air and water.

Status: Yellowstone has made excellent progress addressing threats to water quality and believes that scheduled programs are in place and will continue to resolve the smaller scale projects remaining to be upgraded.

Road Impacts

Threats in 1995: Yellowstone's road system was never designed for the volume, size, and weight of vehicles that travel through the park today. The park maintains 466 miles of roads of which 310 are paved and considered primary roads for the public. The remaining 156 miles are paved or gravel secondary roads for service and/or light public use. The condition of the road system in 1995 was considered deplorable.

Outcome: Yellowstone has an integrated, methodical and long-term program to improve the condition of the park's roads and lessen unsafe conditions and unsatisfactory experiences for visitors and prevention of resource degradation. An annual funded program of complete road bed and/or surface replacement is expected to continue through 2017.

Status: Much has been accomplished upgrading the existing road system since 1995, but it is a slow process because of the short construction season and the reality that reconstruction must be reasonably compatible with summer visitors. As noted above, the current program will be carried out annually through the year 2017, which should largely correct the structural deficiencies. In 2003, Yellowstone issued its Business Plan; its statement of operational needs for the next five years. In that plan, deficiencies in road cyclical maintenance are articulated and would keep those new roads in top, non-deteriorating condition. All federal programs, such as road maintenance, are subject to federal appropriations.

Visitor Use Impacts

Threats in 1995: Increasing visitor pressures on the natural and cultural resources of the park have been of concern to managers for many years. More recently, the quality of a visitor's Yellowstone experience in terms of sights, sounds and smells has also been extensively debated. Concerns have been raised most strongly regarding winter use in the park, but the crowds of summer are also a concern to many people. The numbers of visitors in the park, whether summer or winter, is a contentious subject with the U.S. public.

Outcome: The completion of an EIS on a new winter use management plan and a Record of Decision in 2000, called for protecting visitor safety and enjoyment, air quality, wildlife, and the natural quiet of Yellowstone by phasing out snowmobile use over a three year period, and replacing them with non-polluting, mass transit snow coaches. The decision was challenged in federal court. A subsequent lawsuit settlement stipulated the NPS would prepare a supplemental EIS (SEIS) analyzing the snowmobile ban and various alternatives to the ban. The draft SEIS was released to the public in 2002 and generated over 350,000 public comments. The final SEIS was released in February 2003, and a Record of Decision signed on March 25, 2003, which approved the new winter use plan. The NPS decision allows for continued snowmobile use under strict limitations, establishing daily use limits, requiring the use of the cleaner and quieter, 4-stroke engines, and requiring snowmobile parties to be guided.

Status: The NPS believes the decision addresses winter use related issues and the park's goals of protecting park resources, protecting employee and visitor health and safety, and improving the quality of the visitor experience. Litigation has been initiated regarding the Record of Decision and new management plan but the park intends to implement the plan in December 2003. Summer, fall and spring visitation has been consistently below the high level experienced in 1995. The park has focused on development of partnerships that have encouraged use of alternate fuels for transportation and facilities. These partnerships will help the park and communities foster a region-wide approach to providing visitors and voluntary alternative modes of transportation.

C. Public Comment Solicitation

Persons wishing to comment may do so by any one of several methods. They may mail comments to Suzanne Lewis, Superintendent, Yellowstone National Park, P.O. Box 168, Yellowstone National Park, WY 82190–0168. They also may comment via e-mail to *yell_world_heritage@nps.gov* (include name and return address in the e-mail message). Finally, they may hand-deliver comments to park headquarters in Mammoth Hot Springs, Wyoming, 82190.

The NPS practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identify, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

A. Durand Jones,

Deputy Director.

[FR Doc. 03–29502 Filed 11–25–03; 8:45 am]

BILLING CODE 4312–FR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

California Bay-Delta Public Advisory Committee Public Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the California Bay-Delta Public Advisory Committee will meet jointly with the California Bay-Delta Authority on December 11, 2003. The agenda for the joint meeting will include recommendations on a Delta Improvements Package, CALFED Bay-Delta Program implementation and future priorities, the 2003 Annual Report, and grant programs, and a presentation on Southern California Regional Highlights.

DATES: The meeting will be held Thursday, December 11, 2003, from 9 a.m. to 5 p.m. If reasonable accommodation is needed due to a disability, please contact Pauline Nevins at (916) 445–5511 or TDD (800) 735–2929 at least 1 week prior to the meeting.

ADDRESSES: The meeting will be held at the Sheraton Hotel in the Grand Ballroom, 1230 J Street, Sacramento, California.

FOR FURTHER INFORMATION CONTACT: Eugenia Laychak, California Bay-Delta Authority, at (916) 445–5511, or Diane Buzzard, U.S. Bureau of Reclamation, at (916) 978–5022.

SUPPLEMENTARY INFORMATION: The Committee was established to provide recommendations to the Secretary of the Interior, other participating Federal agencies, the Governor of the State of California, and the California Bay-Delta Authority on implementation of the CALFED Bay-Delta Program. The Committee makes recommendations on annual priorities, integration of the eleven Program elements, and overall balancing of the four Program objectives of ecosystem restoration, water quality, levee system integrity, and water supply reliability. The Program is a consortium of State and Federal agencies with the mission to develop and implement a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the San Francisco/Sacramento and San Joaquin Bay Delta.

Committee and meeting materials will be available on the California Bay-Delta Authority website at *http://calwater.ca.gov* and at the meeting. This meeting is open to the public. Oral comments will be accepted from members of the public at the meeting and will be limited to 3–5 minutes.

(Authority: The Committee was established pursuant to the Department of the Interior's authority to implement the Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et seq.,* the Endangered Species Act, 16 U.S.C. 1531 *et seq.,* and the Reclamation Act of 1902, 43 U.S.C. 371 *et seq.,* and the acts amendatory thereof or supplementary thereto, all collectively referred to as the Federal Reclamation laws, and in particular, the Central Valley Project Improvement Act, Pub. L. 102–575.)

Dated: November 7, 2003.

Allan Oto,

Special Projects Officer, Mid-Pacific Region.

[FR Doc. 03–29528 Filed 11–25–03; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–500]

In the Matter of Certain Purple Protective Gloves; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 23, 2003, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Kimberly-Clark Corporation of Irving, Texas and Safeskin Corporation of Roswell, Georgia. A letter supplementing the complaint was filed on November 17, 2003. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain purple protective gloves by reason of infringement of U.S. Registered Trademark Nos. 2,596,539, 2,533,260, and 2,593,382. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's rules of practice and procedure, 19 CFR 210.10 (2003).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 19, 2003, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain purple protective gloves by reason of infringement of U.S. Registered Trademark No. 2,596,539, 2,533,260, or 2,593,382, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Kimberly-Clark Corporation, 351 Phelps Drive, Irving, Texas 75038.

Safeskin Corporation, 1400 Holcomb Bridge Road, Roswell, Georgia 30076.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

The Delta Group, 4250 River Green Parkway, NW., Duluth, Georgia 30136.

Delta Hospital Supply, Inc., 31 Astor Avenue, Norwood, Massachusetts 02062.

Delta Medical Systems, Inc., 6865 Shiloh Road E., Suite 400, Alpharetta, Georgia 30005.

Delta Medical Supply Group, Inc., 436 W. Gay Street, West Chester, Pennsylvania 19380.

Medtexx Partners, 216 Charles Street, Hackensack, New Jersey 07601.

Latexx Partners Berhad, 62–3, Jalan 5/101C, Cheras Business Centre, Off Jalan Kaskas, 56100 Kuala Lumpur, Malaysia.

Dash Medical Gloves, Inc., 10180 South 54th Street, Franklin, Wisconsin 53132.

(c) Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Delbert R. Terrill, Jr. is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's rules of practice and procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

Issued: November 20, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–29562 Filed 11–25–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–038]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: December 2, 2003, at 9:30 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1023 (Final) (Certain Ceramic Station Post Insulators from Japan)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before December 12, 2003.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: November 24, 2003.

By order of the Commission:

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–29645 Filed 11–24–03; 11:13 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Extension of Comment Period Regarding Consent Judgment Lodged Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act

On October 17, 2003, Notice was published in the **Federal Register** that on September 30, 2003, a proposed Consent Judgment in *United States* v. *City of Glen Cove, et al,* Civil Action No. CV–03–4975, was lodged with the United States Court for the Eastern District of New York. 68 FR 59819 (''Notice''). The Notice described the proposed Consent Judgment and set forth the intention of the United States Department of Justice to receive any comments concerning the proposed Consent Judgment for a period of thirty (30) days from the date of the publication of the Notice.

Notice is hereby given that, consistent with 42 U.S.C. 9622(d) and 28 CFR 50.7, and in response to a request received, the United States will receive comments regarding the proposed Consent Judgment for an additional fifteen (15) days, until December 2, 2003.

Reference should be made to the Notice for a description of the proposed Consent Judgment and for the procedure to be followed in order to comment thereon.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–29606 Filed 11–25–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,732]

Agere Systems, Inc., Reading, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 20, 2003, applicable to workers of Agere Systems, Inc., Reading, Pennsylvania. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce integrated circuits and are not separately identifiable by product line.

New findings show that there was a previous certification, TA–W–39,437, issued on August 29, 2001, for workers of Agere Systems, Integrated Circuits Div., Reading, Pennsylvania who were engaged in employment related to the production of integrated circuits. That certification expired August 29, 2003. To avoid an overlap in worker group coverage, this certification is being amended to change the impact date from August 15, 2002 to August 30, 2003, for workers of the subject firm.

The amended notice applicable to TA–W–52,732 is hereby issued as follows:

Workers of Agere Systems, Inc., Reading, Pennsylvania, engaged in employment related to the production of integrated circuits, who became totally or partially separated from employment on or after August 30, 2003, through October 20, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 3rd day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29537 Filed 11–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,656]

Agere Systems, Inc., Allentown, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 7, 2003, applicable to workers of Agere Systems, Inc., Allentown, Pennsylvania. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce integrated circuits and are not separately identifiable by product line.

New findings show that there was a previous certification, TA–W–39,449, issued on August 29, 2001, for workers of Agere Systems, Integrated Circuits Div., Allentown, Pennsylvania who were engaged in employment related to the production of integrated circuits. That certification expired August 29, 2003. To avoid an overlap in worker group coverage, this certification is being amended to change the impact date from August 15, 2002 to August 30, 2003, for workers of the subject firm.

The amended notice applicable to TA–W–52,656 is hereby issued as follows:

Workers of Agere Systems, Inc., Allentown, Pennsylvania, engaged in employment related to the production of integrated circuits, who became totally or partially separated from employment on or after August 30, 2003, through October 7, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 3rd day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29538 Filed 11–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,946]

Arkansas Metal Castings, Inc., Fort Smith, AR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 24, 2003 in response to a petition filed on behalf of workers of Arkansas Metal Castings, Forth Smith, Arkansas.

The Department has been unable to locate company officials of the subject firm or to obtain the information necessary to reach a determination on worker group eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 3rd day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29539 Filed 11–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,400]

CapitaL City Press, Publication Services Division, Barre, VT; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 31, 2003 in response to a worker petition which was filed on behalf of workers at Capital City Press, Publication Services Division, Barre, Vermont.

An active certification covering the petitioning group of workers is already in effect (TA–W–50,315, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 6th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29535 Filed 11–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,315]

Capital City Press, Inc., Publication Services Division, Barre, VT; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 29, 2003, applicable to workers of Capital City Press, Inc., Barre, Vermont. The notice was published in the **Federal Register** on Februrary 24, 2003 (68 FR 8620).

At the request of the company, the Department reviewed the certification for workers of the subject firm. Findings show that the Department limited its certification coverage to workers of the subject firm engaged in typesetting printing production.

New company information shows that worker separations involving the remaining worker groups will occur at the Barre, Vermont location of the subject firm. The Publication Services Division of the subject firm encompasses all production processes at the Barre, Vermont location. The Publication Services Division provides typesetting, proofreading and digital imaging (scanning) necessary to prepare pages for the typesetting printing production.

It is the intent of the Department to include all workers of Capital City Press, Publication Services Division, who were adversely affected by increased imports.

The amended notice applicable to TA-W–50,315 is hereby issued as follows:

All workers of Capital City Press, Inc., Publication Services Division, Barre, Vermont, who became totally or partially separated from employment on or after December 10, 2001, through January 29, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 6th day of November 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29550 Filed 11–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,403]

Clariant Corporation, Oak Creek, WI; Notice of Revised Determination on Reconsideration

By application of June 12, 2003, a company official requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on April 30, 2003, based on the finding that criterion 3(A) (the workers' firm is a supplier and the component parts it supplied for the primary firm accounted for at least 20 percent of the production or sales of the workers' firm) and 3(B)(a loss of business by the workers' firm with the primary firm contributed importantly to the workers' separation or threat of separation) have not been met. The denial notice was published in the **Federal Register** on May 9, 2003 (68 FR 25060).

Pursuant to the receipt of the request for reconsideration, which included subject firm customers not provided in the initial investigation, it has become apparent that Clariant Corporation, Oak Creek, Wisconsin supplies component parts for leather and a loss of business with a manufacturers (whose workers were certified eligible to apply for adjustment assistance) contributed importantly to the workers separation or threat of separation.

Conclusion

After careful review of the facts obtained in the investigation, I determine that workers of Clariant Corporation, Oak Creek, Wisconsin qualify as adversely affected secondary workers under Section 222 of the Trade Act of 1974. In accordance with the provisions of the Act, I make the following certification:

All workers of Clariant Corporation, Oak Creek, Wisconsin, who became totally or partially separated from employment on or after April 1, 2002 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 17th day of October, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29543 Filed 11–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,676, et al.]

Defender Services, Inc., Working at Pillowtex Plant #1, Kannapolis, NC, et al.; Notice of Negative Determination Regarding Application for Reconsideration

By application of September 17, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of Pillowtex Plant #1, Kannapolis, North Carolina (TA–W–52,676), Pillowtex Plant #16, Salisbury, North Carolina (TA–W–52,676A), Pillowtex Plant #6, Concord, North Carolina (TA–W–52,676B) and Pillowtex Plant, Eden, North Carolina (TA–W–52,676C) to apply for Trade Adjustment Assistance (TAA). The decision notice was signed on September 9, 2003 and published in the **Federal Register** on October 10, 2003 (68 FR 58719).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Pillowtex Plant #1, Kannapolis, North Carolina (TA–W–52,676), Pillowtex Plant #16, Salisbury, North Carolina (TA–W–52,676A), Pillowtex Plant #6, Concord, North Carolina (TA–W–52,676B) and Pillowtex Plant, Eden, North Carolina (TA–W–52,676C) was denied because the ''upstream supplier'' group eligibility requirement of Section 222(b) of the Trade Act of 1974, as amended, was not met.

The ''upstream supplier'' requirement is fulfilled when the workers'' firm (or subdivision) is a supplier to a firm that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification. The workers of the subject firm did not act as an upstream supplier to a trade certified firm.

The petitioner notes that other contractors have been certified for trade adjustment assistance and thus appears to imply that the petitioning workers should be eligible for trade adjustment assistance as import impacted secondary workers.

When addressing the issue of import impact in a case of secondary impact, the Department considers whether the subject firm supplied a component in a product produced by a trade certified firm. As the subject firm did not produce a component used in the product of Pillowtex Corporation, the allegation of secondary import impact is invalid.

Further, the subject firm does not produce an article within the meaning of Section 222 of the Trade Act. Only in very limited instances are service workers certified for trade adjustment assistance, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for trade adjustment assistance. A further investigation revealed that the workers of Pillowtex Plant #1, Kannapolis, North Carolina (TA–W–52,676), Pillowtex Plant #16, Salisbury, North Carolina (TA–W–52,676A), Pillowtex Plant #6, Concord, North Carolina (TA–W–52,676B) and Pillowtex Plant, Eden, North Carolina (TA–W–52,676C) do not meet the criteria to be certified for trade adjustment assistance.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 3rd day of November, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29546 Filed 11–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,136]

Fairchild Semiconductor Corp., a Subsidiary of Fairchild Semiconductor International, Inc., Including Temporary Workers of Manpower, South Portland, ME; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 6, 2003, applicable to workers of Fairchild Semiconductor Corporation, a subsidiary of Fairchild Semiconductor International, Inc., South Portland, Maine. The notice was published in the **Federal Register** on August 18, 2003 (68 FR 49523).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that temporary workers of Manpower were employed at Fairchild Semiconductor Corporation to produce semiconductor devices at the South Portland, Maine location of the subject firm.

Based on these findings, the Department is amending this certification to include temporary workers of Manpower working at Fairchild Semiconductor Corporation, a subsidiary of Fairchild Semiconductor International, Inc., South Portland, Maine.

The intent of the Department's certification is to include all workers of Fairchild Semiconductor Corporation, a subsidiary of Fairchild Semiconductor International, Inc., who were adversely affected by increased imports.

The amended notice applicable to TA–W–52,136 is hereby issued as follows:

All workers of Fairchild Semiconductor Corporation, a subsidiary of Fairchild Semiconductor International, Inc., South Portland, Maine, including temporary workers of Manpower, producing semiconductor devices at Fairchild Semiconductor Corporation, a subsidiary of Fairchild Semiconductor International, Inc., South Portland, Maine, who became totally or partially separated from employment on or after June 9, 2002, through August 6, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 6th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29549 Filed 11–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,475]

Fieldcrest Cannon, Inc., a Subsidiary of Pillowtex Corporation, Including Leased Workers of Corestaff Agency, and Manpower, Scottsboro, AL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 5, 2003, applicable to workers of Fieldcrest Cannon, Inc., a subsidiary of Pillowtex Corp., Bath Division, including leased workers of Corestaff Agency, Scottsboro, Alabama. The notice was published in the **Federal Register** on October 10, 2003 (68 FR 58720).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that leased workers of Manpower were employed at Fieldcrest Cannon, Inc., a subsidiary of Pillowtex Corp., Bath Division to produce bath rugs at the Scottsboro, Alabama location of the subject firm.

Based on these findings, the Department is amending this certification to include leased workers of Manpower working at Fieldcrest Cannon, Inc., a subsidiary of Pillowtex Corp., Bath Div., Scottsboro, Alabama.

The intent of the Department's certification is to include all workers employed at Fieldcrest Cannon, Inc., Bath Division who were adversely affected by increased imports of bath rugs.

The amended notice applicable to TA–W–52,475 is hereby issued as follows:

All workers of Fieldcrest Cannon, Inc., a subsidiary of Pillowtex Corporation, Bath Division, Scottsboro, Alabama and leased workers of Corestaff Agency and Manpower producing bath rugs at Fieldcrest Cannon, Inc., a subsidiary of Pillowtex Corporation, Bath Division, Scottsboro, Alabama, who became totally or partially separated from employment on or after August 6, 2002, through September 5, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 6th day of November, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29547 Filed 11–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,284]

Fisher Pierce, Weymouth, MA; Notice of Revised Determination on Reconsideration

By application of August 26, 2003, a company official requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on July 31, 2003, based on the finding that imports of outdoor lighting controls and printed circuit boards (PCBs)did not contribute importantly to worker separations at the subject plant and no shift of production to a foreign source occurred. The denial notice was published in the **Federal Register** on August 18, 2003 (68 FR 49523).

To support the request for reconsideration, the company official supplied additional information not made available in the initial investigation. A review of this additional information revealed that the company shifted a significant portion of its production to Mexico, which is party to a free trade agreement with the United States.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Fisher Pierce, Weymouth, Massachusetts, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Fisher Pierce, Weymouth, Massachusetts, who became totally or partially separated from employment on or

after July 31, 2002, through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 20th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29548 Filed 11–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,154]

International Stone Products, Inc., Barre, VT; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 6, 2003, in response to a petition filed by the United Steelworkers of America, Local 4 on behalf of workers of International Stone Products, Inc., Barre, Vermont. The workers produced granite memorials.

The petitioning group of workers is covered by an active certification issued on October 24, 2003 and which remains in effect (TA–W–53,261). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 31st day of October, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29540 Filed 11–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,204]

Kokusai Semiconductor Equipment Corporation, Billerica Facility, Billerica, MA; Notice of Revised Determination on Reconsideration

By application of April 8, 2003, a petitioner requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on March 11, 2003, based on the finding that imports of vertical diffusion furnaces (200mm and 300mm wafers) did not contribute importantly to worker separations at the subject plant and no shift of production to a foreign source occurred. The denial notice was published in the **Federal Register** on March 26, 2003 (68 FR 14706).

Upon further review of the initial investigation, in the reconsideration process, it was revealed that subject firm customer(s) increased their import purchases of semiconductor testing equipment during the relevant period. It was further revealed that U.S. aggregate imports of electric furnaces and ovens for diffusion, oxidation or annealing of semiconductor wafers increased significantly during the relevant period.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Kokusai Semiconductor Equipment Corporation, Billerica Facility, Billerica, Massachusetts, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Kokusai Semiconductor Equipment Corporation, Billerica Facility, Billerica, Massachusetts, who became totally or partially separated from employment on or after November 16, 2001 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 27th day of October, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29544 Filed 11–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,834]

Levolor Kirsch Window Fashions, Levolor Home Fashions, Westminster, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 8, 2002, applicable to workers of Levolor Kirsch Window Fashions, Wood and Faux Wood Custom Window Coverings Department, Westminster, California. The notice was published in the **Federal Register** on April 24, 2002 (67 FR 20166). The certification was amended on July 15, 2003 to show that workers wages were paid under the unemployment insurance (U.I.) tax account for Levolor Home Fashions. The notice was published in the **Federal Register** on July 24, 2002 (67 FR 48486).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Findings show that the Department limited its certification coverage to the Wood and Faux Wood Customer Window Coverings Department who were engaged in the production of wood and faux wood window coverings at the subject firm.

Company information shows that the Westminster, California plant has closed down completely and has shifted production of wood and faux wood window coverings to Mexico.

It is the intent of the Department to include ''all workers'' of Levolor Kirsch Window Fashions, Levolor Home Fashions who were adversely affected by increased imports.

The amended notice applicable to TA–W–40,834 is hereby issued as follows:

All workers of Levolor Kirsch Window Fashions, Levolor Home Fashions, Westminster, California, who became totally or partially separated from employment on or after January 28, 2001 through April 8, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 4th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29536 Filed 11–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,959]

Maxxim Medical, Inc., Honea Path, SC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance, and

under Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), a Negative Determination Regarding Eligibility to Apply for Alternative Trade Adjustment Assistance on October 14, 2003, applicable to workers of Maxxim Medical, Inc., Honea Path, South Carolina. The notice will be published soon in the **Federal Register**.

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of surgical gloves.

Company information received during the Department's investigation stated that workers engaged in the production of surgical gloves at the plant possess skills that are easily transferable. New information provided by the company states that workers at the subject firm require skills that are unique to the surgeon glove manufacturing process. Therefore, workers' skills are not easily transferable.

Review of this information shows that all eligibility criteria under Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended have been met.

The amended notice applicable to TA–W–52,959 is hereby issued as follows:

All workers of Maxxim Medical, Inc., Honea Path, South Carolina, who became totally or partially separated from employment on or after September 19, 2002 through October 14, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 6th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29545 Filed 11–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,376]

Ocello, Inc., Now Known as H.H. Fessler Knitting Co., Inc., Bedford, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on September 21, 2001, applicable to workers of Ocello, Inc., Richland, Pennsylvania. The notice was published in the **Federal Register** on October 11, 2001 (68 FR 25060).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of knit garments until the company closed at the end of June, 2001.

New information shows that Ocello, Inc. became known as H.H. Fessler Knitting Co., Inc. in June 2002 due to a change in ownership. Workers separated from employment as the subject firm had their wages reported under a separated unemployment insurance (UI) tax account for H.H. Fessler Knitting Co., Inc.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Ocello, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–39,376 is hereby issued as follows:

All workers of Ocello, Inc., now known as H.H. Fessler Knitting Co., Inc., Richland, Pennsylvania, who became totally or partially separated from employment on or after May 17, 2000, through September 21, 2003, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 3rd day of November 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29553 Filed 11–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,185]

Pittsburgh Logistics Systems, Inc., a Subsidiary of Quadrivius, Inc., on Location at LTV Steel Corp., Independence, OH; Notice of Revised Determination

In accordance with the August 28, 2003 order of the United States Court of International Trade (USCIT) in Former Employees of *Pittsburgh Logistics Systems, Inc., Plaintiff* v. *United States Secretary of Labor, Defendant* (Court No. 02–00387), I make the following certification:

All workers of Pittsburgh Logistics Systems, Inc., A Subsidiary of Quadrivius, Inc., on location at LTV Steel Corp., Independence, Ohio who became totally or partially separated from employment on or after February 23, 2001, through two years from date of certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 30th day of October, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29542 Filed 11–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,874A and TA–W–41,874B]

Sebago, Inc., Now Known as Sebago USA, LLC, a Wholly Owned Subsidiary of Wolverine Worldwide, Westbrook, ME, and Gorham, ME; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 30, 2002, applicable to workers of Sebago, Inc., Westbrook, Maine and Gorham, Maine. The notice was published in the **Federal Register** on October 22, 2002 (67 FR 64923).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of men's and women's footwear.

New information shows that Wolverine Worldwide purchased the Westbrook, Maine and Gorham, Maine locations of Sebago, Inc. and is now known as Sebago USA, LLC, a wholly owned subsidiary of Wolverine Worldwide. Workers separated from employment at the Westbrook, Maine and Gorham, Maine locations of the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Sebago USA, LLC, a wholly owned subsidiary of Wolverine Worldwide.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Sebago, Inc., now known as Sebago USA, LLC, a wholly owned subsidiary of Wolverine Worldwide, Westbrook, Maine, and Gorham, Maine, who were adversely affected by increased imports.

The amended notice applicable to TA–W–41,874A and TA–W–41,874B are hereby issued as follows:

All workers of Sebago, Inc., now known as Sebago USA, LLC, a wholly owned subsidiary of Wolverine Worldwide, Westbrook, Maine (TA–W–41,874A) and Gorham, Maine (TA–W–41,874B), who became totally or partially separated from employment on or after September 19, 2002, through September 30, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 6th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29551 Filed 11–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,469, TA–W–41,469C, TA–W–41–469D, and TA–W–41–469E]

Telect, Liberty Lake, WA and Including Employees of Telect, Located in Colorado, Georgia, and Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 19, 2002, applicable to workers of Telect, Liberty Lake, Washington. The notice was published in the **Federal Register** on September 10, 2002 (67 FR 57453).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations have occurred involving employees of the Liberty Lake, Washington facility of Telect located in Colorado, Georgia and Texas. These employees provided sales function services and customer services for the production of fiber optic patchcords and pigtails at the Liberty Lake, Washington location of the subject firm.

Based on these findings, the Department is amending this certification to include employees of the Liberty Lake, Washington facility of Telect located in Colorado, Georgia and Texas.

The intent of the Department's certification is to include all workers of Telect who were adversely affected by increased imports.

The amended notice applicable to TA–W–41,469 is hereby issued as follows:

''All workers of Telect, Liberty Lake, Washington (TA–W–41,469), including employees of Telect, Liberty Lake, Washington, located in Colorado (TA–W–41,469C), Georgia (TA–W–41,469D) and Texas (TA–W–41,469E), who became totally or partially separated from employment on or after April 16, 2001, through August 19, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 1st day of October, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29552 Filed 11–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation process to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This process helps to ensure that requested data can be provided in the desired format, reporting burdens are minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the reporting requirements for the Disability Employment Grant and the Disability Information Technology Grant Programs for the FY 04–07 funding periods. The reports submitted for comment include the quarterly Activity and Placement Report (APR) and annual Participant Characteristics Report (PCR).

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before January 26, 2004.

ADDRESSES: Alexandra K. Kielty, Chief, Division of Disability and Workforce Programs, Rm. S–5206, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–3730 (VOICE), (202) 693–3818 (FAX) (these are not toll-free numbers) or e-mail: *Kielty.Alexandra@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Employment and Training Administration of the Department of Labor is considering revising the reporting forms that correspond to OMB NO.: 1205–0416 which implements reporting requirements for the Disability Employment Grant Program for the fiscal years 1999 and 2000. Reporting impacts 15 grants for the last two years of a three year grant cycle which began July 1, 1998. The grants are awarded for one year plus two option years. These reports will also be used for similar disability related grants administered by ETA.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's burden estimate for the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The proposed Information Collection Request establishes reporting requirements for this discretionary grant program which is funded under the Workforce Investment Act (WIA) Title I. The Activity and Placement Report (APR) includes information on the number of participants being served, activities and services provided, and planned outcomes. The Participant Characteristics Report (PCR) covers information on age, race, educational level and types of disability.

In addition to these reports, grantees are required to provide a quarterly Financial Status Report (FSR), SF 269

which is approved under OMB Clearance #0348–0039.

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: Disability Employment Grant Program and Disability Information Technology Grant Program.

OMB Number: 1205–0416.

Catalog of Federal Domestic Assistance Number: 17.248.

Frequency: Quarterly for Activity and Placement Report (APR) ETA Form No. 9077 and Annually for participant Characteristic Report (PCR) ETA Form No. 9078.

Affected Public: National not-for-profit organizations.

Form	Total respondents	Frequency	Total responses	Avg. time per responses (hours)	Estimated total burden hours
ETA 9077	16	Quarterly	64	20	1,280
ETA 9078	16	Annually	16	20	320
ETA SF–269	16	Quarterly	64	20	1,280
Totals			144		2,880

Number of Respondents: 16.

Total Responses: 144; (16 respondents × 4 Quarterly Reports) = 64 + (16 respondents × 1 annual report) = 16 + (16 respondents × 4 Quarterly Reports) = 16 Total = 144 Annual Responses.

Estimated Time Per Respondent: 180 Hours; 20 Hours × 4 APRs +(20 hrs. SF–269 × 4) + (20 hrs.PCR) = 180 hrs.per respondent.

Total Burden Hours: 2,880hrs. (Note: Estimate is based on having 20 respondents).

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintaining): $1,200.00.

Description: The disAbility Employment Initiative Grant Programs give partial funds to National organizations that engage in employment training and services for people with disabilities to obtain competitive employment. The Activity and Placement Report (APR) gives the number of participants being served, activities and services provided, and placement outcomes. The Participant Characteristics Report (PCR) gives participant information in age, race, type of disAbility, etc. These funds are taken from the WIA Title I (29 U.S.C. 2916(c)(1)). There is a requirement to have grantees complete quarterly an Activity Placement Report (APR) [29 U.S.C. 2917(a)(1)] and a Standard Form 269 (SF–269). A Participant Characteristic Report (PCR) is submitted annually to provide an overview of participants that were served during the program year) (29 U.S.C. 2917(a)(1))]. Respondents submit a narrative as part of the quarterly report package. The narrative states activities of the participants in the organization during the previous three months.

Signed in Washington, DC this 11th day of November, 2003.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. 03–29534 Filed 11–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—05080]

Great Western International, Portland, OR; Amended Certification Regarding Eligibility To Apply for NAFTA—Transitional Adjustment Assistance

In accordance with section 250(A), subchapter D, chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on October 16, 2001, applicable to workers of Great Western International, Portland, Oregon. The notice was published in the **Federal Register** on October 30, 2001 (66 FR 54784).

At the request of a petitioner, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of industrial use chemicals such as caustic soda and sulfuric acid until the company shifted production to Canada in July 2001.

New information shows that a worker will be retained at the subject firm beyond the October 16, 2003 expiration date of the certification. This employee is currently performing the closing down functions until her termination no later than December 31, 2003.

Based on these findings, the Department is amending the certification to extend the October 16, 2003 expiration date for NAFTA–05080 to read December 31, 2003.

The intent of the Department's certification is to include all workers of Great Western International who were adversely affected by a shift of production of sulfuric acid and caustic soda to Canada.

The amended notice applicable to NAFTA—05080 is hereby issued as follows:

All workers of Great Western International, Portland, Oregon who became totally or partially separated from employment on or after July 3, 2000, through December 31, 2003, are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.

Signed at Washington, DC this 8th day of October, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–29554 Filed 11–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–4357]

Oxford Automotive, Inc., Argos, IN; Notice of Revised Determination On Remand

The United States Court of International Trade (USCIT) remanded to the Department of Labor for further consideration and investigation of the negative determination on reconsideration on remand in *Former Employees of Oxford Automotive U.A.W. Local 2088* v. *U.S. Secretary of Labor* (Court No. 01–00453).

The Department's denial of NAFTA-Transitional Adjustment Assistance for the workers of Oxford Automotive, Inc., Argos, Indiana (NAFTA–4357) was issued on January 24, 2001 and published in the **Federal Register** on February 20, 2001 (66 FR 10916). The

initial investigation concluded that there was no shift of production to Canada or Mexico and that imports from Canada or Mexico did not contribute importantly to workers' separations.

On April 30, 2001, the Department issued a Notice of Negative Determination Regarding Application for Reconsideration for NAFTA–4357 and published the determination in the **Federal Register** on May 9, 2001 (66 FR 23732).

The petitioners alleged in the request for reconsideration that production equipment (180″ press line and two single pot spot welders) was sent to an affiliated plant located in Mexico. Information provided by the company at that time indicated that while equipment, absent its use, was sent to Mexico, the equipment was not used and there was no production shift. The Department determined that the shift of production equipment, absent its use, was an insufficient basis for certification.

The petitioners appealed to the U.S. Court of International Trade, and on voluntary remand, the Department requested more information from the company.

In the remand investigation, the Department requested information regarding company imports of side panels. The Department determined that there was no basis to reverse the negative reconsideration determination.

In a second voluntary remand investigation, the Department conducted a survey of the subject company's major customer and asked the company to clarify the situation regarding the shift of equipment to Mexico and alleged shift of production to Mexico. The Department determined that there was no increased customer reliance upon import purchases and no shift of production to Mexico. Therefore, the Department did not reverse the negative remand determination.

On the current remand, the Department followed the Court's guidance in conducting its investigation, obtaining new and additional information, as well as clarification, from the company regarding the alleged production shifts to Mexico. Upon careful review of the new information, it has been determined that a significant portion of production of like and directly competitive products was shifted from the subject facility to Mexico during the relevant period.

Conclusion

After careful review of the additional facts obtained on the current remand, I conclude that there was a shift of production to Mexico of articles like or indirectly competitive with those produced at the subject facility. In accordance with the provisions of the Trade Act, I make the following certification:

All workers of Oxford Automotive, Inc., Argos, Indiana who became totally or partially separated from employment on or after December 4, 1999, through two years from the issuance of this revised determination, are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 10th day of November, 2003.

Linda G. Poole,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–29541 Filed 11–25–03; 8:45 am]

BILLING CODE 4510–30–P

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, December 4, 2003, and Friday, December 5, 2003, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW, Washington, DC. The meeting is tentatively scheduled to begin at 10 a.m. on December 4, and at 8 a.m. on December 5.

Topics for discussion include: quality of care; payment adequacy analyses for hospitals, physicians, outpatient dialysis, ambulatory surgical centers, home health, and skilled nursing facility; and Medicare+Choice.

Agendas will be e-mailed approximately one week prior to the meeting. The final agenda will be available on the Commission's web site (*http://www.MedPAC.gov*).

ADDRESSES: MedPAC's address is: 601 New Jersey Avenue, NW, Suite 9000, Washington, DC 20001. The telephone number is (202) 220–3700.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 220–3700.

Mark E. Miller,

Executive Director.

[FR Doc. 03–29517 Filed 11–25–03; 8:45 am]

BILLING CODE 6820–BW–M

MERIT SYSTEMS PROTECTION BOARD

Membership of the Merit Systems Protection Board's Senior Executive Service Performance Review Board

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: Notice is hereby given of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Steve Nelson, Director of Policy and Evaluation, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419.

SUPPLEMENTARY INFORMATION: The Merit Systems Protection Board is publishing the names of the new and current members of the Performance Review Board (PRB) as required by 5 U.S.C. 4314(c)(4). Rosemarie Straight and Steve Nelson have been appointed as new members. P.J.Winzer will continue to serve as Chair of the PRB; Barbara Wade will continue to serve as member.

Dated: November 18, 2003.

Bentley M. Roberts, Jr.,

Clerk of the Board.

[FR Doc. 03–29446 Filed 11–25–03; 8:45 am]

BILLING CODE 7400–01–P

NATIONAL MEDIATION BOARD

Administration of National Railroad Adjustment Board Functions and Activities

AGENCY: National Mediation Board.

ACTION: Notice.

SUMMARY: The National Mediation Board (NMB) extends an invitation to interested parties to attend an open meeting with the Board and its staff on Friday, December 19, 2003. The Board meeting will be held from 1 p.m. until 5 p.m. The meeting will be held in the Margaret A. Browning Hearing Room (Room 11000), National Labor Relations Board, 1099 14th St. NW, Washington, DC 20570. During the public meeting, the NMB invites interested persons to share their views on the issues raised in the Board's Advance Notice of Proposed Rulemaking (ANPRM) concerning the administration of National Railroad Adjustment Board (NRAB) functions and activities (68 FR 46983, Aug. 7, 2003).

DATES: The meeting will be held on December 19, 2003, from 1 p.m. to 5 p.m. Due to time and seating considerations, individuals desiring to

attend the meeting, or to make a presentation before the Board, must notify the NMB staff, in writing, no later than 4 pm on Thursday, December 11, 2003.

ADDRESSES: The public meeting will be held in the Margaret A. Browning Hearing Room, (Room 11000), National Labor Relations Board, 1099 14th St. NW, Washington, DC 20570. Requests to attend the meetings must be in writing, and must be addressed to Mr. Roland Watkins, Director of Arbitration/NRAB Administrator, National Mediation Board, 1301 K Street, NW, Suite 250—East, Washington, DC 20005. Attn: NMB Docket No. 2003–01. Written requests may be sent electronically to the following e-mail address: *arb@nmb.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Roland Watkins, Director of Arbitration/NRAB Administrator, National Mediation Board (telephone 202–692–5057).

SUPPLEMENTARY INFORMATION: The National Mediation Board will hold an open public meeting on Friday, December 19, 2003 from 1 p.m. until 5 p.m. The purpose of the public meeting will be to solicit the views of interested persons concerning the various topics and questions posed by the NMB in its ANPRM concerning the administration of National Railroad Adjustment Board (NRAB) functions and activities (68 FR 46983, Aug. 7, 2003).

Individuals desiring to attend the meeting must notify the NMB staff, in writing, at the above listed physical or e-mail address, by the deadline noted. If an individual desires to make a presentation to the Board at the meeting, he or she is required to submit a brief outline of the presentation when making the request. In addition, a full written statement must be submitted one week prior to the meeting (the deadline for this submission is Thursday, December 11, 2003 at 4 p.m.). In lieu of making an oral presentation, individuals may submit a written statement for the record.

To attend the meeting, all potential attendees must include in their request: (1) their full name and (2) organizational affiliation (if any). Attendees are also reminded to bring photo identification card with them to the public meeting in oreder to gain admittence to the building. Due to time and potential space limitations in the meeting room, the NMB will notify individuals of their attendance and/or speaking status (*i.e.*, preliminary time for their presentation) prior to the meeting. Time allocations for oral presentations will depend upon the number of individuals who desire to make presentations to the Board. Individuals should be prepared to summarize their written statements at the meeting.

Agenda: The NMB, in particular, solicits presentations on the following questions that were posed in the ANPRM:

Question One: If the NMB promulgates procedures for the administrative processing of NRAB cases in which the parties request that the Government compensate the neutral (''referee''), what should be the criteria or guidelines for these procedures?

It has been suggested to the NMB, that a desirable goal is to have minor disputes resolved within one year of the filing of a Notice of Intent to File a Submission. At present, it is not uncommon for cases to remain unresolved for two years.

Question Two: If a stated goal of any new procedures to be adopted by the NMB is to have the cases decided by an arbitrator within one year from the date of the filing of the Notice of Intent, what steps do you recommend comprise this procedure? Do you believe that a one year goal is reasonable? If not, why not?

Question Three: If the parties do not agree to follow the procedures adopted by the NMB, should there be any adverse consequences? Should the parties have options with respects to these procedures? What would you recommend be the steps that comprise an efficient case resolution procedure?

Question Four: What should happen to those cases that are still pending after one year in which the parties have not placed the cases before a Public Law Board, pursuant to 45 U.S.C. 153, Second? If the cases are placed before a Public Law Board, should a time limit be imposed for the resolution of those cases?

At present, the NRAB has approximately 2,000 cases pending before it. Many of these cases arise out of the filing of multiple grievances by different parties for the same underlying set of facts.

Question Five: In order to ensure the most efficient use of limited Government resources, should the NMB, in agreeing to pay for the appointment of an arbitrator (''referee'') require the consolidation of similar cases dealing with similar issues? If, in your view, case consolidation is a viable option for improving the resolution of cases, what should be the standards adopted for consolidation? What should the NMB do if the parties refuse to consolidate cases, when in the NMB's view, it would be appropriate to do otherwise?

Question Six: As the goal of this initiative is to improve the processing of disputes before the NRAB, are there any other recommendations or suggestions that you would make to the NMB with regard to its statutory responsibilities for the administration of the NRAB?

Roland Watkins,

National Railroad Adjustment Board Administrator.

[FR Doc. 03–29496 Filed 11–25–03; 8:45 am]

BILLING CODE 7550–01–P

NUCLEAR REGULATORY COMMISSION

Draft Criteria for Determining Feasibility of Manual Actions To Achieve Post-Fire Safe Shutdown

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The U. S. Nuclear Regulatory Commission (NRC) is considering a revision to the fire protection regulations in 10 CFR part 50, appendix R, paragraph III.G.2 to allow the use of manual actions by nuclear power plant operators to achieve hot shutdown conditions in the event of fires in certain areas provided the actions are evaluated against specific criteria and determined to be acceptable. Currently, licensees who rely on operator manual actions which have not been reviewed and approved by the NRC are generally considered to be in non-compliance with NRC regulations. However, the NRC believes that manual actions relied upon by licensees are safe and effective when performed under appropriate conditions. Accordingly, until the fire protection regulations are revised, the NRC is planning to issue an interim enforcement policy to exercise enforcement discretion if licensees' manual actions meet the NRC's interim acceptance criteria. The NRC is seeking comments from interested parties on the adequacy and clarity of draft interim acceptance criteria which will be utilized by the interim enforcement discretion policy.

DATES: Comment period expires December 26, 2003.

ADDRESSES: Submit written comments to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T6–D59, Washington, DC 20555–0001. Comments may be submitted by e-mail to *nrcrep@nrc.gov.* Comments may be delivered to the NRC's headquarters at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Richard Dudley, Office of Nuclear Reactor Regulation, Washington DC 20555–0001, telephone (301) 415–1116, e-mail *rfd@nrc.gov* or Ray Gallucci, telephone (301) 415–1255, e-mail *rhg@nrc.gov*.

SUPPLEMENTARY INFORMATION: Nuclear power plant fire protection regulations and associated guidelines prescribe fire protection features to ensure that at least one means of achieving and maintaining safe shutdown conditions will remain available during or after any postulated fire. The NRC has concluded that a fire protection regulatory compliance issue exists at many nuclear power plants. This situation involves fire protection of redundant safe shutdown trains when these trains are located within the same fire area. Regional inspections indicate that rather than using fire barriers or physical separation to maintain safe shutdown capability, many licensees rely on operator manual actions that have not been approved by the NRC. Operator manual actions refer to those actions taken by operators to manipulate components and equipment from outside the main control room to achieve and maintain post-fire safe shutdown. Operator manual actions are not permitted in 10 CFR part 50, appendix R, paragraph III.G.2, for plants licensed to operate before 1979 unless a specific exemption has been granted. For plants licensed to operate after 1979, there is uncertainty as to whether operator manual actions can be used without NRC approval as Appendix R is not required by regulation for those plants (although most plants committed to Appendix R-equivalent guidance in their fire protection programs). It is the NRC's understanding that most of the licensees who rely on unapproved operator manual actions have done so under the belief that the use of operator manual actions to achieve safe shutdown is acceptable, without NRC prior approval, as long as the reliance on operator manual actions does not adversely affect the ability of a plant to achieve and maintain safe shutdown. The industry also believes that most operator manual actions used by licensees for operation of a safe shutdown train during a fire do not involve any safety significant feasibility concerns and would likely be approved by the NRC if processed as an exemption or deviation request. The results from NRC fire protection inspections to date indicate that there is insufficient evidence that the generic use of these manual actions poses a safety concern. Thus the staff believes that use of unapproved manual actions (for both pre- and post-1979 plants) is typically a compliance issue and is not a significant safety issue.

The Commission has decided to resolve this issue generically through rulemaking because rulemaking provides the most efficient and effective process to align regulatory requirements and safety objectives. In SECY–03–0100, dated June 17, 2003, the staff proposed and on September 12, 2003, the Commission approved developing an interim enforcement policy which would be in effect while the rulemaking was being undertaken to codify final acceptance criteria for operator manual actions. This policy would exercise discretion in that the NRC would refrain from taking enforcement action for those licensees who rely on operator manual actions, provided these licensees have demonstrated and documented the acceptability of their operator manual actions in accordance with interim acceptance criteria developed by the staff. The Commission approved the staff's recommendation to engage stakeholders in at least one public meeting to discuss the interim manual action acceptability criteria and how they would be used in interim enforcement policy. (See Commission Memorandum dated September 12, 2003, ADAMS Accession No. ML032550222).

The NRC staff has developed draft interim acceptance criteria for manual actions. These draft criteria are provided below. They are an extension of the ''*Inspection Criteria for Fire Protection Manual Actions*'' issued by the NRC in March 2003 in Inspection Procedure 71111.05. This inspection procedure is available on the NRC public Web site (*http://www.nrc.gov*.) The NRC held a public meeting on November 12, 2003, at NRC headquarters in Rockville, Maryland to allow members of the public to comment on the preliminary draft criteria below. Additional written comments on these criteria may be submitted to the NRC during the 30 day comment period.

During the rulemaking process to codify the final acceptance criteria for manual actions, additional public notices will be issued and additional public comments will be solicited to further ensure that public stakeholder input is considered.

Draft Interim Criteria for Determining the Acceptability of Manual Actions To Achieve Post-Fire Safe Shutdown

Licensees who have relied on operator manual actions to comply with Paragraph III.G.2 of Appendix R may be allowed enforcement discretion if the area where the fire occurs has fire detectors and an automatic fire suppression system installed in the fire area and if the manual actions relied upon are consistent with all of the following acceptance criteria [1]:

1. Available Indications

Diagnostic indication, if credited to support operator manual actions, shall be capable of:

- Confirming that the action is necessary;
- Being unaffected by the postulated fire;
- Providing a means for the operator to detect whether spurious operation of safety-related equipment has occurred; and
- Verifying that the operator manual action accomplished the intended objective.

2. Environmental Considerations

Environmental conditions encountered while accessing and performing operator manual actions shall be demonstrated to be consistent with the following human factor considerations for visibility and habitability:

- Emergency lighting shall be provided as required in Appendix R, Section III.J, or by the licensee's approved fire protection program, [*e.g.*, lit with 8-hr battery-backed emergency lighting], and sufficient lighting shall be provided for paths to and from locations requiring any actions.
- Radiation shall not exceed 10 CFR Part 20, Section 20.1201, limits.
- Temperature and humidity conditions shall be evaluated to ensure that temperature and humidity do not adversely affect the capability to perform the operator manual action (See, *e.g.*, NUREG/CR–5680, Vol. 2, ''The Impact of Environmental Conditions on Human Performance'') or the licensee shall provide an acceptable rationale for why temperature/humidity do not adversely affect performing the manual actions.
- Fire effects shall be evaluated to ensure that smoke and toxic gases from the fire do not adversely affect the capability to access the required equipment or to perform the operator manual action.

3. Staffing and Training

There shall be a sufficient number of plant operators, under all staffing levels, to perform all of the required actions in the times required for a given fire scenario. The use of operators to perform actions shall be independent

[1] The criteria are not listed in any particular order.

from any collateral fire brigade or control room duties they may need to perform as a result of the fire. Operators required to perform the manual actions shall be qualified and continuously available to perform the actions required to achieve and maintain safe shutdown. A training program on the use of operator manual actions and associated procedures during a postulated fire shall demonstrate that operators can successfully achieve these objectives.

4. Communications

To achieve and maintain safe shutdown, adequate communications capability shall be demonstrated for operator manual actions that must be coordinated with other plant operations, with this communications capability continuously available.

5. Special Equipment

Any special equipment required to support operator manual actions, including keys, self-contained breathing apparatus (SCBA), and personnel protective equipment, shall be readily available, easily accessible and demonstrated to be effective.

6. Procedures

Procedural guidance on the use of required operator manual actions shall be readily available, easily accessible and demonstrated to be effective.

7. Local Accessibility

All locations where operator manual actions are performed shall be assessed as accessible without hazards to personnel, with controls needed to assure availability of any special equipment, such as keys or ladders, being demonstrated.

8. Demonstration

The capability to successfully accomplish required operator manual actions within the time allowable using the required procedures and equipment shall be demonstrated using the same personnel/crews who will be required to perform the actions during the fire; documentation of the demonstration shall be provided.

9. Complexity and Number

The degree of complexity and total number of operator manual actions required to effect safe shutdown shall be limited such that their successful accomplishment under realistically severe conditions is assured for a given fire scenario. The need to perform operator manual actions in different locations shall be considered when sequential actions are required. Analyses of the postulated fire time line shall demonstrate that there is sufficient time to travel to each action location and perform the action required to support the associated shutdown function(s) such that an unrecoverable condition does not occur.

10. Equipment Pre-Conditions

Possible failure modes and damage that may occur to equipment used during a fire shall be considered to the extent that the equipment's subsequent use could be prevented, or at least made difficult. Credit for using equipment whose operability may have been adversely affected by the fire due to smoke, heat, water, combustion products or spurious actuation effects shall account for such possibilities (*e.g.*, over-torquing an MOV due to a spurious signal, as discussed in Information Notice 92–18).

Dated at Rockville, Maryland, this 20th day of November, 2003.

For The Nuclear Regulatory Commission.

Catherine Haney,

Program Director, Policy and Rulemaking Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–29560 Filed 11–25–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued a revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in its review of applications for permits and licenses, and data needed by the NRC staff in its review of applications for permits and licenses.

Revision 2 of Regulatory Guide 1.53, ''Application of the Single-Failure Criterion to Safety Systems,'' provides guidance on methods acceptable to the NRC staff for satisfying the NRC's regulations with respect to the application of the single-failure criterion to the electrical power, instrumentation, and control portions of nuclear power plant safety systems. This Revision 2 supersedes the recently issued Revision 1, as an incorrect version of the guide was inadvertently issued as Revision 1.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555. Questions on the content of this guide may be directed to Mr. S.K. Aggarwal, (301) 415–6005; e-mail *ska@nrc.gov.*

Regulatory guides are available for inspection or downloading at the NRC's Web site at <*http://www@nrc.gov*> under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by e-mail to <*distribution@nrc.gov*>. Issued guides may also be purchased from the National Technical Information Service (NTIS) on a standing order basis. Details on this service may be obtained by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161; telephone 1–800–553–6847; <*http://www.ntis.gov*>. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, MD, this 17th day of November, 2003.

For The Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 03–29558 Filed 11–25–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Availability and Solicitation of Public Comments on Interagency Steering Committee on Radiation Standards' Reports on Radioactivity in Sewage Sludge and Ash

AGENCIES: U.S. Nuclear Regulatory Commission and U.S. Environmental Protection Agency.

ACTION: Announce the issuance of three reports concerning radioactivity in sewage sludge and ash, and request public comments.

SUMMARY: This **Federal Register** notice announces the availability of three reports, prepared by the Sewage Sludge Subcommittee of the Interagency Steering Committee on Radiation Standards (ISCORS), addressing radioactivity in sewage sludge and ash. The first report, ''ISCORS Assessment of

Radioactivity in Sewage Sludge: Radiological Survey Results and Analysis,'' summarizes the information on radioactivity found in samples of sewage sludge and ash from 313 publicly owned treatment works (POTWs). This report is being issued as a final document, since it only presents data that has already been collected. The second report, ''ISCORS Assessment of Radioactivity in Sewage Sludge: Modeling to Assess Radiation Doses,'' assesses the potential levels of radiation doses to people by modeling the transport of radioactivity from sludge into the local environment. The report also provides a complete description and justification of the dose assessment methodology. The third report, ''ISCORS Assessment of Radioactivity in Sewage Sludge: Recommendations on Management of Radioactive Materials in Sewage Sludge and Ash at Publicly Owned Treatment Works,'' recommends further actions that may be taken by a POTW operator when elevated levels of radionuclides are detected.

The purpose of ISCORS is to foster early resolution and coordination of regulatory issues associated with radiation standards. Agencies represented on ISCORS include the U.S. Nuclear Regulatory Commission (NRC), the U.S. Environmental Protection Agency (EPA), the U.S. Department of Energy, the U.S. Department of Defense, the U.S. Department of Transportation, the Occupational Safety and Health Administration of the U.S. Department of Labor, and the U.S. Department of Health and Human Services. The Office of Science and Technology Policy, the Office of Management and Budget, and State representatives may be observers at meetings. The objectives of ISCORS are to: (1) Facilitate a consensus on allowable levels of radiation risk to the public and workers; (2) promote consistent and scientifically sound risk assessment and risk management approaches in setting and implementing standards for occupational and public protection from ionizing radiation; (3) promote completeness and coherence of Federal standards for radiation protection; and (4) identify interagency radiation protection issues and coordinate their resolution.

There have been a number of well-publicized cases of radionuclides discovered in sewage sludge and ash, and some of these have led to expensive cleanup projects. These incidents made clear the need for a comprehensive determination of the prevalence of radionuclides at publicly owned treatment works sewage sludge and ash around the country, and the level of potential threat posed to human health and the environment by various levels of such materials.

In response to this need, ISCORS formed a Sewage Sludge Subcommittee (SSS) to coordinate, evaluate, and resolve issues regarding radioactive materials in sewage sludge and ash. To estimate the amounts of radionuclides that actually occur in sewage sludge and ash, ISCORS' SSS performed a survey of radioactivity in sludge and ash across the United States. The final report is entitled, ''ISCORS Assessment of Radioactivity in Sewage Sludge: Radiological Survey Results and Analysis,'' and is available on the ISCORS Web site at *http://www.iscors.org.*

Concurrently, the Dose Modeling Workgroup of the SSS undertook a dose assessment to help assess the potential threat that these materials may pose to human health. The draft report that we are making available for public comment today, ''ISCORS Assessment of Radioactivity in Sewage Sludge: Modeling to Assess Radiation Doses,'' describes the methodology and results of the dose modeling effort. The general approach used in the report is a standard one that consists essentially of two steps. First, seven general, fairly generic scenarios (and some sub-scenarios) are constructed to represent typical situations in which members of the public of POTW workers are likely to be exposed to sludge. The selection of radionuclides for consideration was based on the results of the ISCORS survey of sewage sludge and ash at various POTWs, and includes manmade and naturally-occurring isotopes. Second, assuming a unit specific activity of a radionuclide in dry sludge, a widely accepted multi-pathway environmental transport model (the RESRAD family of codes) is employed to obtain sludge concentration-to-dose conversion factors.

A third and final document, ''ISCORS Assessment of Radioactivity in Sewage Sludge: Recommendations on Management of Radioactive Materials in Sewage Sludge and Ash at Publicly Owned Treatment Works,'' is also being issued for public comment today. This document is for use by POTW operators in evaluating whether the presence of radioactive materials in sewage sludge could pose a threat to the health and safety of POTW workers or the general public. ISCORS concludes that the levels of radioactive materials detected in sewage sludge and ash in the ISCORS survey indicate that, at most POTWs, radiation exposure to workers or to the general public is not likely to be a concern.

Comments on either, ''ISCORS Assessment of Radioactivity in Sewage Sludge: Modeling to Assess Radiation Doses,'' or ''ISCORS Assessment of Radioactivity in Sewage Sludge: Recommendations on Management of Radioactive Materials in Sewage Sludge and Ash at Publicly Owned Treatment Works,'' should be sent to the EPA contact listed below by February 6, 2004.

Robert Bastian, U.S. Environmental Protection Agency—4204M, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Telephone: 202–564–0653, e-mail: *bastian.robert@epa.gov.*

Hard copies can also be obtained by calling or writing to Carol Walls, U.S. Nuclear Regulatory Commission, NMSS/DWM/EPAB, M.S. T–7J8, Washington, DC 20555–0001, 301–415–8028, or *caw@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: James Kennedy, U.S. Nuclear Regulatory Commission, NMSS/DWM, M.S. T–7J8, Washington, DC 20555, telephone 301–415–6668, fax 301–415–5397, e-mail *jek1@nrc.gov.*

Dated at Rockville, Maryland, this 20th day of November, 2003.

For The U.S. Nuclear Regulatory Commission.

John T. Greeves,

Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–29559 Filed 11–25–03; 8:45 am]

BILLING CODE 7590–01–P

PRESIDIO TRUST

Notice of Public Meeting

AGENCY: The Presidio Trust.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 103(c)(6) of the Presidio Trust Act, 16 U.S.C. 460bb note, Title I of Pub. L. 104–333, 110 Stat. 4097, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Presidio Trust Board of Directors will be held commencing 6:30 p.m. on Wednesday, December 10, 2003, at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base know as the Presidio, in San Francisco, California.

The purposes of this meeting are to: (1) Take action on the minutes of previous Board meetings; (2) provide the Executive Director's general status

report; (3) receive oral scoping comments under the National Environmental Policy Act on the Trust's proposed environmental review for the Public Health Service Hospital project; and (4) receive public comment in accordance with the Trust's Public Outreach Policy.

Accommodation: Individuals requiring special accommodation at this meeting, such as needing a sign language interpreter, should contact Mollie Matull at (415) 561–5300 prior to November 28, 2003.

FOR FURTHER INFORMATION CONTACT: Karen Cook, General Counsel, the Presidio Trust, 34 Graham Street, PO Box 29052, San Francisco, California 94129–0052, Telephone: (415) 561–5300.

Dated: November 20, 2003.

Karen A. Cook,

General Counsel.

[FR Doc. 03–29529 Filed 11–25–03; 8:45 am]

BILLING CODE 4310–4R–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26258; 812–12920]

John Hancock Bank and Thrift Opportunity Fund; Notice of Application

November 20, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

SUMMARY OF APPLICATION: John Hancock Bank and Thrift Opportunity Fund (the ''Applicant'') requests an order to permit it to make periodic distributions of long-term capital gains, as often as monthly, so long as it maintains in effect a distribution policy calling for periodic distributions of a fixed percentage of net asset value or a fixed dollar amount each taxable year (''Distribution Plan'').

FILING DATES: The application was filed on January 17, 2003, and amended on November 10, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 15, 2003 and should be accompanied by proof of service on Applicant, 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. Applicant, c/o Susan S. Newton, John Hancock Advisers, LLC, 101 Huntington Avenue, Boston, MA 02199–7603.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 942–0581, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

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).

Applicant's Representations

1. Applicant is organized as a Massachusetts business trust and is registered under the Act as a closed-end diversified management investment company. Applicant's investment objective is long-term capital appreciation through investment of at least 80% of its net assets in securities of U.S. regional banks and thrifts and holding companies that primarily own or receive a substantial portion of their income from regional banks or thrifts. Applicant's shares are listed and traded on the New York Stock Exchange. John Hancock Advisers, LLC, an investment adviser registered under the Investment Advisers Act of 1940, serves as investment adviser to the Applicant.

2. On May 20, 2003, the Applicant's board of trustees (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), of the Applicant, adopted a Distribution Plan, pursuant to which the Applicant would make quarterly distributions of an amount equal to at least 2.5% of the Applicant's net asset value determined as of December 31st of the prior calendar year, for a total distribution of at least 10% annually. Applicant believes that the discount at which the Applicant's shares trade may be reduced if the Applicant implemented the Distribution Plan.

3. Applicant requests relief to permit it, so long as it maintains in effect a Distribution Plan, to make periodic long-term capital gains distributions, as often as monthly, on its outstanding common stock.

Applicant's Legal Analysis

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the Commission may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b–1(a) under the Act permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986, as amended (the ''Code''). Rule 19b–1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b–1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. Applicant asserts that rule 19b–1 under the Act, by limiting the number of net long-term capital gains distributions that it may make with respect to any one year, would prevent the normal and efficient operation of the Distribution Plan whenever the Applicant's realized net long-term capital gains in any year exceed the total of the fixed regular periodic distributions that may include such capital gains under the rule. Applicant states that rule 19b-1 thus may force the fixed regular periodic distributions to be funded with returns of capital (to the extent net investment income and realized short-term capital gains are insufficient to fund the distribution), even though realized net long-term capital gains otherwise would be available. Applicant further asserts that, to distribute all of its long-term capital gains within the limits in rule 19b-1, the Applicant may be required to make total distributions in excess of the annual amount called for by the Distribution Plan or retain and pay taxes on the excess amount. Applicant asserts that the application of rule 19b-1 to the Applicant's Distribution Plan may create pressure to limit the realization of long-term capital gains based on considerations unrelated to investment goals.

3. The Applicant submits that one of the concerns leading to the enactment of section 19(b) and the adoption of the

rule was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income. The Applicant states that the proposed Distribution Plan, including the fact that the distributions called for by the Distribution Plan will include returns of capital to the extent that the Applicant's net investment income and net realized capital gains are insufficient to meet the minimum percentage dividend, will be fully described in each of the Applicant's periodic reports to shareholders. The Applicant states that, in accordance with rule 19a–1 under the Act, a statement showing the source of the distribution would accompany each distribution (or the confirmation of the reinvestment thereof under the Applicant's dividend reinvestment plan). The Applicant states that the amount and source of each distribution received during the calendar year will be included with the Applicant's IRS Form 1099–DIV reports of distributions during the year, which will be sent to each shareholder who received distributions (including shareholders who have sold shares during the year). The Applicant states that this information also will be included in the Applicant's annual report to shareholders.

4. Another concern underlying section 19(b) and rule 19b–1 is that frequent capital gains distributions could facilitate improper distribution practices, including, in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming distribution (''selling the dividend''), where the dividend results in an immediate corresponding reduction in NAV and would be, in effect, a return of the investor's capital. Applicant submits that this concern does not apply to closed-end investment companies, such as the Applicant, which do not continuously distribute their shares. In addition, the Applicant states that any rights offering will be timed so that shares issuable upon exercise of the rights will be issued only in the 15-day period immediately following the record date for the declaration of a monthly dividend, or in the six-week period immediately following the record date of a quarterly dividend. Thus, the Applicant states that, in a rights offering, the abuse of selling the dividend could not occur as a matter of timing. Any rights offering also will comply with all relevant Commission and staff guidelines. In determining compliance with these guidelines, the Board will consider, among other things, the brokerage commissions that would be paid in connection with the offering. Any offering by the Applicant of transferable rights will comply with any applicable National Association of Securities Dealers, Inc. rules regarding the fairness of compensation.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or class or classes of any persons, securities or transactions from any provision of the Act, or from any rule thereunder, if such 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. For the reasons stated above, the Applicant believes that the requested relief satisfies this standard.

Applicant's Condition

The Applicant agrees that any order granting the requested relief shall terminate upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by the Applicant of its shares other than:

(i) a rights offering to holders of the Applicant's common stock, in which (a) shares are issued only within the 15-day period immediately following the record date of a monthly dividend, or within the six-week period following the record date of a quarterly dividend, (b) the prospectus for such rights offering makes it clear that shareholders exercising rights will not be entitled to receive such dividend, and (c) the Applicant has not engaged in more than one rights offering during any given calendar year; or

(ii) an offering in connection with a merger, consolidation, acquisition, spin-off or reorganization of the Applicant; unless the Applicant has received from the staff of the Commission written assurance that the order will remain in effect.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–29574 Filed 11–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27766]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 20, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 15, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 15, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

KeySpan Corporation, et al. (70–10129)

KeySpan Corporation (''KeySpan''), a registered holding company and KeySpan's directly owned public utility subsidiaries The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (''KEDNY''); KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island (''KEDLI''); KeySpan Generation LLC (''KeySpan Generation''); and KeySpan's public utility subsidiaries indirectly owned through KeySpan New England LLC (''KeySpan New England''), Boston Gas Company d/b/a KeySpan Energy Delivery New England (''Boston Gas''), Essex Gas Company d/b/a KeySpan Energy Delivery New England (''Essex Gas''), Colonial Gas Company d/b/a KeySpan Energy Delivery New England (''Colonial Gas''), and EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England (''ENGI'' and the

direct and indirect utility subsidiaries, together, ''Utility Subsidiaries''); KeySpan's nonutility subsidiaries (''Nonutility Subsidiaries''): KeySpan Energy Corporation (''KEC'') and its subsidiaries; KeySpan Insurance Company; KeySpan Electric Services LLC; KeySpan Engineering and Survey, Inc.; KeySpan Exploration & Production LLC; KeySpan Corporate Services LLC (''KCS''); KeySpan Utility Services LLC; KSNE LLC; KeySpan-Ravenswood LLC (''Ravenswood''); KeySpan Services, Inc. and its nonutility subsidiaries; KeySpan Energy Trading Services LLC, and KeySpan Energy Development Corporation and its nonutility subsidiaries, all located at One MetroTech Center, Brooklyn, New York 11201, except for KeySpan New England, Boston Gas, Essex Gas, Colonial Gas and ENGI, which are located at 52 Second Avenue, Waltham, MA 02451, (KeySpan, the Utility Subsidiaries and the Nonutility Subsidiaries are collectively referred to as ''Applicants'') have filed with the Commission an application-declaration (''Application'') under sections 6(a), 7, 9(a), 10, 11, 12(b), 12(f), and 13(b) of the Act, and rules 42, 43, 44, 45, 46, 52, 53, 54, 58, 62, 90, and 91 under the Act.

I. Introduction

By order dated November 7, 2000 (HCAR No. 27269), as corrected by order issued on December 1, 2000 (HCAR No. 27281) (together, ''Merger Order''), KeySpan was authorized to acquire all of the issued and outstanding common stock of Eastern Enterprises (''Eastern'' now known as KeySpan New England)[1] and EnergyNorth Inc. (''Mergers''). KeySpan now directly or indirectly owns the following seven public utility companies: (i) KEDNY, which distributes natural gas at retail to residential, commercial and industrial customers in the New York City boroughs of Brooklyn, Staten Island and Queens; (ii) KEDLI, which distributes natural gas at retail to customers in New York State located in the counties of Nassau and Suffolk on Long Island and the Rockaway Peninsula in Queens County; (iii) KeySpan Generation, which owns and operates electric generation capacity located on Long Island all of which is sold at wholesale to the Long Island Power Authority (''LIPA'') for resale by LIPA to its approximately 1.1 million customers; (iv) Boston Gas, which distributes natural gas to customers located in Boston and other cities and towns in eastern and central Massachusetts; (v) Essex Gas, which distributes natural gas to customers in eastern Massachusetts to customers; (vi) Colonial Gas, which distributes natural gas to customers located in northeastern Massachusetts and on Cape Cod; and (vii) ENGI, which distributes natural gas to customers located in southern and central New Hampshire, and the City of Berlin located in northern New Hampshire. Together, KEDNY and KEDLI serve approximately 1.66 million customers. Together, Boston Gas, Colonial Gas and Essex Gas serve approximately 768,000 customers. ENGI serves approximately 75,000 customers.

II. General Request

Applicants request authorization to engage in the financing transactions set forth below through December 31, 2006 (''Authorization Period'').

(i) Issuance by KeySpan of common stock, long-term debt; Preferred Stock, Preferred or equity-linked securities (including units with incorporated options, warrants and/or forward equity purchase contracts or provisions that are exercisable or exchangeable for or convertible into common stock);

(ii) Issuance by KeySpan of short-term debt;

(iii) Issuance of up to 13 million shares of KeySpan common stock under KeySpan's direct stock purchase and dividend reinvestment plan, certain incentive compensation plans and certain other employee benefit plans;

(iv) The entering into by KeySpan and its Subsidiaries of hedging transactions;

(v) The issuance of intra-system advances and guarantees (''Guarantees''), and performance guarantees (''Performance Guarantees'') by KeySpan to or on behalf of Subsidiaries of KeySpan;

(vi) The issuance of intra-system advances, Guarantees, Performance Guarantees and, to the extent not exempt under rule 52, by the Nonutility Subsidiaries to or on behalf of other Nonutility Subsidiaries;

(vii) Issuances of short-term debt securities by the Utility Subsidiaries, to the extent not exempt under rule 52;

(viii) Issuances of debt securities in foreign jurisdictions;

(ix) The ability of the Nonutility Subsidiaries to pay dividends out of capital or unearned surplus;

(x) The right of KeySpan to acquire directly or through Subsidiaries the securities of one or more corporations, trust, partnerships, limited liability companies or other entities (''Intermediate Subsidiaries'') in order to, among other things, facilitate the acquisition, holding and/or financing of KeySpan's nonutility investments;

(xi) The authority for KeySpan to engage, directly or through Subsidiaries, in preliminary development activities (''Development Activities'') and administrative and management activities (''Administrative Activities'') in each case related to KeySpan's permitted nonutility investments;

(xii) The authority for KeySpan and its Nonutility Subsidiaries to undertake internal reorganizations of then existing and permitted Nonutility Subsidiaries and businesses;

(xiii) The authority for KeySpan and its Nonutility Subsidiaries to undertake internal reorganizations of then existing and permitted Nonutility Subsidiaries and businesses;

(xiv) The authority for KeySpan and the Subsidiaries to make investments in EWGs and FUCOs up to an aggregate amount not to exceed $3.0 billion;

(xv) The authority for KeySpan and the Subsidiaries to organize and/or acquire the equity securities of one or more additional corporations, trusts, partnerships or other entities organized to serve the purpose of facilitating financings (''Financing Subsidiaries'');

(xvi) The authority for the Nonutility Subsidiaries to provide services and sell goods to each other at fair market prices determined without regard to cost in exemption from section 13(b) and rules 90 and 91; and

(xvii) Issuances by KeySpan and its Subsidiaries of common stock, preferred stock, preferred and equity-linked securities, long-term debt and short-term debt to refund, replace, repurchase or refinance existing securities, to the extent not exempt under rule 52.

III. Financing Parameters

Applicants request authorization to engage in a variety of financing transactions, credit support arrangements and other related transactions, as more fully discussed below, during the Authorization Period for which the specific terms and conditions are not at this time known. Applicants state that the following general terms (''Financing Parameters'') would be applicable, where appropriate, to the financing transactions requested:

A. Effective Cost of Money on Financings

Applicants state that the effective cost of capital on debt and preferred or equity-linked financings will not exceed

[1] KeySpan New England has succeeded to Eastern's ownership interests in Boston Gas, Essex Gas, Colonial Gas and ENGI and the nonutility subsidiaries owned by Eastern, (i) is successor of Eastern with respect to its commitments and authorizations set forth by order dated November 8, 2000 (HCAR No. 27272) as corrected by order dated December 1, 2000 (HCAR No. 27286) (together, ''2000 Financing Order'') and (ii) is an exempt holding company under section 3(a)(1) of the Act as stated in the Merger Order.

competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality; provided that in no event will the effective cost of capital on (i) long-term debt borrowings exceed 500 basis points over the comparable term U.S. Treasury securities and on (ii) short-term debt borrowings exceed 500 basis points over the comparable term London Interbank Offered Rate (''LIBOR'').

B. Maturity

Applicants state that the maturity of indebtedness will not exceed 50 years and that preferred stock or preferred or equity-linked securities (other than perpetual preferred stock) will be redeemed no later than 50 years after its issuance, unless converted into common stock.

C. Issuance Expenses

Applicants state that the underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of securities would not exceed the greater of (i) 7% of the principal or total amount of the security being issued or (ii) issuance expenses that are generally paid at the time of the pricing for sales of the particular issuance, having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality.

D. Use of Proceeds

Applicants state that the proceeds from the sale of securities in external financing transactions will be used for general corporate purposes including (i) the financing of the capital expenditures of the KeySpan system; (ii) the financing of working capital requirements of the KeySpan system; (iii) the acquisition, retirement or redemption under rule 42 of securities previously issued by KeySpan or its Subsidiaries or as otherwise authorized by Commission; (iv) direct or indirect investment in companies authorized under the Act or Commission rule, or by Commission order (including EWGs or FUCOs) or in a separate proceeding; and (v) other lawful purposes. Applicants represent that no financing proceeds will be used to acquire a new subsidiary unless the financing is consummated in accordance with a Commission order or an available exemption under the Act.

E. Common Equity Ratio

Applicants state that KeySpan and each Utility Subsidiary will each maintain common equity (as reflected in the most recent annual or quarterly financial statement of each entity, as the case may be, adjusted to reflect changes in capitalization since the included balance sheet date) of at least 30% of its consolidated capitalization by considering common equity, preferred stock, long-term debt and short-term debt (''30% Test'') at all times during the Authorization Period.

As of June 30, 2003, the common equity of each Utility Subsidiary and of KeySpan on a consolidated basis is as follows:

	Percent
Essex Gas Company	37.44
Colonial Gas Company	42.85
Boston Gas Company	35.58
KeySpan Generation LLC	42.15
EnergyNorth Natural Gas, Inc	65.00
The Brooklyn Union Gas Company	58.61
KeySpan Gas East Corporation	46.89
Consolidated	39.78

F. Investment Grade Ratings

Applicants state that apart from securities issued for the purpose of funding money pool operations, KeySpan and the Utility Subsidiaries will not issue any other securities in reliance upon this Order, unless (i) the security to be issued, if rated, is rated investment grade; (ii) all outstanding securities of the issuer, that are rated,[2] are rated investment grade; and (iii) all outstanding securities of KeySpan, the top-level registered holding company, that are rated, are rated investment grade (''Investment Grade Condition''). For purposes of this provision, a security will be deemed to be rated ''investment grade'' if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the Securities Exchange Act of 1934. Applicants request that the Commission reserve jurisdiction over the issuance by KeySpan and the Utility Subsidiaries of any securities that are not able to meet the Investment Grade Condition.

IV. Current Financial Condition

Applicants state that all outstanding long-term debt securities of KeySpan and each of the Utility Subsidiaries that are rated, are rated investment grade. For purposes of this provision, Applicants state that a security will be deemed to be rated ''investment grade'' if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the Securities Exchange Act of 1934. The ratings are as follows:

	Moody's	Standard and Poor's
KeySpan	A3	A
KEDLI	A2	A+
KEDNY	A2	A+
KeySpan Generation.	A3	A
Boston Gas	A2	A
Colonial Gas	A2	A

V. Description of Specific Financings

A. KeySpan External Financing

Applicants request that KeySpan increase its total consolidated capitalization through sales of common stock, preferred stock, preferred and equity-linked securities, long-term debt and short-term debt securities. Applicants also request that KeySpan be authorized to issue common stock to third parties in consideration for the acquisition by KeySpan or a Nonutility Subsidiary of equity or debt securities of a company being acquired through a Commission order, applicable rule, or exemption under the Act. Applicants request that the aggregate amount of common stock, preferred stock, preferred and equity-linked securities, and/or long-term debt to be issued by KeySpan during the Authorization Period, other than for refinancing, refunding or replacement of outstanding securities, shall not exceed $3.0 billion (''Long-Term Financing Limit'').

In addition to the $3.0 billion authorization under the Long-Term Financing Limit, Applicants propose that KeySpan issue up to $1.3 billion of short-term debt during the Authorization Period (''Short-Term Financing Limit'').

1. Common Stock

(a) General

Applicants request that KeySpan sell or otherwise issue [3] common stock in any one of the following ways: (i) Through underwriters or dealers; (ii) through agents; (iii) directly to a limited number of purchasers or a single

[2] Applicants state that ENGI and Essex Gas are not rated.

[3] Applicants request that the authority to issue common stock also includes authorization to contribute common stock to current or future employee benefit plans to satisfy current or future capital funding obligations.

purchaser; or (iv) directly to employees (or to trusts established for their benefit), and shareholders. Applicants request that issuances of common stock under KeySpan's employee benefit plans and stock purchase and dividend reinvestment plans not count towards the Long-Term Financing Limit, but that these securities be limited to 13 million shares as described below in V.A.1.(c).

Applicants state that if underwriters are used in the sale of the securities, the securities would be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. The securities may be offered to the public either through underwriting syndicates (which may be represented by a managing underwriter or underwriters designated by KeySpan) or directly by one or more underwriters acting alone. Applicants state that the securities may be sold directly by KeySpan or through agents designated by KeySpan from time to time and that if dealers are utilized in the sale of any of the securities, KeySpan would sell the securities to the dealers as principals. Any dealer may then resell these securities to the public at varying prices to be determined by the dealer at the time of resale. The aggregate price of the common stock being sold through any underwriter or dealer shall be calculated based on either the specified selling price to the public or the closing price of the common stock on the day the offering is announced. Applicants state that if common stock is being sold in an underwritten offering, KeySpan may grant the underwriters an over-allotment option permitting the purchase from KeySpan of additional shares at the same price then being offered solely for the purpose of covering over-allotments.

Applicants state that public distributions may be through private negotiation with underwriters, dealers or agents as discussed above or effected through competitive bidding among underwriters. In addition, Applicants request that sales be made through private placements or other non-public offerings to one or more persons. Applicants state that these common stock sales would be with terms and conditions, at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

(b) Acquisitions

Applicants also request that KeySpan be authorized to issue common stock to third parties in consideration for the acquisition by KeySpan or a Nonutility Subsidiary of equity or debt securities of a company being acquired through a Commission order, applicable rule, or exemption under the Act. Applicants state that the KeySpan common stock to be exchanged in this type of transaction may be purchased on the open market under rule 42, or may be original issue.[4]

(c) Direct Stock Purchase and Other Employee Benefit Plans

Applicants propose, from time to time during the Authorization Period, for KeySpan to issue and/or acquire in open market transactions, or by some other method which complies with applicable law and Commission interpretations then in effect, up to 13 million shares of KeySpan common stock (''Benefit Plan Limit'') under KeySpan's current or any future direct stock purchase and dividend reinvestment plan, certain incentive compensation plans, and certain other employee benefit plans. Applicants propose that any shares of common stock acquired by KeySpan on the open market during the Authorization Period under a rule 42 exemption, that were originally issued under the Benefit Plan Limit shall no longer count against the Benefit Plan Limit until the shares are reissued.

2. Preferred Stock and Preferred and Equity-Linked Securities

Applicants request that KeySpan issue preferred stock in addition to preferred securities and or equity-linked securities up to the Long-Term Security Limit. Applicants request authority for KeySpan to issue preferred stock, preferred securities including trust preferred securities, convertible preferred securities, such as, debt or preferred securities that are convertible or exchangeable, either mandatorily or at the option of the holder, into common stock of KeySpan, common stock of the Subsidiaries, KeySpan indebtedness, or forward purchase contracts for common stock.

Applicants state that preferred or equity-linked securities may be issued in one or more series with rights, preferences, and priorities as may be designated in the instrument creating each series. Dividends or distributions on preferred or equity-linked securities will be made periodically and to the extent funds are legally available for this purpose, but may be made subject to terms that allow the issuer to defer dividend payments or distributions for specified periods. Applicants state that preferred or equity-linked securities may be convertible or exchangeable into shares of common stock or other indebtedness and may be issued in the form of shares or units. Applicants request that the conversion of equity-linked securities and the subsequent issuance of other securities as a direct result of the conversion (or the performance of forward purchase contracts), to the extent that no additional financing proceeds are realized, would not be counted against the Long-Term Financing Limit.[5] Applicants state that preferred stock and preferred or equity linked securities may be sold directly or indirectly through underwriters or dealers in connection with an acquisition similar to that described for common stock, above.

3. Long-Term Debt

Applicants request that KeySpan issue unsecured, long-term debt securities subject to the Long-Term Financing Limit through the Authorization Period. At June 30, 2003, KeySpan had approximately $4.9 billion of long-term debt obligations outstanding. Long-term debt securities may be comprised of bonds, notes, medium-term notes, debentures, or similar unsecured securities under one or more indentures (''KeySpan Indenture'') or long-term indebtedness under agreements with banks or other institutional lenders. Any long-term debt security would have such designation, aggregate principal amount, maturity, interest rate(s) or methods of determining the same, terms of payment of interest, redemption provisions, sinking fund terms, terms for conversion into any other security of KeySpan or the Subsidiaries and other terms and conditions as KeySpan may determine at the time of issuance.

Applicants state that the maturity dates, interest rates, redemption and sinking fund provisions, tender or repurchase and conversion features, if

[4] Applicants state that this common stock may be registered under the Securities Act of 1933, as amended (''1933 Act''), or if the common stock is not registered, then it would be subject to resale restrictions under Rule 144 under the 1933 Act.

[5] Applicants state, for example, that in May 2002, KeySpan completed an offering of 9.2 million publicly traded equity-linked securities units. The aggregate offering price was $460 million. Each unit consists of a 6-year term, 8.75% senior unsecured note with a principal amount of $50, and a forward stock purchase contract to purchase $460 million of KeySpan common stock (based on a range of prices between $35.30 and $42.36) in May 2005. Applicants state that both the issuance of the note and the forward stock purchase contract portion (including the execution thereof) of the equity-linked units were issued and accounted for under KeySpan's Prior Financing Orders. Applicants state that because of the above, the conversion of the forward stock purchase contracts into KeySpan common stock in May 2005 shall not be counted against the $3.0 billion Long-Term Financing Limit.

any, with respect to the long-term securities of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding, subject to the Financing Parameters. Applicants further state that borrowings from banks and other financial institutions will be *pari passu* with debt securities issued under the KeySpan Indenture and the short-term credit facilities. Specific terms of any borrowings will continue to be determined by KeySpan at the time of issuance and will comply in all regards with the Financing Parameters.

4. Short-Term Debt

Applicants request authority for KeySpan to have outstanding, at any one time during the Authorization Period, up to $1.3 billion of short-term debt (''Short-Term Financing Limit''), which may include institutional borrowings, commercial paper (''Commercial Paper'') or bid notes and short-term debt issued under the KeySpan Indenture or otherwise. Applicants state that the authorization for short-term debt is in addition to the Long-Term Financing Limit.

Short-term debt shall include any debt securities with a maturity term of one year or less. KeySpan may sell Commercial Paper, from time to time, in established domestic Commercial Paper markets. Applicants state that Commercial Paper would be sold to dealers at the discount rate or the coupon rate per annum prevailing at the date of issuance for Commercial Paper of comparable quality and maturities sold to Commercial Paper dealers generally. Applicants expect that the dealers acquiring Commercial Paper from KeySpan will re-offer it at a discount to corporate and institutional investors. Applicants expect Institutional investors to include commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities, and finance companies.

KeySpan may, without counting against the Short-Term Financing Limit set forth above, maintain back-up lines of credit (regardless of the maturation term for such back-up credit) in connection with a Commercial Paper program in an aggregate amount not to exceed the amount of authorized short term debt. In no event will the amount of borrowings under such lines of credit plus the amount of Commercial Paper outstanding exceed $1.3 billion in the aggregate.

B. Utility Subsidiary and Nonutility Subsidiary Financing

1. Utility Subsidiaries

Applicants request authority for the Utility Subsidiaries to issue short-term debt, including Commercial Paper and credit lines, and to loan and borrow funds from the utility money pool [6] during the Authorization Period, in the following aggregate principal[7] amounts (''Utility Financing Limit''):

Utility subsidiary	Aggregate principal amount ($ million) [7]
KEDNY	350
KEDLI	450
KeySpan Generation	100
Boston Gas	500
Colonial Gas	225
Essex Gas	50
ENGI	125
	1,800

Applicants state that the Utility Financing Limit is in addition to the Long-Term Financing Limit and the Short-Term Financing Limit. Applicants also request authority for the Utility Subsidiaries to refund, refinance or replace outstanding securities; provided that in no event will the aggregate principal amount of outstanding securities for each Utility Subsidiary exceed the amounts requested above. Applicants request authority for the Utility Subsidiaries to sell Commercial Paper, from time to time, in established domestic commercial paper markets. Commercial Paper would be sold to dealers at the discount rate or the coupon rate per annum prevailing at the date of issuance for Commercial Paper of comparable quality and maturities sold to Commercial Paper dealers generally. Applicants expect that the dealers acquiring commercial paper from Utility Subsidiaries will re-offer it at a discount to corporate and institutional investors. Applicants expect Institutional investors to include commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities and finance companies. Applicants request that the Utility Subsidiaries may, without counting against the limits set forth above, further maintain back up lines of credit in an aggregate amount not to exceed the amount of authorized Commercial Paper. Applicants request authority for the Utility Subsidiaries to set up credit lines for general corporate purposes in addition to credit lines to support Commercial Paper. The Utility Subsidiaries would borrow and repay under these lines of credit, from time to time, as it is deemed appropriate or necessary. Subject to the Financing Parameters, Applicants propose that each Utility Subsidiary may engage in other types of unsecured short-term financing as it may deem appropriate in light of its needs and market conditions at the time of issuance.

2. Nonutility Subsidiaries

Applicants request authority for Nonutility Subsidiaries to borrow and lend funds through the operation of the KeySpan nonutility money pool, approved by order dated August 7, 2003 (HCAR No. 27709). Applicants state that short-term financings undertaken by Nonutility Subsidiaries that are not exempt under rule 52, but are otherwise authorized, will be included in the aggregate Short-Term Financing Limit.

C. Guarantees and Intra-System Advances

KeySpan requests authorization to enter into Guarantees, Performance Guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support with respect to the obligations of its Subsidiaries as may be appropriate or necessary to enable the Subsidiaries to carry on in the ordinary course of their respective businesses in an aggregate principal amount not to exceed $4.0 billion outstanding at any one time (excluding obligations exempt under rule 45) (''Guarantee Financing Limit''). For example, Applicants contemplate that during the Authorization Period, KeySpan will enter into Guarantees, performance Guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support with respect to the obligations of its Subsidiaries in connection with transactions that are anticipated to involve generation expansion projects.

Applicants state that the Guarantee Limit is in addition to the Long-Term Financing Limit, the Short-Term Financing Limit and the Utility Financing Limit. Included in this amount are existing intra-system Guarantees and support provided by KeySpan as of June 30, 2003, which are expected to remain in place. Applicants request authority for KeySpan to charge

[6] The Commission authorized the Utility Money Pool in the 2000 Financing Order.

[7] Applicants state that the dollar limitations set forth do not include certain presently outstanding push-down debt resulting from the Merger in the following amounts: $700 million to Boston Gas, $100 million to Colonial Gas, $100 million to Essex Gas, and $150 million to ENGI.

each Subsidiary a fee for each Guarantee provided on its behalf that is not greater than the cost, if any, of obtaining the liquidity necessary to perform the Guarantee for the period of time the Guarantee remains outstanding. Any Guarantees or other credit support arrangements outstanding at the end of the Authorization Period will continue until expiration or termination in accordance with their terms.

Applicants request that KeySpan's guarantee authority include the ability to guarantee debt. Applicants state that the debt guaranteed will comply with the Financing Parameters or be exempt. To the extent that a Guarantee issued is of a security issued under the authority granted in this Application, Applicants request that the issuance will count only against the applicable limitation related to the underlying obligation in order to avoid a double count.

Applicants also request authorization for the Nonutility Subsidiaries to enter into Guarantees, Performance Guarantees, obtain letters of credit, enter into expense agreements and otherwise provide credit support with respect to other Nonutility Subsidiaries, in an aggregate principal amount not to exceed the Guarantee Financing Limit. The Nonutility Subsidiary providing any credit support may charge its associate company a fee for each Guarantee provided on its behalf that is not greater than the cost, if any, of obtaining the liquidity necessary to perform the Guarantee for the period of time the Guarantee remains outstanding.

Applicants state that certain of the Guarantees referred to above may be in support of the obligations of Subsidiaries which are not capable of exact quantification because they are subject to varying quantification. In these cases, KeySpan will determine the exposure under these Guarantee for purposes of measuring compliance with the Guarantee Financing Limit by appropriate means including estimation of exposure based on loss experience or projected potential payment amounts. Applicants state that estimates will be made in accordance with GAAP and that these estimations will be reevaluated periodically.

D. Refunding, Replacing, Repurchasing or Refinancing Outstanding Securities

Applicants request authorization to refund, repurchase (through open market purchases, tender offers, or private transactions), replace or refinance (together, ''Refinancing'') their respective debt or equity securities outstanding during the Authorization Period through the issuance of similar or any other types of securities authorized in this Application. Applicants state that in no case, will Refinancing cause any applicable financing limit to be exceeded.

Applicants request that the amount of a Refinancing that is equal to the then existing outstanding aggregate principal amount of securities to be refinanced not be counted against the securities' applicable financing limit. Only securities issued to finance the additional costs associated with the Refinancing will be counted against the applicable financing limit. The securities issued in the Refinancing may be issued to finance costs incurred due to redemption premiums, costs of acquisition or retirement of the securities, costs of issuance, or other similar costs including the costs expended to acquire securities on the open market under rule 42 and the subsequent costs to reissue the securities. Applicants state that any Refinancing of securities outstanding during the Authorization Period will be undertaken through the issuance of similar or any other securities of the types authorized in this Application and will be subject to the Financing Parameters.

E. Issuing Debt Securities in Foreign Jurisdictions

Applicants state that KeySpan engages in business operations outside of the United States, including Canada and Ireland. In connection with this business, and potential expansion outside of the United States, Applicants request authorization to make sales of KeySpan's long-term and short-term debt securities, of the type authorized in this Application, in foreign countries. Applicants state that opportunities in foreign jurisdictions may arise that allow KeySpan to enter into financing transactions at costs lower than that otherwise may be available within the United States. Applicants state that these issuances will not exceed an aggregate of $500 million at any time outstanding during the Authorization Period (''Foreign Issue Limit''). Applicants state that consideration for foreign securities sales may be in foreign currency. In addition, foreign securities sales shall be subject to the Financing Parameters, the Long-Term Financing Limit and Short-Term Financing Limit, as the case may be, based on its value in U.S. Dollars as calculated in accordance with the currency exchange rate for the currency used as reported at the time of the sale.

F. Financing Risk Management Devices

1. Interest Rate Risk

Applicants request authority to enter into, perform, purchase, and sell financial instruments intended to reduce or manage the volatility of interest rates, including but not limited to interest rate swaps, caps, floors, collars and forward agreements. Applicants state that hedges may also include issuance of structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury or U.S. governmental agency obligations or LIBOR based swap instruments (''Hedge Instruments''). Applicants state that the transactions would be for fixed periods and stated notional amounts. Applicants state that they would employ interest rate derivatives as a means of prudently managing the risk associated with any of its outstanding debt issued under this authorization or an applicable exemption by, in effect, synthetically (i) converting variable rate debt to fixed rate debt, (ii) converting fixed rate debt to variable rate debt, and (iii) limiting the impact of changes in interest rates resulting from variable rate debt. Applicants assert that in no case will the notional principal amount of any interest rate swap exceed the face value of the underlying debt instrument and related interest rate exposure. Applicants state that transactions will be entered into for a fixed or determinable period and that they will not engage in speculative transactions. Applicants state that they will only enter into agreements with counterparties (''Approved Counterparties'') whose senior debt ratings, as published by a national recognized rating agency, are greater than or equal to ''BBB-,'' or an equivalent rating.

2. Anticipatory Hedges

In addition, Applicants request authorization to enter into interest rate hedging transactions with respect to anticipated debt offerings (''Anticipatory Hedges''), subject to certain limitations and restrictions. Applicants state that Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through (i) a forward sale of exchange-traded Hedge Instruments (''Forward Sale''), (ii) the purchase of put options on Hedge Instruments (''Put

Options Purchase''), (iii) a Put Options Purchase in combination with the sale of call options Hedge Instruments (''Zero Cost Collar''), (iv) transactions involving the purchase or sale, including short sales, of Hedge Instruments, or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to, structured notes, caps and collars, appropriate for the Anticipatory Hedges. Anticipatory Hedges may be executed on-exchange (''On-Exchange Trades'') with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade (''CBOT''), the opening of over-the-counter positions with one or more counterparties (''Off-Exchange Trades''), or a combination of On-Exchange Trades and Off-Exchange Trades. Applicants state that they will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution and that they may decide to lock in interest rates and/or limit its exposure to interest rate increases.

3. Accounting Standards

Applicants state they will comply with Statement of Financial Accounting Standards (''SFAS'') 133 (''Accounting for Derivative Instruments and Hedging Activities''), SFAS 138 (''Accounting for Certain Derivative Instruments and Certain Hedging Activities'') or any other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board (''FASB''). The Hedge Instruments and Anticipatory Hedges will qualify for hedge accounting treatment under the current FASB standards in effect and as determined at the date the Hedge Instruments or Anticipatory Hedges are entered into.

G. Direct Stock Purchase and Dividend Reinvestment Plan, Incentive Compensation Plans and Other Employee Benefit Plans

Applicants propose that KeySpan, from time to time during the Authorization Period, issue and/or acquire in open market transactions, or by some other method which complies with applicable law and Commission interpretations then in effect, up to thirteen million shares of KeySpan common stock under KeySpan's current or any future direct stock purchase and dividend reinvestment plan, certain incentive compensation plans and certain other employee benefit plans. Applicants request that any shares of common stock acquired by KeySpan on the open market during the Authorization Period under rule 42 that were originally issued under this 13 million issuable shares limitation shall no longer count against the 13 million issuable shares limitation until the shares are reissued.

H. Payment of Dividends out of Capital or Unearned Surplus by Nonutility Subsidiaries

Applicants request authority for the Nonutility Subsidiaries to pay dividends from time to time, out of capital and unearned surplus (including revaluation reserve), to the extent permitted under applicable corporate law. Applicants state that, without further approval of the Commission, no Nonutility Subsidiary will declare or pay any dividend out of capital or unearned surplus if that Nonutility Subsidiary derives any material part of its revenues from sales of goods, services, electricity or natural gas to any of the Utility Subsidiaries or if at the time of the declaration or payment such Nonutility Subsidiary has negative retained earnings.

I. Development and Administrative Activities

Applicants request authority for KeySpan and the Subsidiaries to engage in preliminary development activities (''Development Activities'') and administrative and management activities (''Administrative Activities'') in connection with future investments in exempt wholesale generators (''EWGs''), foreign utility companies (''FUCOs''), as those terms are defined in sections 32 and 33 of the Act, and in subsidiaries permitted under rule 58 (''Rule 58 Subsidiaries''). Applicants state that Development Activities will be limited to due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including in connection, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal ''hosts,'' fuel suppliers and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and any other preliminary activities as may be required in connection with the purchase, acquisition or construction of facilities or the securities of other companies.

Applicants further request authority to form new subsidiary companies organized for the sole purpose of engaging in Development Activities. Development Activities will be designed to eventually result in a permitted nonutility investment.

Applicants propose that to the extent a Subsidiary for which amounts were expended for Development Activities and Administrative Activities becomes an EWG, FUCO, or Rule 58 Subsidiary, the amount expended will cease to be Development Activities or Administrative Activities and then be considered as part of the ''aggregate investment'' allowed by Commission order and/or the applicable provisions under the Act. In the case of Rule 58 Subsidiaries, the aggregate investment will then count against the limitation on such aggregate investment under rule 58. In the case of EWGs and FUCOs, the aggregate investment will then be transferred from the investment limitation for Development Activities or Administrative Activities and instead count against the limitation on EWG and FUCO aggregate investment requested below. Applicants propose that, should the Development Activities or Administrative Activities fail to lead to a permitted nonutility investment, the expenditures will not be counted against the ''aggregate investment'' allowed by Commission order and/or the applicable provisions under the Act with respect to EWG, FUCO, or Rule 58 Subsidiaries. Additionally, in the event that the Development Activities or Administrative Activities fail to lead to a permitted nonutility investment, any new subsidiaries formed for the purposes of engaging in Development Activities or Administrative Activities shall be dissolved as soon as reasonably practicable.

J. Financing Subsidiaries

KeySpan and the Subsidiaries request authorization to organize and/or acquire the equity securities of one or more additional corporations, trusts, partnerships or other entities organized to serve the purpose of facilitating financings (''Financing Subsidiaries''). Applicants state that the formation and acquisition of a limited use subsidiary may allow KeySpan and the Subsidiaries to secure more favorable financing terms, at lower costs than may otherwise be available. In addition, Applicants state that the interposition of a Financing Subsidiary can serve to isolate the risks associated with debt securities issuances thereby providing further benefit to the KeySpan system.

Specifically, Financing Subsidiaries may be organized to issue to third parties, long-term debt, short-term debt, preferred securities (including but not

limited to trust preferred securities), equity-linked securities, and/or other securities that are authorized or exempt and then transfer the proceeds to KeySpan or the Subsidiaries. Applicants request authorization for KeySpan and, to the extent not exempt under rule 52, Subsidiaries to issue debentures and other evidence of indebtedness (''Financing Debt'') to any Financing Subsidiary to evidence the transfer of financing proceeds by a Financing Subsidiary to its parent company. The principal amount, maturity and interest rate on any Financing Debt will be designed to parallel the amount, maturity and interest or distribution rate on the securities issued by a Financing Subsidiary in respect of which the Financing Debt is issued. Each of the Subsidiaries also requests authorization to enter into an expense agreement with its respective Financing Subsidiary, under which it would agree to pay all expenses of the Financing Subsidiary. Applicants state that any affiliate transactions entered into by a Financing Subsidiary in connection with an expense agreement, or otherwise, would be conducted at fair market value without regard to cost, and therefore, Applicants request an exemption under section 13(b) from the at cost standards of rules 90 and 91 for KeySpan and the Subsidiaries to enter into these transactions.

The amount of securities issued by any Financing Subsidiary to third parties will be included in the applicable overall external financing limitation, authorized for the immediate parent company of such Financing Subsidiary. However, to avoid double counting, the amount of Financing Debt issued by a parent company to its Financing Subsidiary will not be counted against the applicable external financing limitation. Applicants request that securities issued by any Financing Subsidiary to third parties be exempt under rule 52 (and therefore reportable on Form U–6B–2) only if the securities, if issued directly by the parent company of such the Financing Subsidiary, would be exempt under rule 52. Applicants propose that KeySpan or a Subsidiary may, if required, guarantee or enter into support or expense agreements in respect of the obligations of Financing Subsidiaries.

VI. EWG/FUCO Investment Authority

Applicants request authorization for KeySpan to increase its ''aggregate investment'', as that term is defined in rule 53, in EWG and FUCOs to $3.0 billion (''EWG/FUCO Limit'') outstanding at any one time during the Authorization Period. Applicants state that the EWG/FUCO Limit represents approximately 528% of KeySpan's average consolidated retained earnings for the four quarters ended June 30, 2003.

At March 31, 2003, applicants state that the consolidated amount of KeySpan's current aggregate investment in existing EWGs and FUCOs was as follows:

Entity≤	Investment ($ millions)
KeySpan-Ravenswood LLC (EWG)	[8] $776.6
Phoenix Natural Gas Limited and Finsa Energeticos (FUCOs)	58.9
KeySpan-Glenwood Energy Center LLC (EWG)	95.3
KeySpan-Port Jefferson Energy Center LLC (EWG)	104.1
Total	$1,034

Applicants state that this total amount, represents approximately 182% of KeySpan's average consolidated retained earnings, as defined in rule 53, of $586.3[8] million for the four quarters ending at June 30, 2003.

By order dated December 6, 2002, (HCAR No. 27612), Applicants were authorized to make investments in an aggregate amount of up to $2.2 billion in EWGs and FUCOs. Applicants state that $2.2 billion represented approximately 440% of KeySpan's average consolidated retained earnings for the four quarters ended September 30, 2002. Applicants now request authority for KeySpan and the Subsidiaries, directly or indirectly, to invest up to $3.0 billion in EWGs and FUCOs during the Authorization Period.

VII. Intermediate Subsidiaries

Applicants propose that KeySpan create and/or acquire, directly or indirectly, the securities of one or more Intermediate Subsidiaries including corporations, trusts, partnerships, limited liability companies or other entities. Applicants state that Intermediate Subsidiaries will be organized exclusively for the purpose of acquiring and holding the securities of, or financing or facilitating KeySpan's investments in, other direct or indirect nonutility investments. Applicants also request authority for Intermediate Subsidiaries to engage in Development Activities and Administrative Activities.

Applicants state that an Intermediate Subsidiary may be organized, among other things,: (i) To facilitate the making of bids or proposals to develop or acquire an interest in any EWG, FUCO, exempt telecommunications company (''ETC''), or other Nonutility which, upon acquisition, would qualify as a Rule 58 Subsidiary; (ii) to facilitate closing on the purchase or financing of an acquired company; (iii) to effect an adjustment in the respective ownership interests in a business held by the KeySpan system and non-affiliated investors; (iv) to facilitate the sale of ownership interests in one or more acquired Rule 58 Subsidiary, ETC, EWG or FUCO; (v) to comply with applicable laws of foreign jurisdictions limiting or otherwise relating to the ownership of domestic companies by foreign nationals; (vi) to limit KeySpan's exposure to U.S. and foreign taxes; (vii) to further insulate KeySpan and the Utility Subsidiaries from operational or other business risks that may be associated with investments in nonutility companies; or (viii) for other lawful business purposes.

Applicants state that investments in Intermediate Subsidiaries may take the form of any combination of the following: (i) Purchases of capital shares, partnership interests, member interests in limited liability companies, trust certificates or other forms of voting or non-voting equity interests; (ii) capital contributions; (iii) open account advances without interest; (iv) loans; and (v) Guarantees issued, provided or arranged in respect of, the securities or other obligations of any Intermediate Subsidiaries.

Applicants state that funds for any direct or indirect investment in any Intermediate Subsidiary will be derived from KeySpan's available funds. No additional financing authority is sought under this heading. Applicants request that to the extent that KeySpan provides funds directly or indirectly to an Intermediate Subsidiary which are used for the purpose of making an investment in any EWG, FUCO, or a Rule 58 Subsidiary, and to the extent these funds are not expenditures in Development Activities, the amount of the funds will be included in KeySpan's ''aggregate investment'' in EWGs, FUCOs and Rule 58 Subsidiaries.[9]

[8] Applicants state that this amount represents existing investment in KeySpan Ravenswood.

[9] Applicants request that if the Intermediate Subsidiary is merely a conduit, the aggregate investment will not ''double count'' both the conduit investment and the investment in the EWG, FUCO, Rule 58 subsidiary or other approved investment.

VIII. Internal Reorganization of Existing Investments

A. Nonutility Subsidiaries

Applicants request authority for KeySpan to engage in internal corporate reorganizations to better organize Nonutility Subsidiaries and investments. Applicants request authority to sell or to cause any Subsidiary to sell or otherwise transfer (i) Nonutility Subsidiaries businesses, (ii) the securities of Nonutility Subsidiaries engaged in some or all of these businesses or (iii) nonutility investments which do not involve a Nonutility Subsidiary (*i.e.* less than 10% voting interest) to a different Subsidiary. Applicants also request authority to acquire the assets of nonutility businesses, Nonutility Subsidiaries or other then existing investment interests. Alternatively, transfers of these securities or assets may be effected by share exchanges, share distributions or dividends followed by contribution of these securities or assets to the receiving entity.

IX. Exemption From Section 13(b)

Applicants request authority for Nonutility Subsidiaries to provide other Nonutility Subsidiaries with (i) operations and management services (''O&M Services''); (ii) administrative services (''Administrative Services''); and (iii) consulting services (''Consulting Services''). These services are referred to collectively as ''Affiliate Services.''

Applicants state that O&M Services would include, for example, development, engineering, design, construction and construction management, pre-operational start-up, testing and commissioning, long-term operations and maintenance, fuel procurement, management and supervision, technical and training, administrative support, market analysis, consulting, coordination and any other managerial, technical, administrative or consulting required in connection with the business of owning or operating facilities used for the generation, transmission or distribution of electric energy and/or natural gas (including related facilities for the production, conversion, sale or distribution of thermal energy) or coordinating their operations in the power market.

Applicants state that Administrative Services would include, for example, corporate and project development and planning, management, administrative, employment, tax, legal, accounting, engineering, consulting, marketing, utility performance and electric data processing services, and intellectual property development, marketing and other support services.

Applicants state that Consulting Services would include, for example, providing the Nonutility Subsidiary with technical capabilities and expertise primarily in the areas of electric power generation, transmission and distribution and ancillary operations.

Applicants state that Affiliate Services would generally be performed by Nonutility Subsidiaries for associate Nonutility Subsidiaries at cost. However, the Nonutility Subsidiaries request an exemption pursuant to section 13(b) from the at-cost standards of rules 90 and 91, for the Affiliate Services in any case in which the Nonutility Subsidiary purchasing services is:

(i) A FUCO or foreign EWG that derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;

(ii) An EWG that sells electricity at market-based rates that have been approved by the Federal Energy Regulatory Commission (''FERC''), provided that the purchaser is not one of the Utility Subsidiaries;

(iii) A ''qualifying facility'' (''QF'') within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA'') that sells electricity exclusively (a) at rates negotiated at arms-length to one or more industrial or commercial customers purchasing the electricity for their own use and not for resale, and/or (b) to an electric utility company (other than a Utility Subsidiary) at the purchaser's ''avoided cost'' as determined in accordance with the regulations under PURPA;

(iv) A domestic EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser thereof is not one of the Utility Subsidiaries; or

(v) A Rule 58 Subsidiary or any other Nonutility Subsidiary that (a) is partially or wholly-owned, directly or indirectly, by KeySpan, provided that the ultimate purchaser of such goods or services is not a Utility Subsidiary (or any other entity within the KeySpan system whose activities and operations are primarily related to the provision of goods and services to the Utility Subsidiaries), (b) is engaged solely in the business of developing, owning, operating and/or providing services or goods to Nonutility Subsidiaries described in clauses (i) through (iv) immediately above; or (c) does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public utility company operating within the United States.

Cinergy Corp. et al. (70–10172)

Cinergy Corp. (''Cinergy''), a registered holding company, Cinergy's direct nonutility subsidiaries, Cinergy Investments, Inc. (''Cinergy Investments'') and Cinergy Global Resources, Inc. (''Global Resources''), CinTec LLC (''CinTec''), Cinergy Technologies, Inc. (''Cinergy Technologies''), and Cinergy Wholesale Energy, Inc. (''Cinergy Wholesale Energy'' and together, ''Applicants'') have filed an application-declaration with the Commission under sections 6(a), 7, 9(a), 10, 12(c), 12(f), 13, 32, 33 and 34 of the Act and rules 43, 45, 46, 54, 83, 87, 90 and 91.

I. Background

By order dated March 1, 1999 (HCAR No. 26984) (''1999 Order''), Cinergy [10] and its nonutility subsidiaries, Cinergy Investments and Cinergy Global Resources were authorized to establish one or more special-purpose subsidiaries (''Intermediate Parents'') [11] through December 31, 2003, to hold Cinergy's direct or indirect interests in existing and future nonutility subsidiaries (''Nonutilty Subsidiaries'').[12]

Cinergy states that it now owns numerous Nonutility Subsidiaries, which it holds through, Cinergy

[10] Applicants state that Cinergy also directly or indirectly owns all the outstanding common stock of five public utility companies, PSI Energy, Inc. (''PSI''), The Cincinnati Gas & Electric Company (''CG&E''), The Union Light, Heat and Power Company, Lawrenceburg Gas Company, and Miami Power Corporation (''Utility Subsidiaries'').

[11] Applicants state that certain of these ''Intermediate Parents'' were formed prior to the 1999 Order under express authorization of the Commission as noted in the 1999 Order.

[12] Applicants state that PSI and CG&E hold three businesses under a reservation of jurisdiction which are not included in the definition of ''Nonutility Subsidiaries'': KO Transmission Company (''KO''), South Construction Company, Inc. (''South Construction'') and Tri-State Company (''Tri-State''). Applicants state that the retainability of these companies is subject to a Commission reservation of jurisdiction, originally by order dated October 21, 1994 (HCAR No. 26146) (''Merger Order''), the order authorizing the merger that created the Cinergy. The Commission extended this reservation of jurisdiction by order dated November 2, 1998 (HCAR No. 26934). Applicants assert that KO is an energy-related company under rule 58, which was enacted after the Merger Order. Applicants state that South Construction and Tri-State acquire and hold real estate in connection with the utility businesses of PSI and CG&E, respectively. South Construction and Tri-State are excluded from the scope of the proposed transactions in this application, except with respect to dividend authority as described fully below.

Investments, Cinergy Global Resources, CinTec, Cinergy Technologies and Cinergy Wholesale Energy, each of which is a direct, wholly owned Nonutility Subsidiary of Cinergy formed to act as an Intermediate Parent. Applicants state that through authority granted in previous orders,[13] applicable provisions of the Act and rules under the Act, Applicants have authority to invest in a variety of nonutility businesses, including:

(1) Exempt wholesale generator (''EWG''), as that term is defined in section 32 of the Act;

(2) Foreign utility company (''FUCO''), as that term is defined in section 33 of the Act;

(3) Exempt telecommunications company (''ETC''), as that term is defined in section 34 of the Act;

(4) Nonutility company, which, upon acquisition, would qualify for exemption from the Act under rule 58 (''Rule 58 Company'');

(5) Companies providing certain infrastructure services (''IS Company'');

(6) Companies providing energy management services and energy-related consulting services outside the United States;

(7) Companies brokering and marketing energy commodities in Canada and Mexico; and

(8) Certain nonutility energy-related assets (''Energy-Related Asset'').

Applicants state that, (i) an ''Authorized Nonutility Business'' means any nonutility business in which Cinergy is currently authorized or may hereafter become authorized under the Act to invest, and includes, without limitation, the types of nonutility businesses enumerated in (1) through (8) above; (ii) a ''Nonutility Subsidiary'' means any existing or future associate company of Cinergy (including any Intermediate Subsidiary) formed for the purpose of engaging in an Authorized Nonutility Business; and (iii) a ''Nonutility Investment'' means any existing or future Authorized Nonutility Business in which Cinergy invests, but which investment does not cause such Authorized Nonutility Business to become an associate company of Cinergy.

II. Current Request

A. Overview

Applicants request authorization for Authorized Nonutility Businesses to engage in the following activities through March 31, 2007 (''Authorization Period):

(i) Acquire the securities of corporations, limited liability companies, partnerships, trusts or other entities that would be formed exclusively to acquire, hold, finance or facilitate the acquisition of, and/or sell goods, services or construction to Nonutility Subsidiaries and/or Nonutility Investments, whether directly or indirectly through one or more subsidiaries thereof formed exclusively for the same purpose (''Intermediate Subsidiaries'');[14]

(ii) Undertake internal corporate reorganizations or restructurings of Nonutility Subsidiaries and Nonutility Investments;

(iii) Declaration and payment by Nonutility Subsidiaries and KO, South Construction, and Tri-State dividends out of capital or unearned surplus, subject to certain conditions; and

(iv) Enter into agreements to perform certain services for certain specified categories of Nonutility Subsidiaries at other than cost under an exemption from section 13(b) under the cost standards of rules 90 and 91.

B. Acquisition of Intermediate Subsidiaries

Applicants request authority to acquire Intermediate Subsidiaries. Applicants propose that an Intermediate Subsidiary may be organized, among other things: (i) In order to facilitate the making of bids or proposals to develop or acquire an interest in any exempt wholesale generator (''EWG''), as that term is defined in section 32 of the Act, foreign utility company (''FUCO''), as that term is defined in section 33 of the Act, exempt telecommunications company (''ETC''), as that term is defined in section 34 of the Act, or other nonutility company which, upon acquisition, would qualify for exemption from the Act under rule 58 (''Rule 58 Company'') or other Authorized Nonutility Business; (ii) after the award of a bid proposal, in order to facilitate closing on the purchase or financing of the acquired company; (iii) at any time subsequent to the consummation of an acquisition of an interest in any of these companies in order, among other things, to effect an adjustment in the respective ownership interests in the business held by Cinergy and non-affiliated investors; (iv) to facilitate the sale of ownership interests in one or more acquired Authorized Nonutility Business; (v) to comply with applicable laws of foreign jurisdictions limiting or otherwise relating to the ownership of domestic companies by foreign nationals; (vi) as a part of tax planning in order to limit Cinergy's exposure to U.S. and foreign taxes; (vii) to insulate Cinergy and its utility subsidiaries from operational or other business risks that may be associated with investments in Authorized Nonutility Business; or (viii) for other lawful business purposes.

Applicants state that investments in Intermediate Subsidiaries may take the form of (i) purchases of capital shares, partnership interests, membership interests in limited liability companies, trust certificates or other forms of voting or non-voting equity interests; (ii) capital contributions; (iii) loans; or (iv) guarantees issued, provided or arranged in respect of the securities or other obligations of any Intermediate Subsidiaries. Applicants state that Cinergy will obtain funds for initial and subsequent investments in Intermediate Subsidiaries from available internal sources or external sources involving issuances of its securities under the June 2000 Order (or any future order supplementing or superseding that order in whole or in part). The other Applicants will obtain funds for initial and subsequent investments in Intermediate Subsidiaries from available cash, capital contributions or loans from Cinergy, or external borrowings or sales of capital stock under the exemption afforded by rule 52(b). To the extent that Cinergy provides funds directly or indirectly to an Intermediate Subsidiary that are used for an investment in an EWG or FUCO, a Rule 58 Company, an IS Company or an Energy-Related Asset, the amount of the funds will be included in Cinergy's ''aggregate investment'' in the appropriate entity, as calculated in accordance with rule 53 or rule 58, as applicable, or the terms of the Commission order authorizing Cinergy's investment in an IS Company or Energy-Related Asset, as applicable.

C. Nonutility Reorganizations

Applicants seek authority to effect corporate reorganizations or restructurings of Nonutility Subsidiaries and Nonutility Investments. Specifically Applicants request authority (i) for each Nonutility Subsidiary to sell or otherwise transfer the securities or assets (in whole or in part) of any Nonutility Subsidiary or Nonutility Investment to any other Nonutility Subsidiary or Nonutility Investment, and (ii) for each Nonutility Subsidiary to acquire these securities or assets.

[13] *See* HCAR No. 27400 (May 18, 2001), HCAR No. 27581 (October 23, 2002), HCAR No. 27393 (May 4, 2001), HCAR No. 27506 (May 21, 2002), HCAR No. 27717 (August 29, 2003).

[14] Applicants state that the term Intermediate Subsidiary also includes any Intermediate Parents formed under authority from the 1999 Order and any other Nonutility Subsidiaries performing a corresponding function formed by Cinergy under prior Commission orders.

Alternatively, transfers of these securities or assets may be effected by share exchanges, share distributions or dividends followed by contribution of these securities or assets to the receiving entity, or by mergers or liquidations, or otherwise, and Applicants request approval for these forms of restructuring transactions as well.

Applicants state that the corporate reorganizations or restructurings of Nonutility Subsidiaries and Nonutility Investments would be undertaken in order to eliminate corporate complexities, to combine related business segments for staffing and management purposes, to eliminate administrative costs, to achieve tax savings, or for other ordinary and necessary business purposes. Applicants state that none of these reorganizations or restructurings will involve the sale or other disposition of any utility assets of the Utility Subsidiaries or any corporate reorganization involving the Utility Subsidiaries, nor does the approval sought in this subsection extend to the acquisitions of any new businesses or activities not constituting an Authorized Nonutility Business.

D. Payment of Dividends by Nonutility Subsidiaries

To the extent not otherwise exempt under the Act, Applicants request authority for each Nonutility Subsidiary and KO, South Construction, and Tri-State to declare and pay dividends out of capital or unearned surplus to its respective parent company, where permitted under applicable corporate law, and where the dividend will not be detrimental to the financial integrity or working capital of any company in the Cinergy holding company system. Additionally, Applicants state that, without further approval of the Commission, no Nonutility Subsidiary will declare or pay any dividend out of capital or unearned surplus if that Nonutility Subsidiary derives any material part of its revenues from sales of goods, services, electricity or natural gas to any of the Utility Subsidiaries or if at the time of the declaration or payment such Nonutility Subsidiary has negative retained earnings.

E. Exemptions from Section 13(b)

Applicants request authority for Nonutility Subsidiaries to enter into agreements to perform services Applicants request authority for Nonutility Subsidiaries to perform certain services (namely, project development services and administrative services and other support services) [15] for any Nonutility Subsidiary within any of the five categories enumerated immediately below at fair market prices determined without regard to cost, and therefore request an exemption from section 13(b) and the cost standards of rules 90 and 91.

(i) A FUCO or an EWG that derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;

(ii) An EWG that sells electricity at market-based rates which have been approved by the Federal Energy Regulatory Commission (''FERC'') or an appropriate state public utility commission, provided that the purchaser of the EWG's electricity is not an affiliated public utility or an affiliate that re-sells such power to an affiliated public utility;

(iii) A ''qualifying facility'' (''QF''), as defined under the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA''), that sells electricity exclusively at rates negotiated at arm's length to one or more industrial or commercial customers purchasing such electricity for their own use and not for resale, or to an electric utility company other than an affiliated electric utility at the purchaser's ''avoided cost'' determined under PURPA;

(iv) An EWG or a QF that sells electricity at rates based upon its costs of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser of the electricity is not an affiliated public utility; or

(v) A Nonutility Subsidiary that is a Rule 58 Company or any other Nonutility Subsidiary that (a) is partially owned, provided that the ultimate purchaser of goods or services is not an affiliated public utility, (b) is engaged solely in the business of developing, owning, operating and/or providing services or goods to Nonutility Subsidiaries described in (i) through (iv) above or (c) does not derive, directly or indirectly, any part of its income from sources within the United States and is not a public utility company operating within the United States.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–29511 Filed 11–25–03; 8:45 am]

BILLING CODE 8010–01–P

[15] Applicants state that project developmental services are anticipated to include such services as research and due diligence with respect to potential projects and transactions, preparation of bid documents, investment proposals, customer proposals and the like, preliminary engineering, construction, licensing and operational studies and analyses, acquisitions of options, and other legal, accounting, marketing, engineering, financial and similar services relating to acquisitions of project investments and consummating transactions with customers. Applicants state that administrative and other support services include without limitation overall strategic planning, operations and maintenance, environmental, information systems, engineering and construction, risk management, marketing, finance, legal, accounting, employment and tax.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48807; File No. SR–CBOE–2003–40]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Options on Certain CBOE Volatility Indices

November 19, 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 Chicago Board Options Exchange, Inc. (''CBOE'' 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 CBOE. On November 18, 2003, the CBOE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby proposes to amend certain of its rules to provide for the listing and trading of options on several volatility indexes; specifically: the CBOE Volatility Index (''VIX''); the CBOE Nasdaq 100'' Volatility Index (''VXN''); and the CBOE Dow Jones Industrial Average'' Volatility Index (''VXD''). Options on each index would

[1] U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jim Flynn, Attorney, CBOE, to Florence Harmond, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated November 18, 2003 (''Amendment No. 1''). Amendment No. 1 revises the original rule filing by defining the reporting authority and terms of these index option contracts, including that the interval between strike prices shall be no less than $2.50, and accordingly replaces CBOE's original Exhibit A.

be cash-settled and will have European-style expiration. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE 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 CBOE 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 the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style options on the VIX, VXN, and VXD. The calculation of each index is based on a recently developed methodology that builds upon the calculation of the original CBOE Market Volatility Index, which is based on S&P 100'' Index option (''OEX'') quotes. Introduced by CBOE in September 2003, the revised VIX is an index that uses the quotes of certain S&P 500 Index® (''SPX''®) option series to derive a measure of the volatility of the U.S. equity market. It provides investors with up-to-the-minute market estimates of expected volatility by extracting implied volatilities from real-time index option bid/ask quotes. The VIX is quoted in percentage points per annum. For example, an index level of 30.34 (the closing value from December 31, 2002) represents an annualized volatility of 30.34%. This new methodology will also be used to calculate VXN and VXD values.

Index Design and Calculation

Each index—VIX, VXN, and VXD—will be calculated using real-quotes of the nearby and second nearby index puts and calls of the SPX, the Nasdaq 100 Index (''NDX'''), and the Dow Jones Industrial Index (''DJX'''), respectively. For options on each respective volatility index, the nearby index option series are defined as the series with the shortest time to expiration, but with at least eight (8) calendar days to expiration. The second nearby index option series are the series for the subsequent expiration month. Thus, with eight days left to expiration, an index will ''roll'' to the second and third contract months.

For each contract month, CBOE will determine the at-the-money strike price. It will then select the at-the-money and out-of-the money series with non-zero bid prices and determine the midpoint of the bid-ask quote for each of these series. The midpoint quote of each series is then weighted so that the further away that series is from the at-the-money strike, the less weight that is accorded to the quote. Then, to compute the index level, CBOE will calculate a volatility measure for the nearby options and then for the second nearby options. This is done using the weighted mid-point of the prevailing bid-ask quotes for all included option series with the same expiration date. These volatility measures are then interpolated to arrive at a single, constant 30-day measure of volatility.

As described above, each volatility index option will be structured as an option on a group of securities, namely options on the SPX, NDX, or DJX indexes and by extension the stocks underlying each respective index. The CBOE will use the actual quotes of specific index options to derive each corresponding volatility index. The underlying index options themselves are securities and are based on an index of the broader number of underlying securities.[4] Thus, the pricing components underlying the Index options will include the SPX, NDX, or DJX options and, by extension, the component stocks of each index. These pricing components will provide a measure of the volatility of price movements of the SPX, NDX, or DJX stock indexes. This structure is similar to the approach used by CBOE for its interest rate options.[5] Those products use the quotes of debt securities to derive an interest rate yield, which is converted into a measure that serves as the underlying for options. In the case of Index options, quotes from index option securities, which reflect a measure of stock price movements of the SPX, NDX and DJX stocks, will be used to derive a measure of volatility that will be the underlying for the respective volatility index options.

The CBOE will compute each index on a real-time basis throughout each trading day, from 8:30 AM until 3:15 PM (Chicago Time) CST. CBOE has calculated historical index values for the new VIX back to January 2, 1990. As of December 31, 2002, the closing values for each respective index were as follows: (1) VIX: 30.34; (2) VXN: 46.94; and (3) VXD: 31.81. Volatility index levels will be calculated by CBOE and disseminated at 15-second intervals to market information vendors via the Options Price Reporting Authority (''OPRA'').

Index Option Trading

Strike prices will be set to bracket the index in 2½ point increments; thus, the interval between strike prices will be no less than $2.50.[6] The minimum tick size for series trading below $3 will be 0.05 and for series trading above $3 the minimum tick will be 0.10. The trading hours for options on the volatility indexes will be from 8:30 a.m. to 3:15 p.m. (Chicago Time) CST.[7]

Exercise and Settlement

The proposed options on each index will expire 30 days prior to the expiration date of the options used in the calculation of that index. For example, September 2003 VIX options would expire on Wednesday, September 17, 2003, exactly 30 days prior to the expiration of the October 2003 SPX options, which would be the only options used in the VIX calculation on that date. Trading in the expiring contract month will normally cease at 3:15 PM (Chicago Time) (CST) on the last day of trading. Exercise will result in delivery of cash on the business day following expiration. VIX, VXN and VXD options will be A.M.-settled. The exercise settlement value will be determined by a Special Opening Quotation (''SOQ'') of each respective volatility index calculated from the sequence of opening prices of the options that comprise that index. The opening price for any series in which there is no trade shall be the average of that option's bid price and ask price as determined at the opening of trading.

The exercise-settlement amount is equal to the difference between the exercise-settlement value and the exercise price of the option, multiplied by $100. When the last trading day is moved because of Exchange holidays, the last trading day for expiring options

[4] 500 securities in the SPX, 100 securities in the NDX, etc.

[5] *See* Securities Exchange Act Release Nos. 26938 (June 15, 1989), 54 FR 26285 (June 22, 1989); and 33106 (October 26, 1993), 54 FR 58358 (November 1, 1993).

[6] *See supra* note 3.

[7] *See* Exhibit B to the proposed rule change filed by CBOE, presents proposed contract specifications for VIX options, Exhibit C presents proposed contract specifications for VXN options; and, Exhibit D presents proposed contract specifications for VXD options, of the proposed rule filing, which set out the contract specifications for each product.

will be the day immediately preceding the last regularly-scheduled trading day.

Surveillance

The Exchange states that it will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in options on each volatility index. The Exchange represents that these surveillance procedures are adequate to monitor the trading of options on these volatility index. For surveillance purposes, the Exchange will have complete access to information regarding trading activity in the pertinent underlying securities.

Position Limits

The Exchange proposes to establish position limits for options on each volatility index—VIX, VXN and VXD—at 25,000 contracts on either side of the market and no more than 15,000 of such contracts may be in series in the nearest expiration month.[8] The Exchange states that this is consistent with Exchange Rule 24.4 (Position Limits for Broad-Based Index Options).

Exchange Rules Applicable

Except as modified herein, the Exchange Rules in Chapter XXIV will be applicable to the VIX, VXN, and VXD options. Each volatility index will be classified as a ''broad-based index'' and, under CBOE margin rules, specifically, Exchange Rule 12.3(c)(5)(A), the margin requirement for a short put or call on the respective volatility indexes shall be 100% of the current market value of the contract plus up to 15% of the respective underlying index value.

Additionally, CBOE affirms that it possesses the necessary systems capacity to support new series that would result from the introduction of VIX, VXN and VXD options. CBOE also has been informed that OPRA has the capacity to support such new series.[9]

2. Statutory Basis

CBOE believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act [10] in general and furthers the objectives of Section 6(b)(5),[11] in particular, in that it will permit trading in options based VIX, VXN, and VXD on the volatility indices pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and thereby will provide investors with the ability to invest in options based on an additional index.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CBOE consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2003–40 and should be submitted by December 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–P

[8] This is consistent with Exchange 24.4 (Position Limits for Broad-Based Index Options).

[9] *See* Exhibit E to the proposed rule change filed by CBOE, which set out the contract specifications for each product.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48810: File No. SR–NASD–2003–161]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish a Nasdaq Official Opening Price

November 19, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 28, 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. 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

Nasdaq is filing a proposed rule change to establish a Nasdaq Official Opening Price that would be made available for wholly voluntary use by NASD members and the public. Nasdaq represents that it would calculate and disseminate the Nasdaq Official Opening Price using its proprietary systems, and that the Nasdaq Official Opening Price would not affect the dissemination of last sale information pursuant to the national market system plan governing trading of Nasdaq securities, the Nasdaq UTP Plan.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

Nasdaq proposes to calculate and disseminate a Nasdaq Official Opening Price for Nasdaq-listed securities. Nasdaq would disseminate the Nasdaq Official Opening Price over the Nasdaq Index Dissemination Service data feed (''NIDS''), a proprietary data feed of Nasdaq. Because the Nasdaq Official Opening Price would be neither a quotation nor a last sale report, it would not be disseminated over either the UTP Quote data feed or the UTP Trade data feed. The Nasdaq Official Opening Price message would contain the prevailing inside quote and the Nasdaq Official Opening Price value. Nasdaq states that the fees for the NIDS feed have previously been filed with the Commission, and that it is not proposing to change those fees.

The Nasdaq Official Opening Price would be equal to the reported price of the first trade executed in the Nasdaq National Market Execution System (''SuperMontage''), which would be based upon orders that are in queue when SuperMontage begins trading at 9:30 a.m. ET (''SuperMontage Opening Match''). SuperMontage executions that are in queue when SuperMontage begins trading at 9:30 a.m. but that are not executed until after 9:30:05 (as a result of being delivered to an order delivery participant that has not responded) would not be eligible to be the SuperMontage Opening Match. SuperMontage executions that result from orders entered into the system after 9:30 also would not be eligible to be the SuperMontage Opening Match.

If there were to be no SuperMontage Opening Match within five seconds after the system opens at 9:30, the Nasdaq Official Opening Price for that security would be based upon the first, last sale eligible trade (''Predicate Trade'')[3] that is reported to Nasdaq's Automated Confirmation Transaction System (''ACT''). The Predicate Trade could be an internalized execution reported to ACT or a SuperMontage execution resulting from an order entered into the system after 9:30, and also reported to ACT. The Predicate Trade could also be a SuperMontage execution based on an order that was in queue in SuperMontage at 9:30 but not executed until after 9:30:05 as a result of being sent to an order delivery participant.

If the Nasdaq Official Opening Price were to be based upon a Predicate Trade rather than a SuperMontage Opening Match, Nasdaq would be able to use the same normalization process that currently applies to the Nasdaq Official Closing Price.[4] Specifically, if the price of the Predicate Trade were to be within the best bid and offer quote entered in the SuperMontage system at the time the trade is reported, the Nasdaq Official Opening Price would equal the reported price of the Predicate Trade. If the price of the Predicate Trade were to be lower than the Nasdaq inside bid, the Nasdaq Official Opening Price would equal the Nasdaq inside bid. Likewise, if the price of the Predicate Trade were to be higher than the Nasdaq inside ask, the Nasdaq Official Opening Price would be the Nasdaq inside ask.

Nasdaq believes that bounding the first ACT trade report by the Nasdaq inside would reduce the extent to which market participants could deliberately affect the Nasdaq Official Opening Price, since firms would need to affect not only the inside quotes but also the Predicate Trade. On the other hand, SuperMontage executions occur only at the prevailing inside bid or ask; therefore, such executions would not need to be bound by a SuperMontage quotation. To be consistent in the delivery of the opening message to market data vendors, the prevailing Nasdaq inside bid and ask would be disseminated with the Nasdaq Official Opening Price whether a SuperMontage trade or an ACT trade sets it.[5]

To illustrate the bounding of an ACT trade report, consider the following example. There is no SuperMontage Opening Match. However, at 9:30:10 a.m., the first, last sale eligible ACT trade is reported with a price of 19.98. The Nasdaq inside bid and ask at 9:30:10 is 20.00 to 20.02. Under the proposal, the Nasdaq Official Opening Price would be equal to the Nasdaq inside bid, in this case 20.00. If the first, last sale eligible ACT trade price were 20.04 instead of 19.98, the Nasdaq Official Opening Price would equal the Nasdaq inside ask at the time of the trade report, in this case 20.02.

The Nasdaq Official Opening Price value would be disseminated as soon as it is calculated, and changes to the underlying trade report would not affect the Nasdaq Official Opening Price. [6]

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, which requires the NASD's rules to be designed, among other things, to protect investors and the public interest. Nasdaq believes that its current proposal is consistent with the NASD's obligations under these provisions of the Act because Nasdaq believes the proposal would result in the public dissemination of information that more accurately reflects the trading in a particular security at the open. Furthermore, to the extent a security is a component of an index, Nasdaq believes the index would more accurately reflect the value of the market, or segment of the market, the index is designed to measure. Nasdaq believes that the corresponding result should be trades, or other actions, executed at prices more reflective of the current market when the price of an execution, or other action, is based on the last sale, the high price or low price of a security, or the value of an index.

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.

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.

[3] Four types of trade reports are not last sale elibible and, thus, would not be eligible to affect the Nasdaq Official Opening Price: cash sales (which include the ''C'' trade report modifier), next day sales (.ND), seller trades (.S), and after hours trades (.T).

[4] *See* Securities Exchange Act Release No. 47517 (March 18, 2003), 68 FR 14446 (March 25, 2003) (SR–NASD–2002–158).

[5] In the event that a security is in a trading halt prior to market open and that halt continues past 9:30, the Nasdaq Official Opening Price for that security would equal the reported trade price of the first last sale eligible trade reported after the trading halt is lifted and the inside market for the security is uncrossed.

[6] Nasdaq represents that it will make an effort to inform users of Nasdaq of when the Nasdaq Official Opening Price is based upon a trade executed in SuperMontage or a Predicate Trade that may have been normalized. Telephone conversation among Jeffrey S. Davis, Associate Vice President and Associate General Counsel, Nasdaq, Alton S. Harvey, Office Head, Office of Market Watch, Division of Market Regulation (''Division''), Commission, and Cyndi Rodriguez, Special Counsel, Division, Commission on November 13, 2003.

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–161 and should be submitted by December 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–29512 Filed 11–25–03; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48808; File No. SR–NYSE–2003–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. to Extend the 30-Day Free Trial Period for Broker Volume

November 19, 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 November 14, 2003, the New York Stock Exchange, Inc. (''NYSE'' 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 Exchange filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder[4] as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the free 30-day trial period for its NYSE Broker Volume Report service, a service that permits subscribers to view Broker Volume Reports of broker share volume information that the NYSE produces from the NYSE Broker Volume Database. The text of the proposed rule change is available at the NYSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. 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

By order dated June 13, 2003, the Commission approved a proposed rule change (the ''Web Service Fee Filing'') by which the NYSE established a monthly $300 fee for a subscriber's receipt of access to NYSE Broker Volume information that the NYSE makes available via a web-based service (the ''NYSE Broker Volume Web Service'').[5] That service enables subscribers to log-on to the NYSE Web site (*http://www.nysedata.com*) and to receive formatted displays containing aggregate broker-dealer volume rankings in NYSE-traded securities.

In the Web Service Fee Filing, NYSE agreed to waive the NYSE Broker Volume Web Service fee for 30 days (the ''Free Trial Period'') for any individual that first subscribed to the NYSE Broker Volume Web Service on or prior to October 1, 2003.

The NYSE has found the Free Trial Period to constitute a successful marketing tool. More than half of all subscribers that subscribe to the NYSE Broker Volume Web Service for the 30-day Free Trial Period continue to subscribe after the Free Trial Period ends. For that reason, the NYSE proposes to extend the application of the 30-day Free Trial Period to subscribers that first subscribe to the NYSE Free Trial Period on or prior to April 1, 2004. To avoid a lapse in the application of the Free Trial Period, the Exchange is making the proposed rule change effective retroactively to October 1, 2003.[6]

The NYSE proposes to continue to apply the Free Trial Period on a rolling basis, determined by the date on which the NYSE first entitles a new individual subscriber or potential individual subscriber to receive the NYSE Broker

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] See Securities Exchange Act Release No. 48060 (June 19, 2003), 68 FR 37889 (June 25, 2003)(SR–NYSE–2003–11)(approval order).

[6] The Commission notes that the NYSE should have filed the instant proposed rule change before the expiration of the original period approved for the 30-day free trial period in SR–NYSE–2003–11. To ensure uniformity in the fees paid by subscribers to the NYSE's Broker Volume Report service, the Commission has, in this isolated case, allowed the NYSE to file the instant proposed rule change pursuant to Section 19(b)(3)(A)(ii) and Rule 19b–4(f)(2) thereunder, and to apply it retroactively to October 1, 2003. The Commission expects that, in the future, the NYSE will monitor its proposed rule changes to ensure that there are no lapses that would require the application of a proposed rule change retroactively.

Volume Web Service. As before, a specific individual subscriber may only receive the fee waiver one time.

Exhibit A to the proposed rule change reflects the NYSE Broker Volume fee schedule as modified by the proposed rule change.

2. Statutory Basis

The Exchange believes that the proposed rule is consistent with the provisions of Section 6(b)(4) of the Act,[7] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [8] and subparagraph (f)(2) of Rule 19b–4 thereunder,[9] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR–NYSE–2003–35 and should be submitted by December 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–29575 Filed 11–25–03; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48806; File No. SR–PCX–2003–61]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Arbitration

November 19, 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 30, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by PCX. PCX filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. On November 12, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 217 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* letter from Tanya Cho, Staff Attorney, Regulatory Policy, Exchange, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 12, 2003. Amendment No. 1 made non-substantive corrections to PCX's original Form 19b–4 filing.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange and its wholly owned subsidiary PCX Equities, Inc. (''PCXE'') are proposing to extend the pilot rule in PCX Rule 12.1, Commentary .02 and PCXE Rule 12.2(h), which requires industry parties in arbitration to waive application of contested California arbitrator disclosure standards, upon the request of customers (and, in industry cases, upon the request of associated persons with claims of statutory employment discrimination), for an additional six-month pilot period.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 PCX 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

On November 21, 2002, the Commission approved, for a six-month pilot period, the Exchange's proposal to amend PCX and PCXE arbitration rules to require industry parties in arbitration to waive application of contested California arbitrator disclosure standards, upon the request of customers or, in employment discrimination cases, upon the request of associated persons.[6] The Commission approved an extension of the pilot period on May 15, 2003.[7] The pilot period is currently set to expire on November 22, 2003.

On July 1, 2002, the Judicial Council of the State of California adopted new rules that mandated extensive disclosure requirements for arbitrators

[6] *See* Exchange Act Release No. 46881 (November 21, 2002), 67 FR 71224 (November 29, 2002) (Order approving SR–PCX–2002–71).

[7] *See* Exchange Act Release No. 47872 (May 15, 2003), 68 FR 28869 (May 27, 2003) (Order approving SR–PCX–2003–22).

in California (the ''California Standards''). The California Standards are intended to address perceived conflicts of interest in certain commercial arbitration proceedings. As a result of the imposition of the California Standards on arbitrations conducted under the auspices of self-regulatory organizations (''SROs''), the National Association of Securities Dealers, Inc. (''NASD'') and the New York Stock Exchange (''NYSE'') suspended the appointment of arbitrators for cases pending in California, and filed a joint complaint in federal court for declaratory relief in which they contend that the California Standards cannot lawfully be applied to NASD and NYSE because the California Standards are preempted by federal law and are inapplicable to SROs under state law.[8] Subsequently, in the interest of continuing to provide investors with an arbitral forum in California pending the resolution of the applicability of the California Standards, the NASD and NYSE filed separate rule proposals with the Commission that would temporarily require their members to waive the California Standards if all non-member parties to arbitration have done so. The Commission approved the NASD's rule proposal on September 26, 2002[9] and the NYSE's rule proposal on November 12, 2002.[10] Both the NASD and the NYSE recently filed rule proposals to further extend the pilot period for an additional six months.[11]

Since the NASD's and NYSE's lawsuit relating to the application of the California Standards has not been resolved, PCX is now requesting an extension of the pilot for an additional six months (or until the pending litigation has resolved the question of whether or not the California Standards apply to SROs).[12] PCX requests that the pilot be extended for six months beginning on November 23, 2003. The extension of time permits the Exchange to continue the arbitration process using PCX rules regarding arbitration disclosures and not the California Standards. No substantive changes are being made to the pilot program, other than extending the operation of pilot program.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6(b)(5) of the Act,[13] in that it is designed to promote just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

PCX has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[16] the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.[17] Waiving the pre-filing requirement and accelerating the operative date will merely extend a pilot program that is designed to provide investors with a mechanism to resolve disputes with broker-dealers. During the period of this extension, the Commission and the Exchange will continue to monitor the status of the previously discussed litigation. For these reasons, the Commission designates the proposed rule change as effective and operative immediately.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All

[8] *See NASD Dispute Resolution, Inc.* v. *Judicial Council of California,* 232 F. Supp. 2d 1055 (N.D. Cal. 2002), *Notice of Appeal* filed December 12, 2002, available on the NASD Web site at: *http://www.nasdadr.com/pdf-text/ca_appeal_notice.pdf.*

[9] *See* Exchange Act Release No. 46562 (September 26, 2002), 67 FR 62085 (October 3, 2002) (Order approving SR–NASD–2002–126). Thereafter, the pilot period was extended to September 30, 2003. *See* Exchange Act Release No. 48187 (July 16, 2003), 68 FR 43553 (July 23, 2003) (Order approving SR–NASD–2003–106).

[10] *See* Exchange Act Release No. 46816 (November 12, 2002), 67 FR 69793 (November 19, 2002) (Order approving SR–NYSE–2002–56). Thereafter, the pilot period was extended to September 30, 2003. *See* Exchange Act Release No. 47836 (May 12, 2003), 68 FR 27608 (May 20, 2003) (Order approving SR–NYSE–2003–16).

[11] *See* Exchange Act Release No. 48553 (September 26, 2003), 68 FR 57494 (October 3, 2003) (Order approving SR–NASD–2003–144) *and* Exchange Act Release No. 48552 (September 26, 2003), 68 FR 57496 (October 3, 2003) (Order approving SR–NYSE–2003–28).

[12] *See also Mayo* v. *Dean Witter Reynolds, Inc. et. al.,* 258 F. Supp. 2d 1097 (N.D. Cal. 2003) in which the District Court for the Northern District of California held that the California Standards, at least as applied to SROs, are preempted by federal law. As this decision was rendered on April 22, 2003, it is still subject to appeal.

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

submissions should refer to File No. SR–PCX–2003–61 and should be submitted by December 17 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–29576 Filed 11–25–03; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 4539]

Bureau of Economic and Business Affairs; List of November 17, 2003, of Participating Countries and Entities (Hereinafter Known as ''Participants'') Under the Clean Diamond Trade Act of 2003 (Pub. L. 108–19) and Section 2 of Executive Order 13312 of July 29, 2003

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: In accordance with sections 3 and 6 of the Clean Diamond Trade Act of 2003 (Pub. L. 108–19) and Section 2 of Executive Order 13312 of July 29, 2003, the Department of State is identifying all the Participants eligible for trade in rough diamonds under the Act, and their respective Importing and Exporting Authorities, and revising the previously published list of September 1, 2003 (68 FR 53419–53420).

FOR FURTHER INFORMATION CONTACT: Jay L. Bruns, Special Negotiator for Conflict Diamonds, Bureau of Economic and Business Affairs, Department of State, (202) 647–2857.

SUPPLEMENTARY INFORMATION: Section 4 of the Clean Diamond Trade Act (the ''Act'') requires the President to prohibit the importation into, or the exportation from, the United States of any rough diamond, from whatever source, that has not been controlled through the Kimberley Process Certification Scheme (KPCS). Under section 3(2) of the Act, ''controlled through the Kimberley Process Certification Scheme'' means an importation from the territory of a Participant or exportation to the territory of a Participant of rough diamonds that is either (i) carried out in accordance with the KPCS, as set forth in regulations promulgated by the President, or (ii) controlled under a system determined by the President to meet substantially the standards, practices, and procedures of the KPCS. The referenced regulations are contained at 31 CFR part 592 (''Rough Diamond Control Regulations'') (68 FR 45777, August 4, 2003).

Section 6(b) of the Act requires the President to publish in the **Federal Register** a list of all Participants, and all Importing and Exporting Authorities of Participants, and to update the list as necessary. Section 2 of Executive Order 13312 of July 29, 2003 delegates this function to the Secretary of State. Section 3(7) of the Act defines ''Participant'' as a state, customs territory, or regional economic integration organization identified by the Secretary of State. Section 3(3) of the Act defines ''Exporting Authority'' as one or more entities designated by a Participant from whose territory a shipment of rough diamonds is being exported as having the authority to validate a Kimberley Process Certificate. Section 3(4) of the Act defines ''Importing Authority'' as one or more entities designated by a Participant into whose territory a shipment of rough diamonds is imported as having the authority to enforce the laws and regulations of the Participant regarding imports, including the verification of the Kimberley Process Certificate accompanying the shipment.

List of Participants

Pursuant to section 3 of the Clean Diamond Trade Act (the Act), Section 2 of Executive Order 13312 of July 29, 2003, and Delegation of Authority No. 245 (April 23, 2001), I hereby identify the following entities as of November 17, 2003, as Participants under section 6(b) of the Act. Included in this List are the Importing and Exporting Authorities for Participants, as required by section 6(b) of the Act. This list revises the previously published list of September 1, 2003 (68 FR 53419–53420).

Angola—Ministry of Geology and Mines.
Armenia—Ministry of Trade and Economic Development.
Australia—Exporting Authority—Department of Industry, Tourism and Resources; Importing Authority—Australian Customs Service.
Belarus—Department of Finance.
Botswana—Ministry of Minerals, Energy and Water Resources.
Brazil—Ministry of Mines and Energy.
Bulgaria—Ministry of Finance.
Canada—Natural Resources Canada.
Central African Republic—Ministry of Energy and Mining.
China—General Administration of Quality Supervision, Inspection and Quarantine.
Democratic Republic of the Congo—Ministry of Mines and Hydrocarbons.
Republic of the Congo—Ministry of Mines and Geology.
Croatia—Ministry of Economy.
European Community—DG/External Relations/A.2.
Ghana—Precious Minerals and Marketing Company Ltd.
Guinea—Ministry of Mines and Geology.
Guyana—Geology and Mines Commission.
Hungary—Ministry of Economy and Transport.
India—The Gem and Jewellery Export Promotion Council.
Israel—The Diamond Controller.
Ivory Coast—Ministry of Mines and Energy.
Japan—Ministry of Economy, Trade and Industry.
Republic of Korea—Ministry of Commerce, Industry and Energy.
Laos—Ministry of Finance.
Lebanon—Ministry of Economy and Trade.
Lesotho—Commissioner of Mines and Geology.
Malaysia—Ministry of International Trade and Industry.
Mauritius—Ministry of Commerce.
Namibia—Ministry of Mines and Energy.
Poland—Ministry of Economy, Labour and Social Policy.
Romania—National Authority for Consumer Protection.
Russia—Gokhran, Ministry of Finance.
Sierra Leone—Government Gold and Diamond Office.
Slovenia—Ministry of Finance.
South Africa—South African Diamond Board.
Sri Lanka—National Gem and Jewellery Authority.
Switzerland—State Secretariat for Economic Affairs.
Taiwan—Bureau of Foreign Trade.
Tanzania—Commissioner for Minerals.
Thailand—Ministry of Commerce.
Togo—Ministry of Mines and Geology.
Ukraine—State Gemological Centre of Ukraine.
United Arab Emirates—Dubai Metals and Commodities Center.
United States of America—Importing Authority—United States Bureau of Customs and Border Protection; Exporting Authority—Bureau of the Census.
Venezuela—Ministry of Energy and Mines.
Vietnam—Ministry of Trade.
Zimbabwe—Ministry of Mines and Mining Development.

[18] 17 CFR 200.30–3(a)(12).

This notice shall be published in the **Federal Register**.

Richard L. Armitage,

Deputy Secretary of State, Department of State.

[FR Doc. 03–29735 Filed 11–25–03; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice Before Waiver With Respect to Land at Hamilton Municipal Airport, Hamilton, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The FAA is publishing notice of the proposed release of approximately 3.966 acres of land located at Hamilton Municipal Airport, to allow its sale for non-aviation development. The parcel was part of the airport property acquired with federal funding support under the Airport Improvement Program. The Village of Hamilton proposes to sell the land to a developer who will develop it as a 63-room motel.

FAA's action is to release the land from a deed provision requiring aeronautical use of the property. The Village of Hamilton has stated that it has no aeronautical use for the parcel now or in the near future according to the Hamilton Municipal Airport Layout Plan.

The Fair Market Value of the land will be paid to the Village of Hamilton to be used for the capital development of Hamilton Municipal Airport.

Any comments the agency receives will be considered as a part of the decision.

DATES: Comments must be received on or before December 26, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Philip Brito, Manager, FAA New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Charles Getchonis, Mayor, Hamilton, New York, at the following address: Mr. Charles Getchonis, Mayor, Village of Hamilton, P.O. Box 119, 3 Broad Street, Hamilton, New York 13346.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito, Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530; telephone (516) 227–3803; FAX (516) 227–3813; e-mail *Philip.Brito@faa.gov.*

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Pub. L. 10–181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30 day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Garden City, New York, on November 14, 2003.

Philip Brito,

Manager, New York Airports District Office, Eastern Region.

[FR Doc. 03–29457 Filed 11–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Air Carrier Operations Issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of a new task for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of new tasks assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice tells the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Kathy Abbott, Federal Aviation Administration, Regulation and Certification, 800 Independence Ave., SW., Washington, DC 20591; telephone: 202–267–7192.

SUPPLEMENTARY INFORMATION:

Background

The FAA established the Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities about aviation-related issues. This includes getting advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area ARAC deals with is air carrier operations issues. These issues involve the operational requirements for air carriers, including crewmember requirements, airplane operating performance and limitations, and equipment requirements.

The Task

This notice is to tell the public the FAA has asked ARAC to provide advice and recommendation on the following harmonization task:

Harmonize positions on issues related to low-visibility operations. The ARAC Working Group will work on operational and airworthiness issues that apply to air carrier operations in low visibility conditions. The ARAC Working Group will identify harmonization issues in the following areas and will work to reach and document consensus on those issues: Maintenance of harmonization of all weather operations criteria based on experience gained from recent certification programs and operations; evolution of criteria to support Global Navigation Satellite System Landing Systems (GLS); new technologies that are being applied to low visibility operations, and complete harmonization of operating minima criteria and implementation processes. The Group will coordinate information with the FAA/Industry Terminal Area Operations Aviation Rulemaking Committee (TAOARC), JAA All Weather Operations Steering Group (AWOSG), and European Aviation Safety Agency (EASA) for consideration during its activities. This coordination will occur before the All Weather Operations Harmonization Working Group (AWO HWG) presents recommendations to ARAC. By March 2004, the Group will complete and document in a technical report the activity underway to harmonize low visibility operating minima between Europe and the United States.

ARAC Acceptance of Task

ARAC has accepted the task and has chosen to assign the task to the All Weather Operations Harmonization Working Group. Because a new task is being assigned to the working group, membership will be reopened. The working group will serve as staff to ARAC to aid ARAC in the analysis of the assigned task. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the working group's recommendations, it forwards them to the FAA as ARAC recommendations.

Working Group Activity

The All Weather Operations Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the

procedures, the working group is expected to:

1. Recommend a work plan for completion of the tasks, including the reason supporting such a plan. The work plan should be presented for consideration at the first meeting of the ARAC on air carrier operations issues held following publication of this notice.

2. Give a detailed presentation of the proposed recommendations, before continuing with the work stated in item 3 below.

3. For each task, draft suitable documents with supporting analyses. Draft any other related material or collateral documents the working group determines to be suitable.

4. Provide a status report at each meeting of ARAC held to consider air carrier operations issues.

Participation in the Working Group

The All Weather Operations Harmonization Working Group will be composed of technical experts having an interest in the assigned task. A working group member need not be a representative of a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the tasks, and stating the expertise he or she would bring to the working group. All requests to participate must be received by December 10, 2003. The assistant chair, the assistant executive director, and the working group chair will review the requests, and the individuals will be advised whether the request can be granted.

Individuals chosen for membership on the working group will be expected to represent their aviation community segment and participate actively in the working group (for example, attend all meetings, provide written comments when asked to do so, etc.). They also will be expected to devote the resources necessary to ensure the ability of the working group to meet any assigned deadline(s). Members are expected to keep their management chain advised of working group activities and decisions to ensure the agreed technical solutions do not conflict with their sponsoring organization's position when the subject being negotiated is presented to ARAC for a vote.

Once the working group has begun deliberations, members will not be added or substituted without the approval of the assistant chair, the assistant executive director, and the working group chair.

The Secretary of Transportation has determined the formation and use of ARAC is necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public. Meetings of the All Weather Operations Harmonization Working Group will not be open to the public, except to the extent those individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on November 17, 2003.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 03–29450 Filed 11–25–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Government/Industry Free Flight Steering Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA/Industry Free Flight Steering Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Government/Industry Free Flight Steering Committee.

DATES: The meeting will be held December 4, 2003, 1–3 p.m.

ADDRESSES: The meeting will be held at FAA Headquarters, 800 Independence Avenue, SW., Bessie Coleman Conference Center (Rm. 2AB), Washington, DC, 20591.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix 2), notice is hereby given for Free Flight Steering Committee meeting. **Note:** *Non-Government attendees to the meeting must go through security and be escorted to and from the conference room.*

Issued in Washington, DC, on November 20, 2003.

Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

[FR Doc. 03–29595 Filed 11–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Change Notice for RTCA Program Management Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Program Management Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Program Management Committee.

DATES: The meeting will be held December 9, 2003 starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L. Street, NW., Suite 850, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Program Management Committee meeting. The revised agenda will include:

- December 9:
- Opening Session (Welcome and Introductory Remarks, Review/ Approve Summary of Previous Meeting)
  - Publication Consideration/ Approval:
  - Final Draft, *Aircraft Surveillance Applications (ASA) MASPS, RTCA Paper No. 208–03/PMC–303, prepared by SC–186.*
- Discussion:
  - Special Committee 147, TCAS
  - Discuss/Approve Revised Terms of Reference
  - Special Committee 181
  - Final Report
  - Special Committee Chairman's Report
  - Action Item Review:
  - Review/Status—All open action items
  - Closing Session (Other Business, Document Production, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability.

With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 6, 2003.

Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

[FR Doc. 03–29456 Filed 11–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 193/ EUROCAE Working Group 44: Terrain and Airport Databases

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 193/EUROCAE Working Group 44 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 193/ EUROCAE Working Group 44: Terrain and Airport Databases.

DATES: The meeting will be held December 8–12, 2003 from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at RTCA Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 193/EUROCAE Working Group 44 meeting. The agenda will include:

- *December 8:*
- Opening Plenary Session (Welcome and Introductory Remarks, Review/ Approval of Meeting Agenda, Review Summary of Previous Meeting)
- Subgroup 4 (Database Exchange Format)
- Resolution of Action Items
- Feature catalogue review

—Aerodrome database

—Terrain database

—Obstacle database

- *December 9:*
- Presentations
- Subgroup 4 (Continue previous day activities)
- *December 10:*
- Subgroup 4 (Continue previous day activities)
- Metadata Review
- *December 11:*
- Subgroup 4 (Continue previous day activities)
- *December 12:*
- Closing Plenary Session (Summary of Subgroup 4, Assign Tasks, Other Business, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on November 10, 2003.

Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

[FR Doc. 03–29454 Filed 11–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 186 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B)

DATES: The meeting will be held December 1–5, 2003 starting at 9 a.m. (unless stated otherwise).

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 186 meeting. **Note:** *Specific working group sessions will be held on December 1, 2, 3, 4, & 5.* The plenary agenda will include:

- December 5;
  - Opening Plenary Session (Chairman's Introductory Remarks, Review of Meeting Agenda, Review/ Approval of Previous Meeting Summary)
  - SC–186 Activity Reports
  - WG–1, Operations & Implementation
  - WG–2, Traffic Information Service—Broadcast (TIS–B)
  - WG–3, 1090 MHz Minimum Operational Performance Standard (MOPS)
  - WG–4, Application Technical Requirements
  - WG–5, Universal Access Transceiver (UAT) MOPS
  - WG–6, Automatic Dependent Surveillance-Broadcast (ADS–B) Minimum Aviation System Performance Standards (MASPS)
  - Review Status-Requirements Focus Group
  - EUROCAE WG–51 Activity Report
  - Briefing-Australian ADS–B air-ground
  - Review SC–186 Terms of Reference-Revision 9
  - Closing Plenary Session (Date, Place and Time of Next Meeting, Other Business, Review Actions Items/ Work Program, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 6, 2003.

Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

[FR Doc. 03–29455 Filed 11–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice to Intend to Rule on Application 04–02–C–00–TTN to Impose and Use the revenue from a Passenger Facility Charge (PFC) at Trenton Mercer Airport, West Trenton, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice to intend to rule on application.

SUMMARY: The FAA proposes to rule an invites public comment on the application to impose and use a PFC at Trenton Mercer Airport under the provisions of the Aviation Safety and Capacity Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 26, 2003.

ADDRESSES: Comments on this Application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Dan Vornea, Project Manager, New York District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Justin P. Edwards, Airport Manager, of the Trenton Mercer Airport at the following addresses: Trenton Mercer Airport, Terminal Building, Sam Weinroth Road, West Trenton, NJ 08628.

Air carriers and foreign air carriers may submit copies of their written comments previously provided to Trenton Mercer Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Dan Vornea, Project Manager, New York Airports District office, 600 Old Country Road, Suite 446, Garden City, NY 11530, Telephone No. (516) 227–3812. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Trenton Mercer Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 13, 2003 the FAA determined that the application to impose and use a PFC submitted by the County of Mercer was substantially completed within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 12, 2004.

The following is a brief overview of the application:

Application Number: 04–02–C–00–TTN.

Level of Proposed PFC: $4.50.

Proposed Charge Effective Date: January 1, 2004.

Proposed Charge Expiration Date: September 1, 2013.

Total Estimated PFC Revenue: $1,061,436.

Brief Description of Proposed Projects

—Construct Taxiway ''E''—Construction Only
—Airport Planning Studies
—Acquire ARFF Safety Equipment
—Install Airport Lighting
—Acquire Airport Snow Sweeper
—Install Airfield Guidance Signage
—Construct Taxiway ''G''
—Remove Obstructions—Runway 24 RPZ—
—Improve Terminal Building
—Improve Runway 6–24
—Rehabilitate Taxiways ''A'', ''C'' and Partial ''D''—State Funding Only
—Rehabilitate Runway 16–34
—Conduct Environmental Assessment—Terminal Building and Other Miscellaneous Projects
—Acquire ARFF Vehicles
—Improve Runway Safety Areas—Phase I
—Security Enhancements
—Construct Snow Removal Building—Phase I—Design Only
—PFC Application Services

Class or classes of air carriers which the public agency has requested not to be required to collect PFS's are : Non-Scheduled/On Demand Air Carriers filing FAA Form 1800–31.

Any person may inspect the Application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Office: 1 Aviation Plaza, Jamaica, NY 11434–4809.

In addition, any person may, upon request, inspect the application notice and other documents germane to the application in person at the Trenton Mercer Airport.

Issued in Garden City, New York, on November 13, 2003.

Philip Brito,

Manager, NYADO, Eastern Region.

[FR Doc. 03–29453 Filed 11–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before December 25, 2003.

ADDRESSES: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at *http://dms.dot.gov.*

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on November 20, 2003.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

No.	No.	Applicant	Regulation(s) Affected	Nature of Exemption Thereof
13302–N		FIBA Technologies, Inc., Westboro, MA.	49 CFR 180.211	To authorize the rethreading of the outside neck of DOT–3AX and DOT–3AAX cylinders for continued use on motor vehicles. (mode 1)
13314–N		Sunoco Inc., Philadelphia, PA.	49 CFR 177.834(h)	To authorize the discharge of Division 6.1 liquids from a DOT 51 portable tanks without removing the tanks from the vehicle on which it is transported. (mode 1)
13319–N		Dow AgroSciences L.L.C., Indianapolis, IN.	49 CFR 173.301 (f)(1)	To authorize the transportation in commerce of sulfuryl fluoride, a Division 2.3, Hazardous Zone D liquefied gas, in DOT specification and certain non-DOT specification cylinders that are not fitted with a pressure relief device. (modes 1, 2, 3)
13320–N		Bowgen Fuel Systems, Inc., Springfield, MO.	49 CFR 173.302, 173.302a.	To authorize the manufacture, mark, sale and use of certain non-DOT specification fiber reinforced plastic hoop wrapped cylinders horizontally mounted and secured to a motor vehicle for use in transporting compressed natural gas. (mode 1)
13321–N		Quest Diagnostics, Inc., Collegeville, PA.	49 CFR 173.28(b)(3)	To authorize the transportation in commerce of infectious substances, Division 6.2, in reused specification UN 5L3 textile bags. (mode 1, 4)
13322–N		UXB International Inc., Ashburn, VA.	49 CFR 172.320, 173.54(a), 173.56(b), 173.58.	To authorize the transportation in commerce for disposal purposes of certain waste hazardous materials, in non-bulk packaging, by private vehicle for short distances in a specially designed bomb-disposal trailer as the outer packaging. (mode 1)
13324–N		Kidde Aerospace, Wilson, NC.	49 CFR 173.301 (f)(3)	To authorize the transportation in commerce of certain fire extinguishers with a lower relief pressure than presently authorized. (modes 1, 3, 4, 5)
13325–N		Air Products and Chemicals, Inc., Allenton, PA.	49 CFR 173.301 (f)(3), 180.250(c)(4).	To authorize the transportation in commerce of certain hazardous materials in certain DOT specification seamless steel cylinders equipped with CG–4 style pressure relief devices with rupture disk at 3360 psig. (modes 1, 2, 3)
13326–N		Precision Technik, Inc., Atlanta, GA.	49 CFR 173, 202, 173.201, 173.203, 173.30(f)(1), 173.302, 173.304.	To authorize the manufacture, marking, sale and use of a non-DOT specification, full opening head salvage cylinder for overpacking damaged or leaking cylinders. (mode 1)
13327–N		Hawk Corp., Ardmore, OK	49 CFR 172.101, B15	To authorize the manufacture, mark, sale and use of non-DOT specification cargo tank motor vehicles constructed from glass fiber reinforced plastics for use in transporting certain hazardous materials. (mode 1)
13328–N		USDA Forest Service Missoula, MT.	49 CFR 173.203(c)	To authorize the transportation in commerce of non-specification packaging for use in transporting Class 3 hazardous materials. (mode 1)
13330–N		Oilphase Division, Schlumberger Eval. & Production Dyce, Aberdeen, Scotland, UK.	49 CFR 173.201(c), 173.202(c), 173.203(c), 173.301(d), 173.304(a) & (d), 175.3.	To authorize the transportation in commerce of certain flammable gases in a non-DOT specification cylinder used for oil well sampling. (modes 1, 2, 3, 4)

[FR Doc. 03–29458 Filed 11–25–03; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration of Exemption, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before December 11, 2003.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in

triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(B); 49 CFR 1.53B(b)).

Issued in Washington, DC, on November 20, 2003.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
7073–M		Ethyl Corporation, Richmond, VA (See Footnote 1)	7073
8650–M		Ethyl Corporation, Richmond, VA (See Footnote 2)	8650
9149–M		Ethyl Corporation, Richmond, VA (See Footnote 3)	9149
9548–M		Ethyl Corporation, Richmond, VA (See Footnote 4)	9548
10798–M		Albemare Corporation, Baton Rouge, LA (See Footnote 5)	10798
11993–M	RSPA–97–3100	Key Safety Systems, Inc., Lakeland, FL (See Footnote 6)	11993
12124–M	RSPA–98–4309	Albemarle Corporation, Baton Rouge, LA (See Footnote 7)	12124
12706–M	RSPA–01–9731	Raufoss Composites AS, Raufoss, NO (See Footnote 8)	12706
13135–M	RSPA–02–13521	Space Systems/LORAL Palo Alto, CA (See Footnote 9)	13135

[1] To modify the exemption to authorize an ultrasonic thickness test/visual inspection in place of the periodic internal inspection of the non-DOT specification portable tanks.

[2] To modify the exemption to authorize an ultrasonic thickness test/visual inspection in place of the periodic internal inspection of the non-DOT specification portable tanks.

[3] To modify the exemption to authorize an ultrasonic thickness test/visual inspection in place of the periodic internal inspection of the non-DOT specification portable tanks.

[4] To modify the exemption to authorize an ultrasonic thickness test/visual inspection in place of the periodic internal inspection of the non-DOT specification portable tanks.

[5] To modify the exemption to authorize the transportation of an additional Class 3 material in DOT Specification tank cars allowed to remain standing with unloading connections attached.

[6] To modify the exemption to authorize additional marking, welding and brazing requirements of the non-DOT specification cylinders for use as components of auto vehicle safety systems and an increased service pressure from 6,000 psig to 9,000 psig.

[7] To modify the exemption to authorize the transportation of an additional Division 4.3 material in non-DOT specification stainless steel portable tanks.

[8] To modify the exemption to authorize the use of tapered threads and update design sizes, drawings, cycle testing of the non-DOT specification fully-wrapped fiberglass composite cylinders with thermoplastic liners.

[9] To modify the exemption to authorize an increased tank pressure from 275 psig to 2,000 psig for the satellite assembly containing a non-DOT specification pressure vessel.

[FR Doc. 03–29459 Filed 11–25–03; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Covington & Burling on behalf of Union Pacific Corporation (WB468–5—11/18/03), for permission to use certain data from the Board's Carload Waybill Samples. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565–1541.

Vernon A. Williams,

Secretary.

[FR Doc. 03–29564 Filed 11–25–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34431]

Allegheny Valley Railroad Company-Lease, Operation and Trackage Rights Exemption—Lines of CSX Transportation, Inc.

Allegheny Valley Railroad Company (AVR) a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate certain rail line segments and acquire related trackage rights, pursuant to an agreement with CSX Transportation, Inc. (CSXT), as follows: (1) Approximately 33.1 miles of CSXT's W&P Subdivision from milepost BO–5.0 at Glenwood Junction to milepost BO–38.1 at Washington, in Allegheny and Washington Counties, PA; and (2) approximately 13.2 miles of CSXT's P&W Subdivision in Allegheny County—(a) from milepost BG–1.0 at Field to milepost BG–10.4 at Glenshaw, (b) the No. 2 Main from milepost BF–322.8 at Glenwood Junction to approximately milepost BF–326 at East Schenley, (c) a portion of the Glenwood Yard to be agreed upon jointly, and (d) from milepost 0.75 [1] of the River Branch near 33rd Street in Pittsburgh, extending southwesterly to its end at milepost 1.35. AVR will also acquire approximately 1.9 miles of local trackage rights over CSXT's No. 1 Main from East Schenley to Field to provide freight service to customers on the line and connect the leased segment that ends at East Schenley and the segment that begins at Field.

AVR certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier.

[1] AVR currently leases and operates a portion of the River Branch extending from milepost 0.0 near 43rd Street to milepost 0.75 near 33rd Street. *See Allegheny Valley Railroad Company-Lease and Operation Exemption-Line of CSX Transportation, Inc.,* STB Finance Docket No. 34095 (STB served Sept. 27, 2001).

Consummation of the transaction was scheduled to take place on or soon after November 7, 2003, the effective date of the exemption.

The notice is filed under 49 CFR 1150.41. 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. 34431, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Keith G. O'Brien, 1707 L Street, NW., Suite 570, Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 19, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–29407 Filed 11–25–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34349]

Wallowa-Union Railroad Authority-Acquisition and Operation Exemption-Wallowa County, OR, and Idaho Northern & Pacific Railroad Company

Wallowa-Union Railroad Authority (Authority), a noncarrier, has filed a notice of exemption, as supplemented by letter dated October 29, 2003, under 49 CFR 1150.31 to acquire and operate a 62.58-mile line of railroad extending between milepost 21.0 at or near Elgin and milepost 83.58 at or near Joseph, in Wallowa and Union Counties, OR. The subject line of railroad is owned by Wallowa County, OR (County), and operated by Idaho Northern & Pacific Railroad Company (INPR). Under the proposed transaction, Authority would acquire INPR's right to operate over the line and County's ownership interest in the line.[1] Authority certifies that its projected annual revenues as a result of this transaction do not exceed those that would qualify it as a Class III rail carrier, and that such revenues will not exceed $5 million annually.

The transaction was scheduled to be consummated on or after November 5, 2003 (7 days after the exemption was filed).

If the verified 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. 34349, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: November 19, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–29565 Filed 11–25–03; 8:45 am]

BILLING CODE 4915–00–P

[1] *See Wallowa County, Oregon-Acquisition and Operation Exemption-Rail Line of Idaho Northern & Pacific Railroad Company Between Elgin and Joseph, OR,* STB Finance Docket No. 34214 (STB served June 17, 2002).

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Continental Heritage Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 4 to the Treasury Department Circular 570; 2003 Revision, published July 1, 2003, at 68 FR 39186.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2003 Revision, on page 39196 to reflect this addition:

Company Name: Continental Heritage Insurance Company.

Business Address: PO Box 163340, Columbus Ohio 43216–3340. *Phone:* (614) 895–2000. *Underwriting Limitation b/:* $564,000. *Surety Licenses c/:* CA, FL, ID, IL, MD, NV, ND, OH, TN, TX, UT. *Incorporated in:* Ohio.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact business and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.* A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04643–2.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: November 14, 2003.

Wanda J. Rogers,

Director, Financial Division, Financial Management Service.

[FR Doc. 03–29494 Filed 11–25–03; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–57–94]

Proposed Collection: Comment Request for Regulation Project; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice and request for comments.

SUMMARY: This document contains a correction to a notice and request for comments, which was published in the **Federal Register** on Monday September 22, 2003 (68 FR 55101). This notice relates to a comment request on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

FOR FURTHER INFORMATION CONTACT: Allan Hopkins, (202) 622–6665 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

This notice and request for comments that is the subject of the correction is

required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

Need for Correction

As published, the comment request for Regulation Project (IA–57–94) contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the comment request for Regulation Project, (IA–57–94), which was the subject of FR Doc. 03–24137, is corrected as follows:

On page 55101, column 2, under the caption **SUPPLEMENTARY INFORMATION:**, line 2, the language ''OMB Number: 1545–14499'' is corrected to read ''OMB Number: 1545–1449''.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–29603 Filed 11–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be held December 17, 2003.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on December 17, 2003, in Room 4200E beginning at 10:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, C:AP:AS, 1099 14th Street, NW., Washington, DC 20005. Telephone (202) 694–1861 (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a closed meeting of the Art Advisory Panel will be held on December 17, 2003, in Room 4200E beginning at 10:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of 26 U.S.C. 6103.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7), and that the meeting will not be open to the public.

Dated:

David B. Robison,

Chief, Appeals.

[FR Doc. 03–29604 Filed 11–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Poverty Threshold

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) hereby gives notice of the weighted average poverty threshold established for 2002 for one person (unrelated individual) as established by the Bureau of the Census. The amount is $9,183.

DATES: For VA determinations, the 2002 poverty threshold is effective October 14, 2003, the date on which it was established by the Bureau of the Census.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7218.

SUPPLEMENTARY INFORMATION: We published a final rule amending 38 CFR 4.16(a) in the **Federal Register** of August 3, 1990, 55 FR 31579. The amendment provided that marginal employment generally shall be deemed to exist when a veteran's earned annual income does not exceed the amount established by the Bureau of the Census as the poverty threshold for one person. The provisions of 38 CFR 4.16(a) use the poverty threshold as a standard in defining marginal employment when considering total disability ratings for compensation based on unemployability of an individual. We stated we would publish subsequent poverty threshold figures as notices in the **Federal Register**.

The Bureau of the Census recently published the weighted average poverty thresholds for 2002. The threshold for one person (unrelated individual) is $9,183.

Dated: November 19, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–29460 Filed 11–25–03; 8:45 am]

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Federal Register

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Part II

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Department of Energy
Export-Import Bank
Small Business Administration
National Aeronautics and Space Administration
Department of Commerce
Social Security Administration
Office of National Drug Control Policy
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CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

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DEPARTMENT OF TRANSPORTATION

49 CFR Parts 29 and 32

Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

AGENCIES: Office of Personnel Management; Department of Agriculture; Department of Energy; The Export-Import Bank of the United States; Small Business Administration; National Aeronautics and Space Administration; Department of Commerce; Social Security Administration; Office of National Drug Control Policy; Department of State; Agency for International Development; Peace Corps; Inter-American Foundation; African Development Foundation; Department of Housing and Urban Development; Department of Justice; Department of Labor; Federal Mediation and Conciliation Service; Department of the Treasury; Department of Defense; Department of Education; National Archives and Records Administration; Department of Veterans Affairs; Environmental Protection Agency; General Services Administration; Department of the Interior; Department of Health and Human Services; National Science Foundation; National Foundation on the Arts and the Humanities, National Endowment for the Arts, National Endowment for the Humanities, Institute of Museum and Library Services; Corporation for National and Community Service, and Department of Transportation.

ACTION: Final rules and interim final rules.

SUMMARY: These rules implement changes to the governmentwide nonprocurement debarment and suspension common rule (NCR) and the associated rule on drug-free workplace requirements. The final and interim final rules reflect changes made to the proposed rules in response to the comments received during the comment period. The NCR sets forth the common policies and procedures that Federal Executive branch agencies must use in taking suspension or debarment actions. It also establishes procedures for participants and Federal agencies in entering covered transactions. While these procedures are mandatory for all agencies of the Executive branch under Executive Order 12549, any Federal agency with procurement or nonprocurement responsibilities may elect to join the governmentwide system by adopting these procedures through the rulemaking process. Certain small Executive branch agencies that are exempt from having to issue separate regulations with the approval of the Office of Management and Budget, may initiate suspension and debarment actions in their inherent authority. Following the procedures set forth in the NCR will help ensure that the agencies' actions comply with due process standards and provide the public with uniform procedures. As an alternative, smaller Executive branch agencies may refer matters of contractor and participant responsibility to another Executive branch agency for action. For a detailed explanation of the changes to these rules, see the comments section under **SUPPLEMENTARY INFORMATION** below.

DATES: The effective date for this rule is November 26, 2003. The comment date for those agencies issuing this rule as an interim rule (*i.e.,* the Department of Agriculture, the Export-Import Bank, the Department of Justice, and the Department of Treasury) is January 26, 2004.

ADDRESSES: Comments on the interim rules should be submitted to the individual agency contacts.

FOR FURTHER INFORMATION CONTACT: Robert F. Meunier, Chair of the Interagency Suspension and Debarment Committee, Office of Grants and Debarment (3901–R), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, by phone at (202) 564–5399 or by e-mail (*meunier.robert@epa.gov*). A chart showing where each agency has codified the common rule may be obtained by accessing the Office of Management and Budget's home page *(http://www.whitehouse.gov/omb*), under the heading ''Grants Management.''

SUPPLEMENTARY INFORMATION:

A. Background

On February 18, 1986, President Reagan issued Executive Order 12549 (3 CFR 1986 Comp., p. 189), ''Debarment and Suspension,'' to establish a governmentwide debarment and suspension system covering the full range of Federal procurement and nonprocurement activities, and to establish procedures for debarment and suspension from participation in Federal nonprocurement programs. Section 4 of that Order established the Interagency Suspension and Debarment Committee (ISDC) to monitor implementation of that system, coordinate actions among the Federal agencies, and make recommendations to the Office of Management and Budget (OMB) concerning regulatory and other changes needed to address the needs of both the procurement and nonprocurement suspension and debarment programs under a comprehensive debarment and suspension system encompassing the full range of Federal activities.

The OMB published initial guidelines for nonprocurement debarment and suspension to all Executive branch agencies on May 29, 1987 (52 FR 20360), followed by final guidelines along with the NCR on May 26, 1988 (53 FR 19160). The OMB guidelines and NCR provide uniform requirements for debarment and suspension by Executive branch agencies to protect assistance, loans, benefits and other nonprocurement activities from waste, fraud, abuse, poor performance or noncompliance similar to the system used for Federal procurement activities under Subpart 9.4 of the Federal Acquisition Regulation (FAR) and its supplements.

On January 31, 1989, the agencies amended the NCR by adding a new subpart F to implement the Drug-Free Workplace Act of 1988 (54 FR 4946).

On August 16, 1989, President George H. W. Bush issued Executive Order 12689, ''Debarment and Suspension,'' (3 CFR 1989 Comp., p. 235), directing agencies to reconcile technical differences existing between the procurement and nonprocurement debarment programs, and to give exclusions under either program reciprocal effect across procurement and nonprocurement activities. In 1994, Congress passed the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355, 108 Stat. 3327), mandating reciprocity for exclusions issued under the procurement and nonprocurement debarment programs.

On April 12, 1999, OMB asked the ISDC to review the common rule and propose amendments that would: (a) Resolve remaining unnecessary technical differences between the procurement and nonprocurement systems; (b) revise the current rule in a plain language style and format; and (c) make other improvements to the common rule consistent with the purpose of the suspension and debarment system. On October 29, 1999, the ISDC issued a final report to OMB with recommended changes to the NCR.

On January 23, 2002, thirty agencies jointly proposed amendments to the NCR and for the removal and relocation of the governmentwide provisions implementing the Drug-Free Workplace Act of 1988 (67 FR 3265). One additional agency, Department of Housing and Urban Development, proposed its amendments to those rules on July 22, 2002 (67 FR 48006).

Since publication of the above proposed rules, the Federal Emergency Management Agency (FEMA), along with parts of many other Federal agencies, has been transferred into the new Department of Homeland Security (DHS). Therefore, this final rulemaking does not include a final rule for FEMA or DHS. Three agencies, Department of Treasury, Department of Justice and The Export-Import Bank of the United States, did not propose changes along with other agencies on January 23, 2002, but are adopting these rules on an interim final basis. The Department of Agriculture, although it proposed rules on January 23, has decided to issue an interim final rule for the reasons cited in its agency-specific preamble. Persons wishing to submit comments to the Department of Agriculture, Department of Treasury, Department of Justice or The Export-Import Bank of the United States may do so within sixty (60) days of the date of this publication by sending comments as described in the preambles to those rules. The remaining twenty-nine agencies are jointly issuing this rule as a final rule.

Furthermore, since publication of the proposed rule, the General Services Administration (GSA) has changed the name of the List of Parties Excluded from Federal Procurement and Nonprocurement Programs (List). It is now called the Excluded Parties List System (EPLS). Corresponding changes have been made throughout this rule.

Comments on the Proposed Rules

We received comments on the proposed amendments to the NCR from sixteen commenters. Of those, eight are

from employees of Federal agencies; two are from state employees; and six are from professional or public organizations. We received no comments addressing the provisions related to the drug-free workplace requirements.

General Comments

Plain language format. Generally, most comments were supportive of the plain language style and format of the proposed rule, including the American Bar Association's Section on Public Contracts Law (ABA–PCL), which found the format of the proposed rule to be in a ''* * * user friendly style that is well suited for non-lawyers. * * * without losing any of the precision in the standard regulation format.''

However, one commenter expressed concern that the question and answer format will make it more difficult for Government officials familiar with standard rules to find information quickly by scanning the table of contents for short titles.

While we acknowledge that the longer sentences associated with the question and answer format will make scanning the table of contents more difficult, we believe that the benefits to the regulated community far exceed any small burden that might be placed on Government officials when using the rule. We prepared the proposed rule so that information pertaining to Government officials with various responsibilities under the rule, and information pertaining to individuals and businesses subject to the rule, are grouped together under separate subparts. We believe that this will enhance everyone's ability to locate information of particular interest to them.

One commenter noted that in some places within the proposed rule the sentences are still complex. In preparing the proposed rule, there were several provisions, such as those reciting the causes for debarment and provisions related to affiliation and imputed conduct, which we did not revise or did so insubstantially. As a result, in a few places the style of the language was not fully in line with the style used in other parts of the proposed rule. Accordingly, we revised the final rule so that those provisions are less complex and more in keeping with the plain language format used elsewhere in the rule. Section 630 of the final rule, regarding imputation of conduct, is reorganized entirely in response to this and other comments regarding its lack of clarity.

Native American Tribes. One commenter noted that neither the existing NCR, nor the proposed rule specifically addresses the treatment of Native American Tribes. Issues related to the status of recognized Native American Tribes can be complex. However, tribes, like states, are expected to be responsible recipients of, and participants in, Federal nonprocurement transactions. Under this rule, Native American Tribes are accorded the same treatment as state governments with regard to the coverage and applicability. Therefore, no special distinction with respect to Native American Tribes is required.

Debarring Official Responsibilities. One commenter requested that the final rule specifically state that suspending and debarring officials may use the services of other officials in carrying out their duties. The numerous references to the suspending or debarring official within this rule do not imply that the suspending or debarring official must perform all those duties without the assistance of staff or others. The drafting committee acknowledges that it is common practice for suspending and debarring officials to use the services of assistants in carrying out their duties. Such administrative matters are more appropriately addressed through agency-specific internal guidance rather than in this rule.

Subpart A

''Participant'' and ''participate''. Two commenters raised concerns that the definition of ''participant'' in section 980 may be confused with the term ''participant'' as used in section 105(a) and ''participate'' as used in section 135. These terms in sections 105(a) and 135 are, in fact, broader in scope than the definition in section 980. We agree that section 105(a) should be clarified to identify the entire universe of potential participants, rather than only those who may presently have the status of a current ''participant'' as defined in section 980. Accordingly, section 105 in the final rule is amended to state that portions of the rule apply to you if you are ''* * * a person who has been, is, or may be expected to be, a * * * '' participant or principal in a covered transaction. Similarly, section 135 of the proposed rule has been amended by substituting the concept of *involvement* for *participation* to make it clear that Federal agencies may take suspension or debarment actions against any persons who may be involved in covered transactions regardless of whether they are currently a ''participant'' as defined under section 980. We also made changes to the imputed conduct provisions by substituting the word ''person'' for ''participant'' in section 630 for the same reason.

Subpart B

Covered transactions. One commenter suggested that Subpart B of the final rule include specific language currently contained in the existing NCR in section 110(a)(1), which notes that a nonprocurement transaction need not involve the transfer of Federal funds. We included that language in the proposed rule in the definition of nonprocurement transaction in section 970(b). Accordingly, no further amendment to Subpart B for that purpose is necessary.

Commodity Debarment. One agency raised concern about the regulation's lack of guidance with regard to ''commodity'' suspension and debarment referenced in sections 110(c) and 945. The ISDC notes that any resolution of the issues surrounding debarment of commodities requires thorough agency-wide consultation and possible changes to Parts 8, 9, 13, 47, 51 and 52 of the FAR. Because the comment was received after the comment period had closed and just prior to publication of this final rule, there was insufficient opportunity for the ISDC to address this issue before this rulemaking. Therefore the issues surrounding commodity suspension and debarment will be addressed at a later time. However, any agency considering a commodity debarment should fully coordinate the action in accordance with section 620.

Optional lower tier coverage. We received two comments about the language in section 220 of the proposed rule that mandates coverage of subcontracts of $25,000 or more at the first tier below a covered nonprocurement transaction. The language gives agencies an option to extend coverage to subcontracts at lower tiers.

The two comments recommended diametrically opposed changes to the proposed rule. One commenter suggested revising the rule to require agencies to cover subcontracts at all tiers and said that making lower tier coverage optional would be inconsistent with the rule's purpose as stated in section 110. The other suggested revising the rule to either: (1) Eliminate coverage of subcontracts entirely, relying on reciprocity with Federal procurement debarment and suspension actions; or (2) establish a common approach for all Federal agencies by limiting coverage to first tier subcontracts of $25,000 or more (the proposed rule's mandatory coverage).

The two comments reflect the widely varying nature of Federal programs subject to this rule. Some programs,

especially programs with awards to states as pass-through entities, have substantial program performance by subcontractors at lower tiers below covered nonprocurement transactions. Other programs, including many research programs, are performed by participants in the covered nonprocurement transactions. At least some programs of the first type may be particularly vulnerable to subcontractor malfeasance; agencies in those cases need the flexibility to extend coverage to lower tier subcontracts to adequately protect the Federal Government's interest. Many programs of the second type, however, do not share that vulnerability. Revising the rule to mandate extended coverage in all cases would increase administrative burdens and costs for those programs without commensurate benefits to the taxpayer. For this reason, the final rule includes the optional lower tier coverage in section 220 as the best way to afford adequate protection for the wide universe of Federal agency programs without imposing undue administrative burdens on agencies or participants.

Subpart C

Scope of action. One commenter recommended that proposed sections 300, 400, 420 and 445 be clarified to state that persons checking the *Excluded Parties List System (EPLS),* formerly known as the List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs, should look at the cause and treatment code to see if the listed person is ineligible under a statute or executive order as opposed to suspended or debarred under this rule. The cause and treatment code will reveal a scope of disqualification which may differ from a discretionary suspension or debarment. The *EPLS* includes cause and treatment codes with each listing, as well as instructions for their use, so that the user will know the nature and scope of a person's ineligibility. This is the same system as that currently in place and has worked without problems. We believe that sections 75(b), 145(b)(1) and 515 of the proposed rule already adequately address this matter. Therefore, no additional language in this regard is added to the final rule.

Participant verification of eligibility of lower tier participant. One commenter recommended that we clarify that a participant planning to enter into a covered transaction with another entity at the next lower tier must verify that the entity is not excluded or disqualified. We agree. We included a new section 300 in the final rule to more clearly state that obligation. We renumbered the remaining sections within that series to maintain the sequence of the final rule.

Participant termination of suspended or debarred principal in existing covered transactions. One agency commenter noted that the cautionary language contained in the final sentence of section 305(a) of the proposed rule (now section 310(a) of the final rule), be modified appropriately and included at the end of proposed section 310(a) (now section 315(a) of the final rule). The language under proposed rule section 305(a) emphasized that a participant exercise caution in deciding whether to terminate covered transactions, such as subcontracts or subgrants, with persons that were already in existence at the time the person was excluded. The commenting agency noted that a participant may face the same issue with regard to one of its own employees who may be subject to an exclusion while already acting as a principal under another covered transaction. Since an agency exclusion imposed under this rule does not apply to existing awards, termination options in such situations can be legally and practically complex. Before such an action is taken, the option must be carefully analyzed and weighed. We believe the same or similar concerns apply to decisions about employees who serve as principals. Accordingly, section 315(a) of this final rule has been amended to include similar cautionary language.

Participant verification of its principals' eligibility. One commenter suggested that proposed section 315 be clarified so that the reader understands that a participant need only verify that its own principals, and not those of lower tier participants, are eligible to participate in the covered transaction. Since a participant may have a transaction both above it and below it, it is possible to misconstrue this section to obligate the participant to verify the principals of those participants above and below its own organization. The language in proposed sections 315 and 325 (now sections 320 and 330 in the final rule), was intended to require participants only to verify eligibility of its own principals in its own transactions. Participants at lower tiers will verify the principals' eligibility in their transactions. Accordingly, we amended proposed section 315 (now section 320 in the final rule), to replace the phrase ''any principal'' in the first sentence, with the phrase ''any of your principals.''

Doing business with an excluded person. The same commenter suggested that proposed section 320 (now section 325 in the final rule), be modified by replacing the phrase ''If as a participant you knowingly do business with an excluded person'' with ''If you as a participant do business with a person when you knew or had reason to know that the person was excluded. * * * .'' The commenter believes it would make the standard consistent with that found elsewhere in the rule. However, the only place in the rule that the ''reason to know'' standard applies is when an agency is imputing conduct from an entity to an individual for the purpose of suspension or debarment. That standard is different from the ''should have known'' standard, but less than the actual knowledge standard required under proposed section 320 (now section 325). When the NCR was published as a final rule in 1988, the standard of actual knowledge was adopted to support a cause for debarment under section 305(c)(2). That final rule changed the language from what had been proposed as a ''known or reasonably should have known'' standard. That was done to conform the nonprocurement rule to a FAR certification proposed amendments at 52 FR 28642–46 (July 31, 1987). See also discussion at 53 FR 19167 (May 26, 1988). It was determined then, and we agree now, that actual knowledge of ineligibility should be required before an agency debars a person for doing business with an excluded or disqualified person. Therefore, the standard under this section in the final rule remains unchanged.

Certification. Three of the six comments we received on this subject, including one from the ABA–PCL, supported the proposed rule's elimination of a current requirement for certifications. The ABA–PCL also noted that the problems caused by certifications could be aggravated, rather than solved, if some agencies elected to continue using certifications, and instructions were not issued to preclude each agency from separately crafting certification language that differed from the language used by the others. We agree and note that this comment should be addressed by the joint efforts of 26 Federal grant-making agencies to implement the streamlining and simplification requirements of the Federal Financial Assistance Management Improvement Act of 1999 (Pub. Law 106–107). A stated goal of those interagency efforts is to eliminate certifications or assurances that are found to be unnecessary and establish common language for others.

One of the three commenters supporting continued use of

certifications said that certifications provide the best means of obtaining accurate and updated information about a person's eligibility. That commenter noted that the Office of Federal Procurement Policy retained the suspension/debarment certification when the Clinger-Cohen amendments were implemented for Federal procurement contracts.[1] Another comment in support of retaining certifications suggested that a certification is the best way for a participant to provide information about itself and its principals, as required by proposed rule section 330 (now section 335 in the final rule), to the Federal agency with which it is about to engage in a covered transaction.

We understand and appreciate these views. However, Federal award officials can now rely on the electronic *EPLS* which is available worldwide on the Internet, as opposed to the printed version that could be six weeks out of date by the time some awarding officials receive them. New technology has eliminated any need to require Federal agencies to obtain suspension/debarment certifications, although the rule still makes certifications available as an option for any agency with circumstances that justify their continued use. In their agency-specific preambles accompanying the **Federal Register** notice of proposed rulemaking, only a few agencies proposed to use certifications in their covered transactions. This suggests that many agencies see alternative methods as an opportunity to reduce burdens on participants without reducing compliance with the rule's requirements. Therefore, the final rule does not require Federal agencies to obtain certifications.

Subpart E

Identity confirmation by date of birth. The Federation of American Hospitals suggested that section 515 of the rule include a field for birth date entries on the *GSA List* (now called the *EPLS*). The Federation observed that birth dates are currently available in company employee databases and are used in other Federal programs to assist in matching identities. The ISDC has been studying the use of birth dates as a potential data entry into the *EPLS* to confirm the identity of individuals. The collection, use, and dissemination of personal identifier information, such as social security numbers and birth dates, is widely practiced in private and commercial settings. However, when Federal agencies desire to do so, the issue is more complex. Certain statutes designed to protect privacy must be considered. We believe that this suggestion has merit and should be considered as an enhancement to the current system at a later date.

Subpart F

Confirmation of receipt of notice by e-mail. The ABA–PCL expressed general support for expanding the options for delivery of action notices under sections 615, 725, 820 and 975. It noted that e-mail notification, unlike notification by facsimile, is still in an evolutionary stage and may lack the level of certainty that the notice reaches the intended recipient in a timely manner. It suggested that the regulation should require that e-mails be followed up by notice via regular mail, or that the respondent provide the sender with a confirmation of e-mail receipt.

While still an evolving technology, e-mail is not inferior to traditional mail or facsimile as a means to deliver notice. Even current mail with return receipt options does not guarantee that the mail reaches the intended recipient. Many return receipts are returned to the sender as undeliverable or unclaimed. Some are signed by a person whose signature is not legible. The legal system accepts, as legally sufficient, constructive notice to bring a matter to conclusion—knowing that actual receipt by the intended recipient is not guaranteed. This has been equally true in the world of suspension and debarment. Agencies are occasionally faced with claims by respondents who have been debarred that they did not see the notice or decision, or that the facsimile notice was mis-delivered. The current NCR and FAR debarment rules assume receipt if the notice is sent to the last known address. Because the rules allow any debarred person to petition for reinstatement at any time, a person who makes a case for non receipt of notice is not deprived of an opportunity to contest an action or have its status changed. Requiring duplicate mailings or other cumbersome procedures will not significantly increase the chance of actual receipt. It would only lengthen the notification process and deprive the agencies of the ability to take prompt protective action and to conduct business efficiently. Therefore, we did not change this in the final rule.

Scope of action with regard to subsidiaries. The ABA–PCL requested that proposed section 625 be amended to address uncertainty about whether an organization's suspension or debarment automatically covers wholly owned subsidiaries. The 1988 preamble to the NCR contained a detailed explanation of the treatment to be accorded all subsidiaries of a corporation with regard to the scope of a debarment or suspension. See 53 FR 19169 (May 26, 1988). The 1988 NCR, when proposed, would have included subsidiaries automatically within the scope of a suspension or debarment action taken against the parent company. As a result of comments received in 1988, the final NCR removed the term ''subsidiaries'' from the automatic scope of a suspension or debarment against a parent company. This was, in part, because separately incorporated entities may have different shareholder interests involved that may not be notified of the action. Also, a subsidiary corporation may receive an award in its own name. Procurement and nonprocurement award officials must rely on the *EPLS* to determine the eligibility status of a potential contractor or participant. There is nothing in the award process that will inform the award official that any potential contractor or participant is, or may be, a subsidiary of another excluded entity—even if all the subsidiary's stock is owned by the excluded entity. Apart from cases where a subsidiary's name may include part of the parent's name, there may be nothing in the *EPLS* that will cause an award official to associate the potential subsidiary contractor or participant with an excluded parent. For these reasons, the original nonprocurement suspension and debarment final rule elected to treat all subsidiaries as ''affiliates.'' This means that all entities with a distinct legal identity, including wholly-owned subsidiaries, must be provided with a notice of action, an opportunity to contest, and written determinations. The subsidiary will appear with its own listing to assure that the Government may effectively enforce the *EPLS.* Parts of a business entity that do not enjoy a separate legal standing, such as unincorporated divisions and branches, are included within the scope of the action against the entity.

Imputing conduct. One commenter observed that a technical reading of section 630 of the proposed rule does not adequately describe imputing conduct from a subsidiary to its parent company or between separate corporate or other business entities other than

[1] Section 4301(b)(2)(iii) of the Federal Acquisition Reform Act of 1996 (Pub. L. 104–106), prohibits Federal agencies from imposing non-statutory certifications on contractors or offerors unless the Federal Acquisition Regulatory Council provides written justification to the Administrator for Federal Procurement Policy, and the Administrator approves the certification requirement in writing. This justification must include a determination that there is no less burdensome means for administering and enforcing the agency regulation.

those engaged in joint ventures. Paragraph (a) of that section refers to imputing conduct from individuals to organizations. Paragraph (b) addresses imputing conduct from organizations to individuals. Paragraph (c) addresses imputing conduct between businesses linked by some form of limited joint venture or agreement.

Many agencies have operated with the understanding that the phrase ''or similar arrangement'' contained in section 325(b)(3) of the current NCR allows agencies to impute conduct between a subsidiary and its parent company. The proposed rule did not alter the current language of the NCR. However, after reviewing the proposed language, and comments requesting that we redraft this section using plain language (see General comments on plain language format above), we revised section 630 of this final rule to make clear that, for the purpose of suspension or debarment, Federal agencies may impute misconduct from individuals to organizations, from organizations to individuals, from individuals to other individuals, and from organizations to organizations, where appropriate. Section 630(c) of the final rule covers imputing misconduct from any linked organizations, including those linked by a parent-subsidiary relationship. This revised format and style of section 630 will help eliminate ambiguity existing under the current NCR language and make it more understandable to the general public.

We also note that this rule retains the *reason to know* standard as the appropriate standard for imputing misconduct to individuals under section 630(b). The Circuit Court of Appeals for the DC Circuit, in *Novicki* v. *Cook,* 946 F.2d 938 (D.C. Cir. 1991), noted that the *reason to know* standard was not defined in the FAR. Using an analysis of that standard at common law, the Court reasoned that this standard is not one of strict liability or a *should have known* standard that can be met merely because of an individual's position as president of a corporation. We agree with that interpretation. We also note, as did the Court, that the debarring official in that case had other information in the record, the nature of which could have reasonably supported imputation under the *reason to know* standard under the right circumstances. Under this rule, if a person in a position of control, influence or authority over a business activity acquires information that suggests misconduct and fails to take action to prevent the misconduct from occurring, or to mitigate the injurious consequences of the misconduct once it has occurred, imputation under the *reason to know* standard of section 630(b) is appropriate. If a person in authority over a business activity can be shown to have deliberately avoided acquiring information about misconduct that would otherwise reasonably be expected to come to their attention in the ordinary course of performing their duties, they may be deemed to have *reason to know* of the misconduct under section 630(b).

The *reason to know* standard of section 630(b) applies to all situations where conduct is to be imputed to an individual. It applies the same standard for imputing conduct between spouses or relatives as it does between an organization and an individual or between unrelated individuals. This section does not authorize imputing conduct from one individual to another in a business activity solely upon the existence of a family or marital relationship between two individuals. Other factors, such as age, experience in the business, education, financial capacity, and organizational or operational independence should be considered along with the relationship before determining that one individual had *reason to know* of the misconduct of the other. Where no other factors are present to support imputing conduct to a related individual, that individual may still be subject to action as an affiliate, if the appropriate degree of control can be established.

Another commenter suggested that we delete from section 630 the word ''scope'' to describe application of the imputed conduct provisions and we use the term only with regard to the subject matter addressed in section 625. We agree with that clarification and have revised the initial sentence in section 630 accordingly.

That commenter also suggested that the final rule substitute the words ''may be'' for the word ''is'' in the final sentence of paragraphs (a) and (c) of section 630 of the proposed rule. The commenter believed such a change would clarify that acceptance of benefits derived from the conduct in question alone does not create a conclusive presumption upon which to impute conduct. We agree that the mere acceptance of benefits alone would be an insufficient basis upon which to conclude that a person had knowledge of, approved of, or acquiesced in the conduct where evidence suggests otherwise. However, agencies under the Governmentwide debarment and suspension system have always used acceptance of benefits as one indicator of knowledge, approval or acquiescence. A suspending or debarring official, or an official conducting fact-finding in a suspension or debarment action, may weigh the fact of receipt of benefits derived from the conduct against other information available in the record to determine whether a person knew or approved of, or acquiesced in, the conduct in question. Therefore, the language in the proposed rule is accurate and remains in the final rule.

Subparts G and H

One Federal debarring official noted that the language of section 700(a) of the proposed rule generally requires adequate evidence to suspect that a cause for debarment exists as the first part of a two-part test to support a suspension. He observed that the adequate evidence test makes sense so long as the reader applies it to any ground under section 800 other than section 800(a). A cause for debarment under section 800(a) requires the matter to have already progressed to a conviction or judgment. While the language in the proposed rule has existed under the NCR for years without apparent confusion, we agree that either section 800(a) should be stated more generally such as ''commission of criminal offense or liability for a civil matter'' or section 700 should distinguish between suspensions based on causes under section 800(a) and those based on causes under sections 800(b) through (d). To keep the causes for debarment under the FAR and this rule consistent, we elected not to alter the language of section 800(a) in this final rule. But to improve the clarity with respect to suspensions for actions that have not yet progressed to a judgment or conviction, we divided proposed section 700(a) into two paragraphs (a) and (b). Section 700(a) of the final rule relates to suspensions based upon indictment, complaint or other adequate evidence to support criminal or civil matters that may ultimately fall under section 800(a). Section 700(b) of the final rule relates to adequate evidence of any other cause for debarment. Proposed section 700(b) becomes section 700(c) in this final rule.

Fact-finding proceedings versus presenting matters in opposition. A few commenters found proposed rule sections 740 and 835 confusing because while these sections address meetings held with the suspending or debarring official to present matters in opposition, the final sentence of each section relates to taking witness testimony and conducting cross-examination. These matters apply to fact-finding proceedings, not presentation of matters in opposition. Fact-finding proceedings are addressed in sections 745 and 840.

Therefore, we moved the language relating to witness testimony and cross-examination from sections 740 and 835 of the proposed rule to sections 745 and 840, respectively, in this final rule. In addition, in response to another agency comment, we clarified the provisions under those sections so that it is clear that fact-finding privileges of presenting witnesses, evidence and other information, or cross-examination of any witnesses, or confrontation of evidence and information presented, is equally available to respondents and the government representatives at those proceedings.

One commenter requested that we revise sections 740(b) and 845(c) to permit the suspending or debarring official to refer both disputed facts and issues of law to another official for resolution. The Governmentwide suspension and debarment provisions under the FAR and the NCR provide only for submitting material *facts* genuinely in dispute to another official for resolution. In some agencies, the debarring official is in the Office of General Counsel, in other cases, the General Counsel's Office may review the decision before issuance or may advise the debarring official on legal matters while the matter is pending. Each agency has the discretion to decide, and must determine for itself, how it will handle legal issues in the context of debarment or suspension actions. We believe it is in the best interest of the Government to continue that practice. Furthermore, changing the proposed language in accordance with this request would place the NCR at odds with the requirements for suspension and debarment under the FAR. Accordingly, we made no change.

One commenter suggested that the final rule clarify whether disputes over mitigating or aggravating factors would entitle a respondent to a fact-finding proceeding. The current interpretation and practice of the agencies in suspension and debarment actions under both the FAR and NCR is that a respondent is entitled to a fact-finding proceeding on material facts in genuine dispute only with regard to establishing a cause for debarment or suspension. As a practical matter, the regulation does not preclude a suspending or debarring official from using a fact-finding proceeding to address aggravating or mitigating factors in dispute if he or she finds it helpful in reaching a final decision. We left the final rule unchanged to avoid creating an appearance of differing standards for fact-finding between the NCR and the FAR.

Time limits for decision. One commenter suggested that we amend sections 755 and 870 to require that the suspending or debarring official make a final decision within 45 days of closing the official record, even in cases where fact-finding is conducted. Currently under the NCR, the 45-day time limit for the suspending or debarring official's decision only applies to cases in which no fact-finding is required. The proposed rule did not alter that requirement. However, since the suspending or debarring official does not close the record in any case until after he or she receives the needed information, including the fact-finder's findings, there is no reason for the suspending or debarring official to treat these cases differently. Accordingly, sections 755 and 870(a) have been revised to set a 45-day period for final decision in all cases, subject to extension for good cause.

Petitions for reconsideration. One commenter recommended that either section 875 or 880 incorporate a minimum six month waiting period before a debarred person may petition the debarring official for reconsideration of its period or scope of debarment. We believe there are many reasons that may justify an adjustment of the period or scope of a debarment within six months of issuance of the initial decision. For example, the debarring official may have overlooked important information in the record, or the debarred person may be able to establish present responsibility shortly after a debarment is issued. Unlike the 45-day time limit imposed upon the debarring official in rendering the initial determination, no such time limit is imposed in handling requests for reconsideration under these sections. The debarring official has significant discretion in, and control over, handling requests for reconsideration. Debarring officials can use that discretion in dealing with reconsideration requests, including frivolous requests, without minimum waiting periods. In a close case, a minimum waiting period could discourage a debarring official from imposing a debarment if a company has made an incomplete demonstration of present responsibility. In addition, it can have a harsh result on the company that addresses Government concerns promptly. Most agencies do not appear to have experienced significant problems handling reconsideration requests. Accordingly, the final rule does not include a mandatory minimum waiting period for reconsideration.

Subpart I

Define ''procurement''. One commenter recommended adding a definition of the term ''procurement'' in Subpart I to clarify which lower tier transactions are covered transactions. The commenter suggested defining ''procurement'' as the acquisition of supplies and services by contract with a commercial entity, to help distinguish lower tier procurement transactions from subawards made by research institutions to collaborating research organizations.

We understand the importance of distinguishing procurement transactions, which are covered transactions at lower tiers only if they meet the criteria under section 220 of the rule, from nonprocurement transactions that are more broadly covered under section 210. Adding a definition of the term ''procurement'' to this rule would be warranted if confusion was prevalent among Federal agencies or participant communities about the distinction between procurement and nonprocurement. However, we do not believe this is the case. The definition of ''subgrant'' and ''subaward'' in Federal agencies' implementation of OMB Circulars A–102 and A–110, respectively, provide an adequate basis for most agencies and participant communities to make the distinction. Specifically, a lower tier transaction is a nonprocurement transaction subject to section 210 if the transaction's purpose is to have the lower tier participant perform any part of the substantive program from the Federal agency's primary tier transaction. If it meets this criterion, the lower tier transaction is a nonprocurement transaction even if the higher tier participant calls the transaction a ''contract.'' In contrast, the lower tier transaction is procurement subject to section 220 if its purpose is the acquisition of goods or services needed by a performer, at any tier, of the substantive program. While we do not believe that adding a definition of ''procurement'' is necessary in this Governmentwide rule, any Federal agency may add clarifying language in its own rule if it judges that doing so is warranted for its programs. Also, a participant may seek guidance from the awarding Federal agency if necessary.

Conviction. One commenter requested clarification of the term ''entry'' of judgment as it relates to the definition of ''conviction'' in section 925. Under Rule 32 of the Federal Rules of Criminal Procedure, a conviction is not final until the entry of a final order. Therefore, a criminal conviction does not exist to

support a cause for debarment under section 800(a) until the court signs the Judgment, Commitment or Probation Order (or its equivalent). The proposed rule sought to address this definition so that agencies would be free to conclude debarment proceedings where a defendant enters a guilty plea or a guilty verdict is returned but judgment is withheld, delayed, or diverted pursuant to an alternative sentence or disposition. Accordingly, the proposed rule expanded the definition to focus on the practical reality of the criminal proceeding's conclusion, rather than the technical requirement that a judgment be ''entered.''

While acknowledging the legitimacy of the Government's desire to finalize debarment proceedings in criminal matters concluded under special terms without the benefit of a formal entry of judgment, the ABA–PCL expressed concern that the proposed definition, as written, is so broad that it would capture dispositions that are not the functional equivalent of a finding or pronouncement of guilt. It observed that the contexts for such alternate dispositions vary from case to case, and from jurisdiction to jurisdiction, and that failure to add some boundaries to the expanded definition might discourage resolution of some cases in a way that is beneficial to the Government and the affected person. The ABA–PCL suggested that the phrase ''or any other resolution'' in the proposed definition be subject to some limitation reflective of an admission or finding of guilt before being treated as a ground for debarment. We believe the ABA–PCL's concern is appropriate. Accordingly, the definition of ''conviction'' in the final rule is revised to provide that an alternative disposition to a criminal entry of a judgment will be treated as the functional equivalent of a judgment if it occurs with the participation of the court; or in a case that involves only an agreement with the prosecutor, if it occurs in the context of an admission of guilt. In making this assessment, the debarring official should consider the entire context of the disposition or resolution, including the nature of the obligations imposed on or accepted by the person, and any official statements made regarding the alternate disposition. Where a person is suspended upon commencement of criminal proceedings which are later held in abeyance to satisfy the terms of an alternative disposition, and the alternative disposition does not qualify as the functional equivalent of a conviction, the suspension may continue until the criminal matter is concluded under NCR section 760(a).

Person. The ABA–PCL also questioned whether it is practical to continue including a ''unit of government'' within the definition of person for the purpose of taking suspension or debarment actions. The commenter notes that units of government often have a unique status in Federal agency programs that make their suspension or debarment impractical. We acknowledge that there is often a unique relationship between the governmental organizations that might dissuade a Federal agency from choosing to debar a governmental body from Federal nonprocurement transactions. However, that is not true for all Federal transactions, or for all units of government. Federal suspending and debarring officials have sufficient discretion and options available when dealing with units of government or their employees that allow the official to consider all relevant factors. We do not believe that the Federal Government's interest in protecting its nonprocurement programs would be enhanced by eliminating all units of government from the definition of ''person.'' Such an approach would, in effect, create an exemption from coverage and create a void of oversight and accountability for many special bodies of government that receive Federal funds and benefits. Therefore, the definition of ''person'' remains unchanged in the final rule.

Principal. The ABA–PCL also expressed concern that the definition of the term ''principal'' in proposed section 995(b)(3) is so broad as to potentially result in making it impossible for an individual to find employment in their given field. Proposed section 995(b)(3) includes any person who ''occupies a technical or professional position capable of influencing the development or outcome of an activity that affects a covered transaction.'' The ABA–PCL suggests that this should be narrowed to cover an employee who ''occupies a technical or professional position capable of *directly and substantially* influencing the development or outcome of an activity *required under* a covered transaction.'' We agree that the definition of ''principal'' in proposed section 995(b)(3) should be narrowed in an effort to cover critical non-supervisory/managerial positions. However, use of the term ''directly'' may confuse the reader to believe that the exclusion will apply only to positions that are charged as a direct cost to the covered transaction. As noted in the 1988 preamble to the NCR, the Government rejects the direct/indirect cost analysis as being a valid basis upon which to apply the exclusion. In addition, the ABA–PCL's suggested phrase ''required under a covered transaction'' could be read to require that the product or service must be specifically mentioned in the award, agreement or transaction. It is the intent of this rule to cover any important service or product that is required to perform the award, whether or not it is directly specified in it. Accordingly, we altered the definition of ''principal'' in section 995(b)(3) of the final rule to apply to any person who ''* * * Occupies a technical or professional position capable of *substantially* influencing the development or outcome of an activity required *to perform* the covered transaction.'' (Emphasis added.)

Fundamental concepts that still apply under this rule. In addition to addressing the comments raised during the comment period in this rulemaking, we identified important concepts that were addressed in the preamble to the original NCR, or that evolved since its publication, that still apply under this final rule. They are being restated here to preserve them and to provide useful guidance on the interpretation and application of this rule.

Protection not punishment. Suspension and debarment are administrative actions taken to protect the Government's business interests. It should not be used to punish persons for past misconduct or to coerce a respondent to resolve other criminal, civil or administrative matters. While suspension and debarment will frequently occur as a result of, or at the same time as other proceedings, and may even be highly dependent upon the resolution of those other proceedings, suspension and debarment are not alternatives for using traditional means of resolving matters in the appropriate forum. Notwithstanding this precaution, the suspending and debarring official may resolve any matter *otherwise appropriate for suspension or debarment* under the terms of a comprehensive or global agreement that addresses criminal, civil, enforcement, audit, contract dispute, or other proceeding collateral to it when in the best interest of the Government to do so.

It is important for suspending and debarring officials to use balance and sound business judgment in ascertaining whether to use suspension and debarment to address a matter. Where other administrative remedies are available, such as disallowing costs or recovery of sums by set-off, filing of civil claims, or various contractual or

audit options exist, the suspending or debarring official should consider whether those remedies may be more appropriate under the circumstances, or whether to await the outcome of those procedures before using the suspension or debarment option.

Covered transactions and principals. While much of the NCR is drafted in terms of an ''award'' being made by the Government or a participant, it is important to note that the concept of covered transactions is much broader than relationships or benefits that are conferred through traditional vehicles such as grants, cooperative agreements, direct loans, or contracts and subcontracts under them. Loan guarantees, technical assistance, approvals, some licenses and other privileges or events, not necessarily involving an award of money, are covered transactions. Where money is part of the equation, the direct or indirect nature of a participant's cost does not govern whether the transaction is a ''covered transaction.'' This is because many critical services, such as professional fees for legal, accounting, engineering and other services may be charged as an indirect cost to the nonprocurement transaction, but the services of that individual or entity are still critical to performance. For example, an accountant or accounting firm that is debarred for misconduct may be ineligible to perform audit services for a grantee under a covered transaction even though the accounting services are to be charged by the participant as an indirect cost to its grant.

Even where a participant provides services under a covered transaction that is being serviced by a volunteer who has been suspended or debarred, the prohibition on the participant's use of that volunteer in the capacity of a principal will apply to the covered transaction.

Where the NCR is otherwise silent, each agency may describe in its own rule those special transactions it regards as ''covered transactions,'' and the services that when performed on behalf of a participant are those of a ''principal.'' Failure to do so may limit the agency's ability to apply the person's exclusion to or within the transaction.

Jurisdiction to debar versus the effect of debarment. It is important to separate the questions: ''Who may an agency suspend or debar?'' and ''What is the excluded person suspended or debarred from?'' The definition of ''person'' in section 985 and the authority stated under section 135 of this rule answer the first question. An agency may suspend or debar *any* individual or entity that may reasonably be expected to be involved in a covered transaction. The authority to take action against any person that may be '' * * * reasonably expected to be involved in a covered transaction,'' is not intended to operate as a limitation on an agency's ability to protect itself. On the contrary, this rule gives agencies broad authority to take action to protect public programs against any individual or entity that presents a rational business risk to the Government's nonprocurement programs. The answer to the second question is that the suspended or debarred person is excluded from being a principal or participant in any nonprocurement covered transaction that is not exempt from coverage under the NCR (see section 215). Federal agencies can freely enter into exempt transactions without checking the *EPLS,* collecting certifications or assurances, or conditioning the award upon non-debarment or suspension. Transactions that are exempt from coverage include entitlements such as certain social security, disability, or welfare benefits, etc. Exempt transactions also include benefits a person receives that are incidental in nature, such as benefits flowing to sellers of a primary residence when the sale is financed by an FHA loan, or benefits that occur as a result of normal government operations, such as insurance on deposits in Federal banks, use of the postal services, and public use of national parks and recreation areas. It is important for agencies to distinguish when a beneficiary of a transaction is an intended beneficiary (not necessarily the principal or primary beneficiary) and when a person is an incidental beneficiary.

An agency is not precluded from suspending or debarring any person just because that person happens to be a participant in one of these non-covered transactions. Indeed, an agency may even suspend or debar that person for misconduct that occurs during performance of one of those exempt or non-covered transactions, *e.g.*, engaging in mail fraud, or violating an environmental permit.

Serious violations of health, safety and environmental laws and regulations. Although the causes for debarment do not specifically identify by name various violations that threaten the health and safety of workers or threaten the environment, serious violations of these laws and regulations have always been subject to suspension or debarment under several provisions, including section 305(a)(4) and/or (d) of the NCR (now section 800(a)(4) and/or (d)). *Any* violation of law, regulation or agreement; or any conduct, failure to perform or other event that seriously threatens a Federal nonprocurement or procurement activity, is subject to potential suspension and debarment under this rule. On December 27, 2001, the Federal Acquisition Regulatory Council issued a final rule (see 66 FR 66986–66990), revoking the December 20, 2000 amendments to the FAR that included, among other things, a contractor's health, safety and environmental record in the contract officer's pre-award responsibility review. In so doing, the FAR Council acknowledged that the Governmentwide suspension and debarment system is the most effective and appropriate forum to address serious concerns about a contractor's or participant's responsibility for violations of this nature.

Transactions in foreign countries. The prohibitions against using suspended or debarred persons in covered transactions applies equally to transactions entered into by Federal agencies or participants in foreign countries. So long as the transaction is one involving U.S. Executive branch resources or benefits, the protection afforded by the exclusion applies no matter where the covered transaction occurs. The state or country of incorporation, registration, or principal place of business of an excluded entity is irrelevant to its coverage. The prohibition would not apply, however, if the transaction is exempt because it is an award to a foreign government entity as described in section 215(a).

Lead agency. Lead agency is not a jurisdictional concept. It is an administrative procedure employed by the Federal agencies to bring efficiency, focus and coordination of resources to bear on any matter which may touch the interests and expertise of several agencies. A respondent has no right to have any particular agency act as lead agency in a suspension or debarment action. While section 620 of this rule allows for agencies to coordinate their interests and select a lead agency, failure to do so does not invalidate the actions of the agency that handles the matter. The ISDC, under its authority in sections 4 and 5 of E.O. 12549, uses flexible and informal procedures to coordinate actions and assist in selecting a lead agency.

Submission of applications, bids and proposals versus award. Questions often arise as to an excluded person's eligibility to submit a bid, application or proposal for or under a covered transaction where the bidder, applicant or offeror expects its suspension or

debarment to end prior to the award date. The NCR, like the FAR, precludes *awards* to excluded persons. Since eligibility for award is determined at that time, in most procurement and nonprocurement transactions, agencies often accept bids, applications or proposals subject to an eligibility determination on the date of award. However, this rule does not require that agencies do so. Each agency must determine for itself whether to accept or consider bids, applications or offers submitted by an excluded person when there is a possibility that an exclusion may end or be removed before the date of award. There may be little danger in considering these submissions where it is clear from the *EPLS* that a debarment will end on a date certain. However, where a suspension is in place, or the debarred person is anticipating a favorable ruling on a petition for early reinstatement prior to award, caution is advised. In any event, it is the prerogative of the awarding agency to decide whether and under what conditions it will accept or consider bids, applications or proposals under these circumstances.

What constitutes a new ''award?'' Once a person is excluded under this rule, it is important to note that the exclusion applies to awards or transactions entered into on or after the date of the exclusion. Because of the varying types of agreements and contracts that may exist, it is not always easy to determine whether a transaction is part of an existing award or if it is a new award subject to the exclusion. As a rule of thumb, if the transaction in question requires the approval of the party awarding the transaction or conferring the benefit, the transaction is a new award, and subject to the prohibition on using excluded persons. If the transaction is part of a larger agreement and the legal obligation and authority to provide goods or services are already in place, the transaction may be regarded as a preexisting transaction. No-cost time extensions under existing awards can be treated as part of the existing award at the option of the agency granting it.

Evidence of misconduct versus mere suspicion. Suspension or debarment may not be imposed upon mere suspicion of misconduct. While the procedures under this rule do not require suspending or debarring officials to follow formal rules of evidence in making decisions, they require that certain standards of proof of misconduct be met in order to suspend or debar a person. These standards (adequate evidence for suspension and preponderance of the evidence for debarment) require that the suspending or debarring official base his or her decision on an appropriate quality of information, according to the circumstances at hand, so as to preclude suspending or debarring a person on the basis of empty speculation or on mere suspicion of wrongdoing.

Suspension, adequate evidence and immediate need. The standard for suspension is a two part test. First, the suspending official must have *adequate evidence* that a cause for debarment exists. Second, the suspending official must conclude that *immediate action is necessary* to protect Federal interests. In a criminal case, the adequate evidence test is met by the presence of an indictment or information. Suspensions based upon evidence other than an indictment are common during the course of an investigation when the information available to the suspending official is sufficient to support a reasonable belief that an act or omission has occurred. In some cases, evidence may be made available to the suspending official that is sensitive to an ongoing investigation. The suspending official may have to review the evidence *in camera* and be unable to disclose the evidence to a suspended respondent. In such cases, it is important that the suspension notice contain enough information so that the respondent can make a meaningful presentation of matters in opposition, since a fact-finding proceeding is likely to be denied to resolve material facts in dispute. In any event, the record must contain the evidence that was considered in issuing the suspension.

Even in cases where an indictment is present, the suspending official must determine that immediate action is necessary to protect Federal interests before imposing a suspension. As noted in the preamble to the proposed changes to this rule, the determination of ''immediate need'' does not require that the suspending official issue a separate finding. As stated by the court in *Coleman American Moving Services, Inc.* v. *Weinberger,* 716 F. Supp. 1405 (M.D. Ala. 1989), immediate need is a conclusion that a suspending official may draw from inferences made from the facts and circumstances present. In cases of serious crimes such as fraud against the Government, or criminal activity that threatens the health and safety of individuals, immediate need may be obvious. In other cases, however, a suspending official's determination of immediate need may not be as clear. It is, therefore, important that the suspending official's record be sufficient for a reviewing court to ascertain why immediate action was deemed prudent. In this regard the term ''immediate'' does not connote that future misconduct, loss, or injury is probable. A suspending official may conclude that immediate action is needed based on what a reasonably prudent business person would be expected to do given the risk potential under the circumstances.

It is also important to note that the standard of evidence for issuing a suspension does not change merely because the respondent contests the action and is able to marshal some information that conflicts with information the Government has provided to the suspending official. In cases where an investigation is still underway, particularly when fact-finding is not to be conducted at the request of the prosecuting officials, the suspending official must be careful not to apply the debarment standard of *preponderance of the evidence* when deciding whether to continue the suspension. To do so would place the Government at a disadvantage and bring the suspension decision out of context with its goal of temporary protection pending the outcome of an investigation or legal proceedings. Unless the respondent is able to nullify the evidentiary basis for the suspension without regard to resolving disputed material facts, the Government's evidence may remain adequate to support the action. However, a respondent may still attempt to have a suspension removed by addressing the Government's immediate interests that are at risk. If the respondent can demonstrate that the respondent has taken protective action to eliminate, or reduce to an acceptable level, the Government's risk pending completion of the investigation or legal proceedings, the suspending official may terminate a suspension even though there is adequate evidence to support a suspension.

Impact Analysis—Executive Order 12866

The participating agencies have examined the economic implications of this final rule as required by Executive Order 12866, ''Regulatory Planning and Review.'' Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions,

including: Having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues.

Although the participating agencies have determined that this final rule does not meet the economic significance threshold of $100 million effect on the economy in any one year under Section 3(f)(1), the Office of Management and Budget has reviewed this final rule as a significant regulatory action under the Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with a ''significant economic impact on a substantial number of small entities,'' an analysis must be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities.

The participating agencies certify that this rule will not have a significant impact on a substantial number of small entities. This rule addresses Federal agency procedures for suspension and debarment. It clarifies current requirements under the Nonprocurement Common Rule for Debarment and Suspension by reorganizing information and presenting that information in a plain language, question-and-answer format.

C. Unfunded Mandates Act of 1995

The Unfunded Mandates Act of 1995 (Pub. L. 104–4) requires agencies to prepare several analytic statements before proposing any rule that may result in annual expenditures of $100 million by State, local, Indian Tribal governments or the private sector. Since this rule does not result in expenditures of this magnitude, the participating agencies certify that such statements are not necessary.

D. Paperwork Reduction Act

The participating agencies certify that this rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

E. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, (5 U.S.C. 804). This rule will not: Result in an annual effect on the economy of $100 million or more; result in an increase in cost or prices; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

F. Executive Order 13132: Federalism

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

Text of the Final Common Rules

The text of the final common rules appear below:

1. [Part/Subpart]__is revised to read as follows:

[PART/SUBPART]__GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

__.25 How is this part organized?
__.50 How is this part written?
__.75 Do terms in this part have special meanings?

Subpart A—General

__.100 What does this part do?
__.105 Does this part apply to me?
__.110 What is the purpose of the nonprocurement debarment and suspension system?
__.115 How does an exclusion restrict a person's involvement in covered transactions?
__.120 May we grant an exception to let an excluded person participate in a covered transaction?
__.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
__.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
__.135 May the [Agency noun] exclude a person who is not currently participating in a nonprocurement transaction?
__.140 How do I know if a person is excluded?
__.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

__.200 What is a covered transaction?
__.205 Why is it important to know if a particular transaction is a covered transaction?
__.210 Which nonprocurement transactions are covered transactions?
__.215 Which nonprocurement transactions are not covered transactions?
__.220 Are any procurement contracts included as covered transactions?
__.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

__.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
__.305 May I enter into a covered transaction with an excluded or disqualified person?
__.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
__.315 May I use the services of an excluded person as a principal under a covered transaction?
__.320 Must I verify that principals of my covered transactions are eligible to participate?
__.325 What happens if I do business with an excluded person in a covered transaction?
__.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

__.335 What information must I provide before entering into a covered transaction with the [Agency noun]?
__.340 If I disclose unfavorable information required under § __.335, will I be prevented from participating in the transaction?
__.345 What happens if I fail to disclose the information required under § __.335?
__.350 What must I do if I learn of the information required under § __.335 after entering into a covered transaction with the [Agency noun]?

Disclosing Information—Lower Tier Participants

__.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
__.360 What happens if I fail to disclose the information required under § __.355?
__.365 What must I do if I learn of information required under § __.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of [Agency adjective] Officials Regarding Transactions

__.400 May I enter into a transaction with an excluded or disqualified person?
__.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
__.410 May I approve a participant's use of the services of an excluded person?

__.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
__.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
__.425 When do I check to see if a person is excluded or disqualified?
__.430 How do I check to see if a person is excluded or disqualified?
__.435 What must I require of a primary tier participant?
__.440 [Reserved]
__.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
__.450 What action may I take if a primary tier participant fails to disclose the information required under § __.335?
__.455 What may I do if a lower tier participant fails to disclose the information required under § __.355 to the next higher tier?

Subpart E—Excluded Parties List System

__.500 What is the purpose of the Excluded Parties List System (EPLS)?
__.505 Who uses the EPLS?
__.510 Who maintains the EPLS?
__.515 What specific information is in the EPLS?
__.520 Who places the information into the EPLS?
__.525 Whom do I ask if I have questions about a person in the EPLS?
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Subpart F—General Principles Relating to Suspension and Debarment Actions

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Subpart I—Definitions

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__.940 Disqualified.
__.945 Excluded or exclusion.
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__.955 Indictment.
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Subpart J—[Reserved]

Appendix to Part—Covered Transactions

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p.189; E.O. 12689, 3 CFR, 1989 Comp., p .235.

§ _.25 How is this part organized?

(a) This part is subdivided into ten subparts. Each subpart contains information related to a broad topic or specific audience with special responsibilities, as shown in the following table:

In subpart . . .	You will find provisions related to . . .
A	general information about this rule.
B	the types of [Agency adjective] transactions that are covered by the Governmentwide nonprocurement suspension and debarment system.
C	the responsibilities of persons who participate in covered transactions.
D	the responsibilities of [Agency adjective] officials who are authorized to enter into covered transactions.
E	the responsibilities of Federal agencies for the *Excluded Parties List System* (Disseminated by the General Services Administration).
F	the general principles governing suspension, debarment, voluntary exclusion and settlement.
G	suspension actions.
H	debarment actions.
I	definitions of terms used in this part.
J	[Reserved]

(b) The following table shows which subparts may be of special interest to you, depending on who you are:

If you are . . .	See subpart(s) . . .
(1) a participant or principal in a nonprocurement transaction.	A, B, C, and I.
(2) a respondent in a suspension action.	A, B, F, G and I.
(3) a respondent in a debarment action.	A, B, F, H and I.
(4) a suspending official	A, B, D, E, F, G and I.
(5) a debarring official	A, B, D, E, F, H and I.
(6) a (n) [Agency adjective] official authorized to enter into a covered transaction.	A, B, D, E and I.
(7) Reserved	J.

§ _.50 How is this part written?

(a) This part uses a ''plain language'' format to make it easier for the general public and business community to use. The section headings and text, often in the form of questions and answers, must be read together.

(b) Pronouns used within this part, such as ''I'' and ''you,'' change from subpart to subpart depending on the audience being addressed. The pronoun ''we'' always is the [Agency noun].

(c) The ''Covered Transactions'' diagram in the appendix to this part shows the levels or ''tiers'' at which the [Agency noun] enforces an exclusion under this part.

§ __.75 Do terms in this part have special meanings?

This part uses terms throughout the text that have special meaning. Those terms are defined in Subpart I of this part. For example, three important terms are—

(a) *Exclusion or excluded,* which refers only to discretionary actions taken by a suspending or debarring official under this part or the Federal Acquisition Regulation (48 CFR part 9, subpart 9.4);

(b) *Disqualification or disqualified,* which refers to prohibitions under specific statutes, executive orders (other than Executive Order 12549 and Executive Order 12689), or other authorities. Disqualifications frequently are not subject to the discretion of an agency official, may have a different scope than exclusions, or have special conditions that apply to the disqualification; and

(c) *Ineligibility or ineligible,* which generally refers to a person who is either excluded or disqualified.

Subpart A—General

§ __.100 What does this part do?

This part adopts a governmentwide system of debarment and suspension for [Agency adjective] nonprocurement activities. It also provides for reciprocal exclusion of persons who have been excluded under the Federal Acquisition Regulation, and provides for the consolidated listing of all persons who are excluded, or disqualified by statute, executive order, or other legal authority. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189), Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103–355, 108 Stat. 3327).

§ __.105 Does this part apply to me?

Portions of this part (see table at § __.25(b)) apply to you if you are a(n)—

(a) Person who has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction;

(b) Respondent (a person against whom the [Agency noun] has initiated a debarment or suspension action);

(c) [Agency adjective] debarring or suspending official; or

(d) [Agency adjective] official who is authorized to enter into covered transactions with non-Federal parties.

§ __.110 What is the purpose of the nonprocurement debarment and suspension system?

(a) To protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons.

(b) A Federal agency uses the nonprocurement debarment and suspension system to exclude from Federal programs persons who are not presently responsible.

(c) An exclusion is a serious action that a Federal agency may take only to protect the public interest. A Federal agency may not exclude a person or commodity for the purposes of punishment.

§ __.115 How does an exclusion restrict a person's involvement in covered transactions?

With the exceptions stated in §§ __.120, __.315, and __.420, a person who is excluded by the [Agency noun] or any other Federal agency may not:

(a) Be a participant in a(n) [Agency adjective] transaction that is a covered transaction under subpart B of this part;

(b) Be a participant in a transaction of any other Federal agency that is a covered transaction under that agency's regulation for debarment and suspension; or

(c) Act as a principal of a person participating in one of those covered transactions.

§ __.120 May we grant an exception to let an excluded person participate in a covered transaction?

(a) The [Agency head or designee] may grant an exception permitting an excluded person to participate in a particular covered transaction. If the [Agency head or designee] grants an exception, the exception must be in writing and state the reason(s) for deviating from the governmentwide policy in Executive Order 12549.

(b) An exception granted by one agency for an excluded person does not extend to the covered transactions of another agency.

§ __.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?

If any Federal agency excludes a person under its nonprocurement common rule on or after August 25, 1995, the excluded person is also ineligible to participate in Federal procurement transactions under the FAR. Therefore, an exclusion under this part has reciprocal effect in Federal procurement transactions.

§ __.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

If any Federal agency excludes a person under the FAR on or after August 25, 1995, the excluded person is also ineligible to participate in nonprocurement covered transactions under this part. Therefore, an exclusion under the FAR has reciprocal effect in Federal nonprocurement transactions.

§ __.135 May the [Agency noun] exclude a person who is not currently participating in a nonprocurement transaction?

Given a cause that justifies an exclusion under this part, we may exclude any person who has been involved, is currently involved, or may reasonably be expected to be involved in a covered transaction.

§ __.140 How do I know if a person is excluded?

Check the *Excluded Parties List System (EPLS)* to determine whether a person is excluded. The General Services Administration (GSA) maintains the *EPLS* and makes it available, as detailed in subpart E of this part. When a Federal agency takes an action to exclude a person under the

nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into the *EPLS.*

§ __.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Except if provided for in Subpart J of this part, this part—

(a) Addresses disqualified persons only to—

(1) Provide for their inclusion in the *EPLS;* and

(2) State responsibilities of Federal agencies and participants to check for disqualified persons before entering into covered transactions.

(b) Does not specify the—

(1) [Agency adjective] transactions for which a disqualified person is ineligible. Those transactions vary on a case-by-case basis, because they depend on the language of the specific statute, Executive order, or regulation that caused the disqualification;

(2) Entities to which the disqualification applies; or

(3) Process that the agency uses to disqualify a person. Unlike exclusion, disqualification is frequently not a discretionary action that a Federal agency takes.

Subpart B—Covered Transactions

§ __.200 What is a covered transaction?

A covered transaction is a nonprocurement or procurement transaction that is subject to the prohibitions of this part. It may be a transaction at—

(a) The primary tier, between a Federal agency and a person (see appendix to this part); or

(b) A lower tier, between a participant in a covered transaction and another person.

§ __.205 Why is it important if a particular transaction is a covered transaction?

The importance of a covered transaction depends upon who you are.

(a) As a participant in the transaction, you have the responsibilities laid out in Subpart C of this part. Those include responsibilities to the person or Federal agency at the next higher tier from whom you received the transaction, if any. They also include responsibilities if you subsequently enter into other covered transactions with persons at the next lower tier.

(b) As a Federal official who enters into a primary tier transaction, you have the responsibilities laid out in subpart D of this part.

(c) As an excluded person, you may not be a participant or principal in the transaction unless—

(1) The person who entered into the transaction with you allows you to continue your involvement in a transaction that predates your exclusion, as permitted under § __.310 or § __.415; or

(2) A(n) [Agency adjective] official obtains an exception from the [Agency head or designee] to allow you to be involved in the transaction, as permitted under § __.120.

§ __.210 Which nonprocurement transactions are covered transactions?

All nonprocurement transactions, as defined in § __.970, are covered transactions unless listed in § __.215. (See appendix to this part.)

§ __.215 Which nonprocurement transactions are not covered transactions?

The following types of nonprocurement transactions are not covered transactions:

(a) A direct award to—

(1) A foreign government or foreign governmental entity;

(2) A public international organization;

(3) An entity owned (in whole or in part) or controlled by a foreign government; or

(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

(b) A benefit to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted). For example, if a person receives social security benefits under the Supplemental Security Income provisions of the Social Security Act, 42 U.S.C. 1301 et seq., those benefits are not covered transactions and, therefore, are not affected if the person is excluded.

(c) Federal employment.

(d) A transaction that the [Agency noun] needs to respond to a national or agency-recognized emergency or disaster.

(e) A permit, license, certificate, or similar instrument issued as a means to regulate public health, safety, or the environment, unless the [Agency noun] specifically designates it to be a covered transaction.

(f) An incidental benefit that results from ordinary governmental operations.

(g) Any other transaction if the application of an exclusion to the transaction is prohibited by law.

§ __.220 Are any procurement contracts included as covered transactions?

(a) Covered transactions under this part—

(1) Do not include any procurement contracts awarded directly by a Federal agency; but

(2) Do include some procurement contracts awarded by non-Federal participants in nonprocurement covered transactions (see appendix to this part).

(b) Specifically, a contract for goods or services is a covered transaction if any of the following applies:

(1) The contract is awarded by a participant in a nonprocurement transaction that is covered under § __.210, and the amount of the contract is expected to equal or exceed $25,000.

(2) The contract requires the consent of a(n) [Agency adjective] official. In that case, the contract, regardless of the amount, always is a covered transaction, and it does not matter who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a nonprocurement transaction, as shown in the appendix to this part.

(3) The contract is for federally-required audit services.

§ __.225 How do I know if a transaction in which I may participate is a covered transaction?

As a participant in a transaction, you will know that it is a covered transaction because the agency regulations governing the transaction, the appropriate agency official, or participant at the next higher tier who enters into the transaction with you, will tell you that you must comply with applicable portions of this part.

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

§ __.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:

(a) Checking the *EPLS;* or

(b) Collecting a certification from that person if allowed by this rule; or

(c) Adding a clause or condition to the covered transaction with that person.

§ __.305 May I enter into a covered transaction with an excluded or disqualified person?

(a) You as a participant may not enter into a covered transaction with an excluded person, unless the [Agency noun] grants an exception under § _.120.

(b) You may not enter into any transaction with a person who is disqualified from that transaction,

unless you have obtained an exception under the disqualifying statute, Executive order, or regulation.

§ __.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

(a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless the [Agency noun] grants an exception under § __.120.

§ __.315 May I use the services of an excluded person as a principal under a covered transaction?

(a) You as a participant may continue to use the services of an excluded person as a principal under a covered transaction if you were using the services of that person in the transaction before the person was excluded. However, you are not required to continue using that person's services as a principal. You should make a decision about whether to discontinue that person's services only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not begin to use the services of an excluded person as a principal under a covered transaction unless the [Agency noun] grants an exception under § __.120.

§ __.320 Must I verify that principals of my covered transactions are eligible to participate?

Yes, you as a participant are responsible for determining whether any of your principals of your covered transactions is excluded or disqualified from participating in the transaction. You may decide the method and frequency by which you do so. You may, but you are not required to, check the *EPLS.*

§ __.325 What happens if I do business with an excluded person in a covered transaction?

If as a participant you knowingly do business with an excluded person, we may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

§ __.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Before entering into a covered transaction with a participant at the next lower tier, you must require that participant to—

(a) Comply with this subpart as a condition of participation in the transaction. You may do so using any method(s), unless § __.440 requires you to use specific methods.

(b) Pass the requirement to comply with this subpart to each person with whom the participant enters into a covered transaction at the next lower tier.

Disclosing Information—Primary Tier Participants

§ __.335 What information must I provide before entering into a covered transaction with the [Agency noun]?

Before you enter into a covered transaction at the primary tier, you as the participant must notify the [Agency adjective] office that is entering into the transaction with you, if you know that you or any of the principals for that covered transaction:

(a) Are presently excluded or disqualified;

(b) Have been convicted within the preceding three years of any of the offenses listed in § __.800(a) or had a civil judgment rendered against you for one of those offenses within that time period;

(c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses listed in § __.800(a); or

(d) Have had one or more public transactions (Federal, State, or local) terminated within the preceding three years for cause or default.

§ __.340 If I disclose unfavorable information required under § __.335, will I be prevented from participating in the transaction?

As a primary tier participant, your disclosure of unfavorable information about yourself or a principal under § __.335 will not necessarily cause us to deny your participation in the covered transaction. We will consider the information when we determine whether to enter into the covered transaction. We also will consider any additional information or explanation that you elect to submit with the disclosed information.

§ __.345 What happens if I fail to disclose information required under § __.335?

If we later determine that you failed to disclose information under § __.335 that you knew at the time you entered into the covered transaction, we may—

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

§ __.350 What must I do if I learn of information required under § __.335 after entering into a covered transaction with the [Agency noun]?

At any time after you enter into a covered transaction, you must give immediate written notice to the [Agency adjective] office with which you entered into the transaction if you learn either that—

(a) You failed to disclose information earlier, as required by § __.335; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § __.335.

Disclosing Information—Lower Tier Participants

§ __.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

Before you enter into a covered transaction with a person at the next higher tier, you as a lower tier participant must notify that person if you know that you or any of the principals are presently excluded or disqualified.

§ __.360 What happens if I fail to disclose the information required under § __.355?

If we later determine that you failed to tell the person at the higher tier that you were excluded or disqualified at the time you entered into the covered transaction with that person, we may pursue any available remedies, including suspension and debarment.

§ __.365 What must I do if I learn of information required under § __.355 after entering into a covered transaction with a higher tier participant?

At any time after you enter into a lower tier covered transaction with a person at a higher tier, you must provide immediate written notice to that person if you learn either that—

(a) You failed to disclose information earlier, as required by § __.355; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § __.355.

Subpart D—Responsibilities of [Agency adjective] Officials Regarding Transactions

§ __.400 May I enter into a transaction with an excluded or disqualified person?

(a) You as an agency official may not enter into a covered transaction with an excluded person unless you obtain an exception under § __.120.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§ __.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

As an agency official, you may not enter into a covered transaction with a participant if you know that a principal of the transaction is excluded, unless you obtain an exception under § __.120.

§ __.410 May I approve a participant's use of the services of an excluded person?

After entering into a covered transaction with a participant, you as an agency official may not approve a participant's use of an excluded person as a principal under that transaction, unless you obtain an exception under § __.120.

§ __.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

(a) You as an agency official may continue covered transactions with an excluded person, or under which an excluded person is a principal, if the transactions were in existence when the person was excluded. You are not required to continue the transactions, however, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, or under which an excluded person is a principal, unless you obtain an exception under § __.120.

§ __.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

If a transaction at a lower tier is subject to your approval, you as an agency official may not approve—

(a) A covered transaction with a person who is currently excluded, unless you obtain an exception under § __.120; or

(b) A transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§ __.425 When do I check to see if a person is excluded or disqualified?

As an agency official, you must check to see if a person is excluded or disqualified before you—

(a) Enter into a primary tier covered transaction;

(b) Approve a principal in a primary tier covered transaction;

(c) Approve a lower tier participant if agency approval of the lower tier participant is required; or

(d) Approve a principal in connection with a lower tier transaction if agency approval of the principal is required.

§ __.430 How do I check to see if a person is excluded or disqualified?

You check to see if a person is excluded or disqualified in two ways:

(a) You as an agency official must check the *EPLS* when you take any action listed in § __.425.

(b) You must review information that a participant gives you, as required by § __.335, about its status or the status of the principals of a transaction.

§ __.435 What must I require of a primary tier participant?

You as an agency official must require each participant in a primary tier covered transaction to—

(a) Comply with subpart C of this part as a condition of participation in the transaction; and

(b) Communicate the requirement to comply with Subpart C of this part to persons at the next lower tier with whom the primary tier participant enters into covered transactions.

§ __.440 [Reserved]

§ __.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?

If a participant knowingly does business with an excluded or disqualified person, you as an agency official may refer the matter for suspension and debarment consideration. You may also disallow costs, annul or terminate the transaction, issue a stop work order, or take any other appropriate remedy.

§ __.450 What action may I take if a primary tier participant fails to disclose the information required under § __.335?

If you as an agency official determine that a participant failed to disclose information, as required by § __.335, at the time it entered into a covered transaction with you, you may—

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

§ __.455 What may I do if a lower tier participant fails to disclose the information required under § __.355 to the next higher tier?

If you as an agency official determine that a lower tier participant failed to disclose information, as required by § __.355, at the time it entered into a covered transaction with a participant at the next higher tier, you may pursue any remedies available to you, including the initiation of a suspension or debarment action.

Subpart E—Excluded Parties List System

§ __.500 What is the purpose of the Excluded Parties List System (EPLS)?

The *EPLS* is a widely available source of the most current information about persons who are excluded or disqualified from covered transactions.

§ __.505 Who uses the EPLS?

(a) Federal agency officials use the *EPLS* to determine whether to enter into a transaction with a person, as required under § __.430.

(b) Participants also may, but are not required to, use the *EPLS* to determine if—

(1) Principals of their transactions are excluded or disqualified, as required under § __.320; or

(2) Persons with whom they are entering into covered transactions at the next lower tier are excluded or disqualified.

(c) The *EPLS* is available to the general public.

§ __.510 Who maintains the EPLS?

In accordance with the OMB guidelines, the General Services Administration (GSA) maintains the *EPLS.* When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into the *EPLS.*

§ __.515 What specific information is in the EPLS?

(a) At a minimum, the *EPLS* indicates—

(1) The full name (where available) and address of each excluded or disqualified person, in alphabetical

order, with cross references if more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for the action;

(6) The agency and name and telephone number of the agency point of contact for the action; and

(7) The Dun and Bradstreet Number (DUNS), or other similar code approved by the GSA, of the excluded or disqualified person, if available.

(b)(1) The database for the *EPLS* includes a field for the Taxpayer Identification Number (TIN) (the social security number (SSN) for an individual) of an excluded or disqualified person.

(2) Agencies disclose the SSN of an individual to verify the identity of an individual, only if permitted under the Privacy Act of 1974 and, if appropriate, the Computer Matching and Privacy Protection Act of 1988, as codified in 5 U.S.C. 552(a).

§ __.520 Who places the information into the EPLS?

Federal officials who take actions to exclude persons under this part or officials who are responsible for identifying disqualified persons must enter the following information about those persons into the *EPLS*:

(a) Information required by § __.515(a);

(b) The Taxpayer Identification Number (TIN) of the excluded or disqualified person, including the social security number (SSN) for an individual, if the number is available and may be disclosed under law;

(c) Information about an excluded or disqualified person, generally within five working days, after—

(1) Taking an exclusion action;

(2) Modifying or rescinding an exclusion action;

(3) Finding that a person is disqualified; or

(4) Finding that there has been a change in the status of a person who is listed as disqualified.

§ __.525 Whom do I ask if I have questions about a person in the EPLS?

If you have questions about a person in the *EPLS,* ask the point of contact for the Federal agency that placed the person's name into the *EPLS.* You may find the agency point of contact from the *EPLS.*

§ __.530 Where can I find the EPLS?

(a) You may access the *EPLS* through the Internet, currently at *http://epls.arnet.gov.*

(b) As of November 26, 2003, you may also subscribe to a printed version. However, we anticipate discontinuing the printed version. Until it is discontinued, you may obtain the printed version by purchasing a yearly subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 783–3238.

Subpart F—General Principles Relating to Suspension and Debarment Actions

§ __.600 How do suspension and debarment actions start?

When we receive information from any source concerning a cause for suspension or debarment, we will promptly report and investigate it. We refer the question of whether to suspend or debar you to our suspending or debarring official for consideration, if appropriate.

§ __.605 How does suspension differ from debarment?

Suspension differs from debarment in that—

A suspending official . . .	A debarring official . . .
(a) Imposes suspension as a temporary status of ineligibility for procurement and nonprocurement transactions, pending completion of an investigation or legal proceedings.	Imposes debarment for a specified period as a final determination that a person is not presently responsible.
(b) Must—	Must conclude, based on a *preponderance of the evidence,* that the person has engaged in conduct that warrants debarment.
(1) Have *adequate evidence* that there may be a cause for debarment of a person; and.	
(2) Conclude that *immediate action* is necessary to protect the Federal interest.	
(c) Usually imposes the suspension *first,* and then promptly notifies the suspended person, giving the person an opportunity to contest the suspension and have it lifted.	Imposes debarment *after* giving the respondent notice of the action and an opportunity to contest the proposed debarment.

§ __.610 What procedures does the [Agency noun] use in suspension and debarment actions?

In deciding whether to suspend or debar you, we handle the actions as informally as practicable, consistent with principles of fundamental fairness.

(a) For suspension actions, we use the procedures in this subpart and subpart G of this part.

(b) For debarment actions, we use the procedures in this subpart and subpart H of this part.

§ __.615 How does the [Agency noun] notify a person of a suspension or debarment action?

(a) The suspending or debarring official sends a written notice to the last known street address, facsimile number, or e-mail address of—

(1) You or your identified counsel; or

(2) Your agent for service of process, or any of your partners, officers, directors, owners, or joint venturers.

(b) The notice is effective if sent to any of these persons.

§ __.620 Do Federal agencies coordinate suspension and debarment actions?

Yes, when more than one Federal agency has an interest in a suspension or debarment, the agencies may consider designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their suspension and debarment actions.

§ __.625 What is the scope of a suspension or debarment?

If you are suspended or debarred, the suspension or debarment is effective as follows:

(a) Your suspension or debarment constitutes suspension or debarment of all of your divisions and other organizational elements from all covered transactions, unless the suspension or debarment decision is limited—

(1) By its terms to one or more specifically identified individuals, divisions, or other organizational elements; or

(2) To specific types of transactions.

(b) Any affiliate of a participant may be included in a suspension or

debarment action if the suspending or debarring official—

(1) Officially names the affiliate in the notice; and

(2) Gives the affiliate an opportunity to contest the action.

§ __.630 May the [Agency noun] impute conduct of one person to another?

For purposes of actions taken under this rule, we may impute conduct as follows:

(a) *Conduct imputed from an individual to an organization.* We may impute the fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with an organization, to that organization when the improper conduct occurred in connection with the individual's performance of duties for or on behalf of that organization, or with the organization's knowledge, approval or acquiescence. The organization's acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

(b) *Conduct imputed from an organization to an individual, or between individuals.* We may impute the fraudulent, criminal, or other improper conduct of any organization to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed either participated in, had knowledge of, or reason to know of the improper conduct.

(c) *Conduct imputed from one organization to another organization.* We may impute the fraudulent, criminal, or other improper conduct of one organization to another organization when the improper conduct occurred in connection with a partnership, joint venture, joint application, association or similar arrangement, or when the organization to whom the improper conduct is imputed has the power to direct, manage, control or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

§ __.635 May the [Agency noun] settle a debarment or suspension action?

Yes, we may settle a debarment or suspension action at any time if it is in the best interest of the Federal Government.

§ __.640 May a settlement include a voluntary exclusion?

Yes, if we enter into a settlement with you in which you agree to be excluded, it is called a voluntary exclusion and has governmentwide effect.

§ __.645 Do other Federal agencies know if the [Agency noun] agrees to a voluntary exclusion?

(a) Yes, we enter information regarding a voluntary exclusion into the *EPLS.*

(b) Also, any agency or person may contact us to find out the details of a voluntary exclusion.

Subpart G—Suspension

§ __.700 When may the suspending official issue a suspension?

Suspension is a serious action. Using the procedures of this subpart and subpart F of this part, the suspending official may impose suspension only when that official determines that—

(a) There exists an indictment for, or other adequate evidence to suspect, an offense listed under § __.800(a), or

(b) There exists adequate evidence to suspect any other cause for debarment listed under § _.800(b) through (d); and

(c) Immediate action is necessary to protect the public interest.

§ __.705 What does the suspending official consider in issuing a suspension?

(a) In determining the adequacy of the evidence to support the suspension, the suspending official considers how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. During this assessment, the suspending official may examine the basic documents, including grants, cooperative agreements, loan authorizations, contracts, and other relevant documents.

(b) An indictment, conviction, civil judgment, or other official findings by Federal, State, or local bodies that determine factual and/or legal matters, constitutes adequate evidence for purposes of suspension actions.

(c) In deciding whether immediate action is needed to protect the public interest, the suspending official has wide discretion. For example, the suspending official may infer the necessity for immediate action to protect the public interest either from the nature of the circumstances giving rise to a cause for suspension or from potential business relationships or involvement with a program of the Federal Government.

§ __.710 When does a suspension take effect?

A suspension is effective when the suspending official signs the decision to suspend.

§ __.715 What notice does the suspending official give me if I am suspended?

After deciding to suspend you, the suspending official promptly sends you a Notice of Suspension advising you—

(a) That you have been suspended;

(b) That your suspension is based on—

(1) An indictment;

(2) A conviction;

(3) Other adequate evidence that you have committed irregularities which seriously reflect on the propriety of further Federal Government dealings with you; or

(4) Conduct of another person that has been imputed to you, or your affiliation with a suspended or debarred person;

(c) Of any other irregularities in terms sufficient to put you on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) upon which we relied under § __.700 for imposing suspension;

(e) That your suspension is for a temporary period pending the completion of an investigation or resulting legal or debarment proceedings;

(f) Of the applicable provisions of this subpart, Subpart F of this part, and any other [Agency adjective] procedures governing suspension decision making; and

(g) Of the governmentwide effect of your suspension from procurement and nonprocurement programs and activities.

§ __.720 How may I contest a suspension?

If you as a respondent wish to contest a suspension, you or your representative must provide the suspending official with information in opposition to the suspension. You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.

§ __.725 How much time do I have to contest a suspension?

(a) As a respondent you or your representative must either send, or make rrangements to appear and present, the information and argument to the suspending official within 30 days after you receive the Notice of Suspension.

(b) We consider the notice to be received by you—

(1) When delivered, if we mail the notice to the last known street address, or five days after we send it if the letter is undeliverable;

(2) When sent, if we send the notice by facsimile or five days after we send it if the facsimile is undeliverable; or

(3) When delivered, if we send the notice by e-mail or five days after we send it if the e-mail is undeliverable.

§ __.730 What information must I provide to the suspending official if I contest a suspension?

(a) In addition to any information and argument in opposition, as a respondent your submission to the suspending official must identify—

(1) Specific facts that contradict the statements contained in the Notice of Suspension. A general denial is insufficient to raise a genuine dispute over facts material to the suspension;

(2) All existing, proposed, or prior exclusions under regulations implementing E.O. 12549 and all similar actions taken by Federal, state, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Suspension that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information, or provide false information, the [Agency noun] may seek further criminal, civil or administrative action against you, as appropriate.

§ __.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?

(a) You as a respondent will not have an additional opportunity to challenge the facts if the suspending official determines that—

(1) Your suspension is based upon an indictment, conviction, civil judgment, or other finding by a Federal, State, or local body for which an opportunity to contest the facts was provided;

(2) Your presentation in opposition contains only general denials to information contained in the Notice of Suspension;

(3) The issues raised in your presentation in opposition to the suspension are not factual in nature, or are not material to the suspending official's initial decision to suspend, or the official's decision whether to continue the suspension; or

(4) On the basis of advice from the Department of Justice, an office of the United States Attorney, a State attorney general's office, or a State or local prosecutor's office, that substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced by conducting fact-finding.

(b) You will have an opportunity to challenge the facts if the suspending official determines that—

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the suspension.

(c) If you have an opportunity to challenge disputed material facts under this section, the suspending official or designee must conduct additional proceedings to resolve those facts.

§ __.740 Are suspension proceedings formal?

(a) Suspension proceedings are conducted in a fair and informal manner. The suspending official may use flexible procedures to allow you to present matters in opposition. In so doing, the suspending official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base a final suspension decision.

(b) You as a respondent or your representative must submit any documentary evidence you want the suspending official to consider.

§ __.745 How is fact-finding conducted?

(a) If fact-finding is conducted—

(1) You may present witnesses and other evidence, and confront any witness presented; and

(2) The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the [Agency noun] agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

§ __.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?

(a) The suspending official bases the decision on all information contained in the official record. The record includes—

(1) All information in support of the suspending official's initial decision to suspend you;

(2) Any further information and argument presented in support of, or opposition to, the suspension; and

(3) Any transcribed record of fact-finding proceedings.

(b) The suspending official may refer disputed material facts to another official for findings of fact. The suspending official may reject any resulting findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

§ __.755 When will I know whether the suspension is continued or terminated?

The suspending official must make a written decision whether to continue, modify, or terminate your suspension within 45 days of closing the official record. The official record closes upon the suspending official's receipt of final submissions, information and findings of fact, if any. The suspending official may extend that period for good cause.

§ __.760 How long may my suspension last?

(a) If legal or debarment proceedings are initiated at the time of, or during your suspension, the suspension may continue until the conclusion of those proceedings. However, if proceedings are not initiated, a suspension may not exceed 12 months.

(b) The suspending official may extend the 12 month limit under paragraph (a) of this section for an additional 6 months if an office of a U.S. Assistant Attorney General, U.S. Attorney, or other responsible prosecuting official requests an extension in writing. In no event may a suspension exceed 18 months without initiating proceedings under paragraph (a) of this section.

(c) The suspending official must notify the appropriate officials under paragraph (b) of this section of an impending termination of a suspension at least 30 days before the 12 month period expires to allow the officials an opportunity to request an extension.

Subpart H—Debarment

§ __.800 What are the causes for debarment?

We may debar a person for—

(a) Conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;

(b) Violation of the terms of a public agreement or transaction so serious as to

affect the integrity of an agency program, such as—

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, or a procurement debarment by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;

(2) Knowingly doing business with an ineligible person, except as permitted under § __.120;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § __.640 or of any settlement of a debarment or suspension action; or

(5) Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701); or

(d) Any other cause of so serious or compelling a nature that it affects your present responsibility.

§ __.805 What notice does the debarring official give me if I am proposed for debarment?

After consideration of the causes in § __.800 of this subpart, if the debarring official proposes to debar you, the official sends you a Notice of Proposed Debarment, pursuant to § __.615, advising you—

(a) That the debarring official is considering debarring you;

(b) Of the reasons for proposing to debar you in terms sufficient to put you on notice of the conduct or transactions upon which the proposed debarment is based;

(c) Of the cause(s) under § __.800 upon which the debarring official relied for proposing your debarment;

(d) Of the applicable provisions of this subpart, Subpart F of this part, and any other [Agency adjective] procedures governing debarment; and

(e) Of the governmentwide effect of a debarment from procurement and nonprocurement programs and activities.

§ __.810 When does a debarment take effect?

A debarment is not effective until the debarring official issues a decision. The debarring official does not issue a decision until the respondent has had an opportunity to contest the proposed debarment.

§ __.815 How may I contest a proposed debarment?

If you as a respondent wish to contest a proposed debarment, you or your representative must provide the debarring official with information in opposition to the proposed debarment. You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.

§ __.820 How much time do I have to contest a proposed debarment?

(a) As a respondent you or your representative must either send, or make arrangements to appear and present, the information and argument to the debarring official within 30 days after you receive the Notice of Proposed Debarment.

(b) We consider the Notice of Proposed Debarment to be received by you—

(1) When delivered, if we mail the notice to the last known street address, or five days after we send it if the letter is undeliverable;

(2) When sent, if we send the notice by facsimile or five days after we send it if the facsimile is undeliverable; or

(3) When delivered, if we send the notice by e-mail or five days after we send it if the e-mail is undeliverable.

§ __.825 What information must I provide to the debarring official if I contest a proposed debarment?

(a) In addition to any information and argument in opposition, as a respondent your submission to the debarring official must identify—

(1) Specific facts that contradict the statements contained in the Notice of Proposed Debarment. Include any information about any of the factors listed in § __.860. A general denial is insufficient to raise a genuine dispute over facts material to the debarment;

(2) All existing, proposed, or prior exclusions under regulations implementing E.O. 12549 and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Proposed Debarment that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information, or provide false information, the [Agency noun] may seek further criminal, civil or administrative action against you, as appropriate.

§ __.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?

(a) You as a respondent will not have an additional opportunity to challenge the facts if the debarring official determines that—

(1) Your debarment is based upon a conviction or civil judgment;

(2) Your presentation in opposition contains only general denials to information contained in the Notice of Proposed Debarment; or

(3) The issues raised in your presentation in opposition to the proposed debarment are not factual in nature, or are not material to the debarring official's decision whether to debar.

(b) You will have an additional opportunity to challenge the facts if the debarring official determines that—

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the proposed debarment.

(c) If you have an opportunity to challenge disputed material facts under this section, the debarring official or designee must conduct additional proceedings to resolve those facts.

§ __.835 Are debarment proceedings formal?

(a) Debarment proceedings are conducted in a fair and informal manner. The debarring official may use flexible procedures to allow you as a respondent to present matters in opposition. In so doing, the debarring official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base the decision whether to debar.

(b) You or your representative must submit any documentary evidence you want the debarring official to consider.

§ __.840 How is fact-finding conducted?

(a) If fact-finding is conducted—

(1) You may present witnesses and other evidence, and confront any witness presented; and

(2) The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the [Agency noun] agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

§ __.845 What does the debarring official consider in deciding whether to debar me?

(a) The debarring official may debar you for any of the causes in § __.800. However, the official need not debar you even if a cause for debarment exists. The official may consider the seriousness of your acts or omissions and the mitigating or aggravating factors set forth at § __.860.

(b) The debarring official bases the decision on all information contained in the official record. The record includes—

(1) All information in support of the debarring official's proposed debarment;

(2) Any further information and argument presented in support of, or in opposition to, the proposed debarment; and

(3) Any transcribed record of fact-finding proceedings.

(c) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any resultant findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

§ __.850 What is the standard of proof in a debarment action?

(a) In any debarment action, we must establish the cause for debarment by a preponderance of the evidence.

(b) If the proposed debarment is based upon a conviction or civil judgment, the standard of proof is met.

§ __.855 Who has the burden of proof in a debarment action?

(a) We have the burden to prove that a cause for debarment exists.

(b) Once a cause for debarment is established, you as a respondent have the burden of demonstrating to the satisfaction of the debarring official that you are presently responsible and that debarment is not necessary.

§ __.860 What factors may influence the debarring official's decision?

This section lists the mitigating and aggravating factors that the debarring official may consider in determining whether to debar you and the length of your debarment period. The debarring official may consider other factors if appropriate in light of the circumstances of a particular case. The existence or nonexistence of any factor, such as one of those set forth in this section, is not necessarily determinative of your present responsibility. In making a debarment decision, the debarring official may consider the following factors:

(a) The actual or potential harm or impact that results or may result from the wrongdoing.

(b) The frequency of incidents and/or duration of the wrongdoing.

(c) Whether there is a pattern or prior history of wrongdoing. For example, if you have been found by another Federal agency or a State agency to have engaged in wrongdoing similar to that found in the debarment action, the existence of this fact may be used by the debarring official in determining that you have a pattern or prior history of wrongdoing.

(d) Whether you are or have been excluded or disqualified by an agency of the Federal Government or have not been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to one or more of the causes for debarment specified in this part.

(e) Whether you have entered into an administrative agreement with a Federal agency or a State or local government that is not governmentwide but is based on conduct similar to one or more of the causes for debarment specified in this part.

(f) Whether and to what extent you planned, initiated, or carried out the wrongdoing.

(g) Whether you have accepted responsibility for the wrongdoing and recognize the seriousness of the misconduct that led to the cause for debarment.

(h) Whether you have paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and have made or agreed to make full restitution.

(i) Whether you have cooperated fully with the government agencies during the investigation and any court or administrative action. In determining the extent of cooperation, the debarring official may consider when the cooperation began and whether you disclosed all pertinent information known to you.

(j) Whether the wrongdoing was pervasive within your organization.

(k) The kind of positions held by the individuals involved in the wrongdoing.

(l) Whether your organization took appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence.

(m) Whether your principals tolerated the offense.

(n) Whether you brought the activity cited as a basis for the debarment to the attention of the appropriate government agency in a timely manner.

(o) Whether you have fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

(p) Whether you had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.

(q) Whether you have taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the cause for debarment.

(r) Whether you have had adequate time to eliminate the circumstances within your organization that led to the cause for the debarment.

(s) Other factors that are appropriate to the circumstances of a particular case.

§ __.865 How long may my debarment last?

(a) If the debarring official decides to debar you, your period of debarment will be based on the seriousness of the cause(s) upon which your debarment is based. Generally, debarment should not exceed three years. However, if circumstances warrant, the debarring official may impose a longer period of debarment.

(b) In determining the period of debarment, the debarring official may consider the factors in § __.860. If a suspension has preceded your debarment, the debarring official must consider the time you were suspended.

(c) If the debarment is for a violation of the provisions of the Drug-Free Workplace Act of 1988, your period of debarment may not exceed five years.

§ __.870 When do I know if the debarring official debars me?

(a) The debarring official must make a written decision whether to debar within 45 days of closing the official record. The official record closes upon the debarring official's receipt of final submissions, information and findings of fact, if any. The debarring official may extend that period for good cause.

(b) The debarring official sends you written notice, pursuant to § __.615 that the official decided, either—

(1) Not to debar you; or

(2) To debar you. In this event, the notice:

(i) Refers to the Notice of Proposed Debarment;

(ii) Specifies the reasons for your debarment;

(iii) States the period of your debarment, including the effective dates; and

(iv) Advises you that your debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception.

§ __.875 May I ask the debarring official to reconsider a decision to debar me?

Yes, as a debarred person you may ask the debarring official to reconsider the debarment decision or to reduce the time period or scope of the debarment. However, you must put your request in writing and support it with documentation.

§ __.880 What factors may influence the debarring official during reconsideration?

The debarring official may reduce or terminate your debarment based on—

(a) Newly discovered material evidence;

(b) A reversal of the conviction or civil judgment upon which your debarment was based;

(c) A bona fide change in ownership or management;

(d) Elimination of other causes for which the debarment was imposed; or

(e) Other reasons the debarring official finds appropriate.

§ __.885 May the debarring official extend a debarment?

(a) Yes, the debarring official may extend a debarment for an additional period, if that official determines that an extension is necessary to protect the public interest.

(b) However, the debarring official may not extend a debarment solely on the basis of the facts and circumstances upon which the initial debarment action was based.

(c) If the debarring official decides that a debarment for an additional period is necessary, the debarring official must follow the applicable procedures in this subpart, and subpart F of this part, to extend the debarment.

Subpart I—Definitions

§ __.900 Adequate evidence.

Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

§ __.905 Affiliate.

Persons are *affiliates* of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways we use to determine control include, but are not limited to—

(a) Interlocking management or ownership;

(b) Identity of interests among family members;

(c) Shared facilities and equipment;

(d) Common use of employees; or

(e) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

§ __.910 Agency.

Agency means any United States executive department, military department, defense agency, or any other agency of the executive branch. Other agencies of the Federal government are not considered ''agencies'' for the purposes of this part unless they issue regulations adopting the governmentwide Debarment and Suspension system under Executive orders 12549 and 12689.

§ __.915 Agent or representative.

Agent or representative means any person who acts on behalf of, or who is authorized to commit, a participant in a covered transaction.

§ __.920 Civil judgment.

Civil judgment means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, other disposition which creates a civil liability for the complained of wrongful acts, or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801–3812).

§ __.925 Conviction.

Conviction means—

(a) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of nolo contendere; or

(b) Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

§ __.930 Debarment.

Debarment means an action taken by a debarring official under subpart H of this part to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1). A person so excluded is debarred.

§ __.935 Debarring official.

(a) *Debarring official* means an agency official who is authorized to impose debarment. A debarring official is either—

(1) The agency head; or

(2) An official designated by the agency head.

(b) [Reserved]

§ __.940 Disqualified.

Disqualified means that a person is prohibited from participating in specified Federal procurement or nonprocurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and 12689) or other authority. Examples of disqualifications include persons prohibited under—

(a) The Davis-Bacon Act (40 U.S.C. 276(a));

(b) The equal employment opportunity acts and Executive orders; or

(c) The Clean Air Act (42 U.S.C. 7606), Clean Water Act (33 U.S.C. 1368) and Executive Order 11738 (3 CFR, 1973 Comp., p. 799).

§ __.945 Excluded or exclusion.

Excluded or exclusion means—

(a) That a person or commodity is prohibited from being a participant in covered transactions, whether the person has been suspended; debarred; proposed for debarment under 48 CFR part 9, subpart 9.4; voluntarily excluded; or

(b) The act of excluding a person.

§ __.950 Excluded Parties List System

Excluded Parties List System (EPLS) means the list maintained and disseminated by the General Services Administration (GSA) containing the names and other information about persons who are ineligible. The *EPLS* system includes the printed version entitled, ''List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs,'' so long as published.

§ __.955 Indictment.

Indictment means an indictment for a criminal offense. A presentment, information, or other filing by a competent authority charging a criminal offense shall be given the same effect as an indictment.

§ __.960 Ineligible or ineligibility.

Ineligible or ineligibility means that a person or commodity is prohibited from covered transactions because of an exclusion or disqualification.

§ __.965 Legal proceedings.

Legal proceedings means any criminal proceeding or any civil judicial proceeding, including a proceeding under the Program Fraud Civil Remedies Act (31 U.S.C. 3801–3812), to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term also includes appeals from those proceedings.

§ __.970 Nonprocurement transaction.

(a) *Nonprocurement transaction* means any transaction, regardless of type (except procurement contracts), including, but not limited to the following:

(1) Grants.
(2) Cooperative agreements.
(3) Scholarships.
(4) Fellowships.
(5) Contracts of assistance.
(6) Loans.
(7) Loan guarantees.
(8) Subsidies.
(9) Insurances.
(10) Payments for specified uses.
(11) Donation agreements.

(b) A nonprocurement transaction at any tier does not require the transfer of Federal funds.

§ __.975 Notice.

Notice means a written communication served in person, sent by certified mail or its equivalent, or sent electronically by e-mail or facsimile. (See § __. 615.)

§ __.980 Participant.

Participant means any person who submits a proposal for or who enters into a covered transaction, including an agent or representative of a participant.

§ __.985 Person.

Person means any individual, corporation, partnership, association, unit of government, or legal entity, however organized.

§ __.990 Preponderance of the evidence.

Preponderance of the evidence means proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.

§ __.995 Principal.

Principal means—

(a) An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or

(b) A consultant or other person, whether or not employed by the participant or paid with Federal funds, who—

(1) Is in a position to handle Federal funds;

(2) Is in a position to influence or control the use of those funds; or,

(3) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

§ __.1000 Respondent.

Respondent means a person against whom an agency has initiated a debarment or suspension action.

§ __.1005 State.

(a) *State* means—

(1) Any of the states of the United States;

(2) The District of Columbia;

(3) The Commonwealth of Puerto Rico;

(4) Any territory or possession of the United States; or

(5) Any agency or instrumentality of a state.

(b) For purposes of this part, *State* does not include institutions of higher education, hospitals, or units of local government.

§ __.1010 Suspending official.

(a) *Suspending official* means an agency official who is authorized to impose suspension. The suspending official is either:

(1) The agency head; or

(2) An official designated by the agency head.

(b) [Reserved]

§ __.1015 Suspension.

Suspension is an action taken by a suspending official under subpart G of this part that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended.

§ __.1020 Voluntary exclusion or voluntarily excluded.

(a) *Voluntary exclusion* means a person's agreement to be excluded under the terms of a settlement between the person and one or more agencies. Voluntary exclusion must have governmentwide effect.

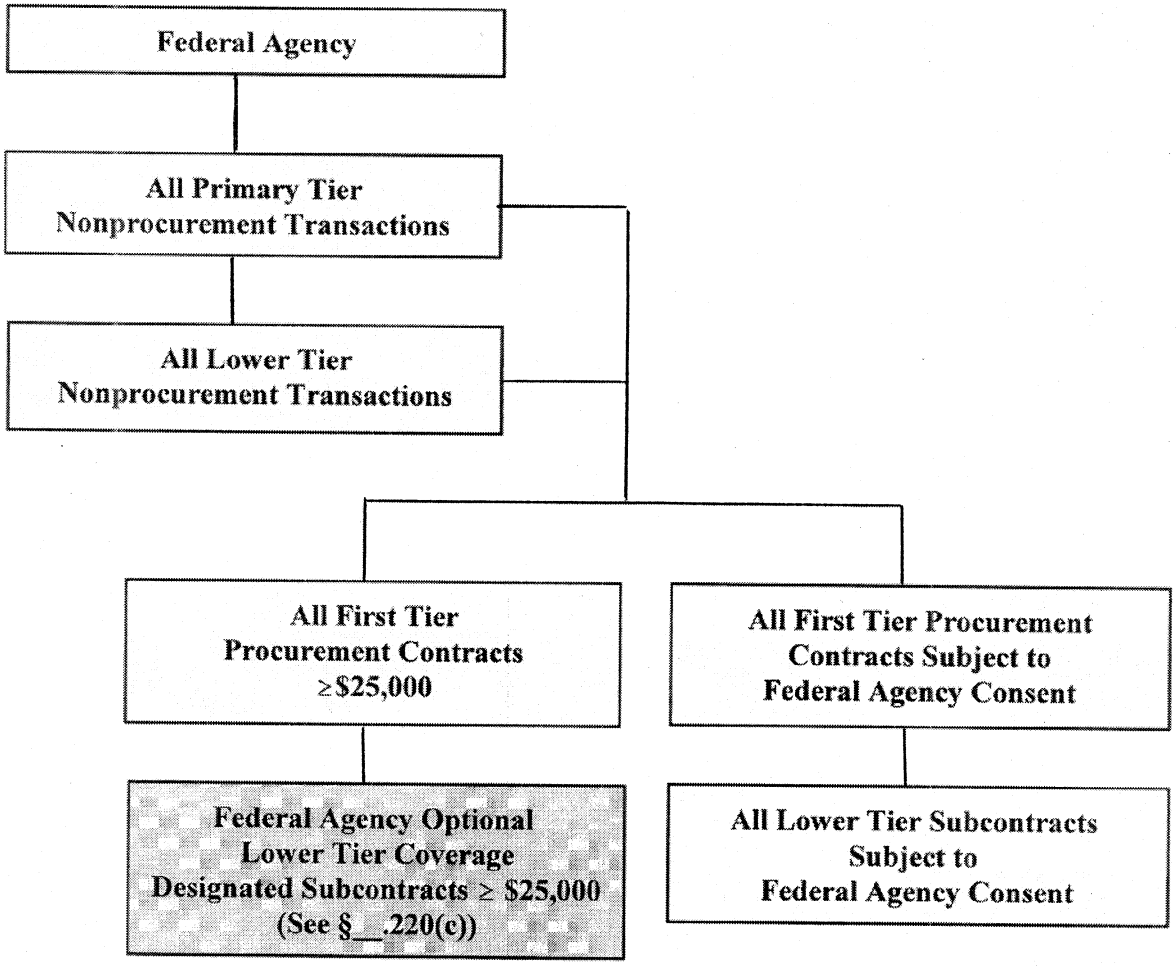
(b) *Voluntarily excluded* means the status of a person who has agreed to a voluntary exclusion.

Subpart J—[Reserved]

Appendix to [Part/Subpart] ____—Covered Transactions

BILLING CODE 6325–01–P et. al.

COVERED TRANSACTIONS



2. [Part/Subpart] is added to read as follows:

[PART/SUBPART]—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.

__.100 What does this part do?
__.105 Does this part apply to me?
__.110 Are any of my Federal assistance awards exempt from this part?
__.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

__.200 What must I do to comply with this part?
__.205 What must I include in my drug-free workplace statement?
__.210 To whom must I distribute my drug-free workplace statement?
__.215 What must I include in my drug-free awareness program?
__.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
__.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
__.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

__.300 What must I do to comply with this part if I am an individual recipient?
__.301 [Reserved]

Subpart D—Responsibilities of [Agency adjective] Awarding Officials

__.400 What are my responsibilities as a(n)[Agency adjective] awarding official?

Subpart E—Violations of this Part and Consequences

__.500 How are violations of this part determined for recipients other than individuals?
__.505 How are violations of this part determined for recipients who are individuals?
__.510 What actions will the Federal Government take against a recipient determined to have violated this part?
__.515 Are there any exceptions to those actions?

Subpart F—Definitions

__.605 Award.
__.610 Controlled substance.
__.615 Conviction.
__.620 Cooperative agreement.
__.625 Criminal drug statute.
__.630 Debarment.
__.635 Drug-free workplace.
__.640 Employee.
__.645 Federal agency or agency.
__.650 Grant.
__.655 Individual.
__.660 Recipient.
__.665 State.
__.670 Suspension

Subpart A—Purpose and Coverage

§ __.100 What does this part do?

This part carries out the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*, as amended) that applies to grants. It also applies the

provisions of the Act to cooperative agreements and other financial assistance awards, as a matter of Federal Government policy.

§ __.105 Does this part apply to me?

(a) Portions of this part apply to you if you are either—

(1) A recipient of an assistance award from the [Agency noun]; or

(2) A(n) [Agency adjective] awarding official. (See definitions of award and recipient in §§ __.605 and __.660, respectively.)

(b) The following table shows the subparts that apply to you:

If you are . . .	see subparts . . .
(1) A recipient who is not an individual	A, B and E.
(2) A recipient who is an individual	A, C and E.
(3) A(n) [Agency adjective] awarding official	A, D and E.

§ __.110 Are any of my Federal assistance awards exempt from this part?

This part does not apply to any award that the [Agency head or designee] determines that the application of this part would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

§ __.115 Does this part affect the Federal contracts that I receive?

It will affect future contract awards indirectly if you are debarred or suspended for a violation of the requirements of this part, as described in § __. 510(c). However, this part does not apply directly to procurement contracts. The portion of the Drug-Free Workplace Act of 1988 that applies to Federal procurement contracts is carried out through the Federal Acquisition Regulation in chapter 1 of Title 48 of the Code of Federal Regulations (the drug-free workplace coverage currently is in 48 CFR part 23, subpart 23.5).

Subpart B—Requirements for Recipients Other Than Individuals

§ __.200 What must I do to comply with this part?

There are two general requirements if you are a recipient other than an individual.

(a) First, you must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part. The specific measures that you must take in this regard are described in more detail in subsequent sections of this subpart. Briefly, those measures are to—

(1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see §§ __.205 through __.220); and

(2) Take actions concerning employees who are convicted of violating drug statutes in the workplace (see § __.225).

(b) Second, you must identify all known workplaces under your Federal awards (see § __.230).

§ __.205 What must I include in my drug-free workplace statement?

You must publish a statement that—

(a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;

(b) Specifies the actions that you will take against employees for violating that prohibition; and

(c) Lets each employee know that, as a condition of employment under any award, he or she:

(1) Will abide by the terms of the statement; and

(2) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.

§ __.210 To whom must I distribute my drug-free workplace statement?

You must require that a copy of the statement described in § __.205 be given to each employee who will be engaged in the performance of any Federal award.

§ __.215 What must I include in my drug-free awareness program?

You must establish an ongoing drug-free awareness program to inform employees about—

(a) The dangers of drug abuse in the workplace;

(b) Your policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.

§ __.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

If you are a new recipient that does not already have a policy statement as described in § __.205 and an ongoing awareness program as described in § __.215, you must publish the statement and establish the program by the time given in the following table:

If . . .	then you . . .
(a) The performance period of the award is less than 30 days	must have the policy statement and program in place as soon as possible, but before the date on which performance is expected to be completed.
(b) The performance period of the award is 30 days or more	must have the policy statement and program in place within 30 days after award.
(c) You believe there are extraordinary circumstances that will require more than 30 days for you to publish the policy statement and establish the awareness program.	may ask the [Agency adjective] awarding official to give you more time to do so. The amount of additional time, if any, to be given is at the discretion of the awarding official.

§ __.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?

There are two actions you must take if an employee is convicted of a drug violation in the workplace:

(a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, as required by § __.205(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must__

(1) Be in writing;

(2) Include the employee's position title;

(3) Include the identification number(s) of each affected award;

(4) Be sent within ten calendar days after you learn of the conviction; and

(5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every awarding official or his or her official designee, unless the Federal agency has specified a central point for the receipt of the notices.

(b) Second, within 30 calendar days of learning about an employee's conviction, you must either__

(1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or

(2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

§ __.230 How and when must I identify workplaces?

(a) You must identify all known workplaces under each [Agency adjective] award. A failure to do so is a violation of your drug-free workplace requirements. You may identify the workplaces__

(1) To the [Agency adjective] official that is making the award, either at the time of application or upon award; or

(2) In documents that you keep on file in your offices during the performance of the award, in which case you must make the information available for inspection upon request by [Agency adjective] officials or their designated representatives.

(b) Your workplace identification for an award must include the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Categorical descriptions may be used (*e.g.*, all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

(c) If you identified workplaces to the [Agency adjective] awarding official at the time of application or award, as described in paragraph (a)(1) of this section, and any workplace that you identified changes during the performance of the award, you must inform the [Agency adjective] awarding official.

Subpart C—Requirements for Recipients Who Are Individuals

§ __.300 What must I do to comply with this part if I am an individual recipient?

As a condition of receiving a(n) [Agency adjective] award, if you are an individual recipient, you must agree that—

(a) You will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity related to the award; and

(b) If you are convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity, you will report the conviction:

(1) In writing.

(2) Within 10 calendar days of the conviction.

(3) To the [Agency adjective] awarding official or other designee for each award that you currently have, unless § __.301 or the award document designates a central point for the receipt of the notices. When notice is made to a central point, it must include the identification number(s) of each affected award.

§ __.301 [Reserved]

Subpart D—Responsibilities of [Agency adjective] Awarding Officials

§ __.400 What are my responsibilities as a(n) [Agency adjective] awarding official?

As a(n) [Agency adjective] awarding official, you must obtain each recipient's agreement, as a condition of the award, to comply with the requirements in—

(a) Subpart B of this part, if the recipient is not an individual; or

(b) Subpart C of this part, if the recipient is an individual.

Subpart E—Violations of this Part and Consequences

§ __.500 How are violations of this part determined for recipients other than individuals?

A recipient other than an individual is in violation of the requirements of this part if the [Agency head or designee] determines, in writing, that—

(a) The recipient has violated the requirements of subpart B of this part; or

(b) The number of convictions of the recipient's employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good faith effort to provide a drug-free workplace.

§ __.505 How are violations of this part determined for recipients who are individuals?

An individual recipient is in violation of the requirements of this part if the [Agency head or designee] determines, in writing, that—

(a) The recipient has violated the requirements of subpart C of this part; or

(b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

§ __.510 What actions will the Federal Government take against a recipient determined to have violated this part?

If a recipient is determined to have violated this part, as described in § __.500 or § __.505, the [Agency noun] may take one or more of the following actions—

(a) Suspension of payments under the award;

(b) Suspension or termination of the award; and

(c) Suspension or debarment of the recipient under [CFR citation for the Federal agency's regulations implementing Executive Order 12549 and Executive Order 12689], for a period not to exceed five years.

§ __.515 Are there any exceptions to those actions?

The [Agency head] may waive with respect to a particular award, in writing, a suspension of payments under an award, suspension or termination of an award, or suspension or debarment of a recipient if the [Agency head] determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

Subpart F—Definitions

§ __.605 Award.

Award means an award of financial assistance by the [Agency noun] or other Federal agency directly to a recipient.

(a) The term award includes:

(1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.

(2) A block grant or a grant in an entitlement program, whether or not the

grant is exempted from coverage under the Governmentwide rule [Agency-specific CFR citation] that implements OMB Circular A–102 (for availability, see 5 CFR 1310.3) and specifies uniform administrative requirements.

(b) The term award does not include:

(1) Technical assistance that provides services instead of money.

(2) Loans.

(3) Loan guarantees.

(4) Interest subsidies.

(5) Insurance.

(6) Direct appropriations.

(7) Veterans' benefits to individuals (*i.e.*, any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).

§ __.610 Controlled substance.

Controlled substance means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.

§ __.615 Conviction.

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

§ __.620 Cooperative agreement.

Cooperative agreement means an award of financial assistance that, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of grant in § __.650), except that substantial involvement is expected between the Federal agency and the recipient when carrying out the activity contemplated by the award. The term does not include cooperative research and development agreements as defined in 15 U.S.C. 3710a.

§ __.625 Criminal drug statute.

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

§ __.630 Debarment.

Debarment means an action taken by a Federal agency to prohibit a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions. A recipient so prohibited is debarred, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Nonprocurement), that implements Executive Order 12549 and Executive Order 12689.

§ __.635 Drug-free workplace.

Drug-free workplace means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

§ __.640 Employee.

(a) *Employee* means the employee of a recipient directly engaged in the performance of work under the award, including—

(1) All direct charge employees;

(2) All indirect charge employees, unless their impact or involvement in the performance of work under the award is insignificant to the performance of the award; and

(3) Temporary personnel and consultants who are directly engaged in the performance of work under the award and who are on the recipient's payroll.

(b) This definition does not include workers not on the payroll of the recipient (*e.g.*, volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces).

§ __.645 Federal agency or agency.

Federal agency or agency means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency.

§ __.650 Grant.

Grant means an award of financial assistance that, consistent with 31 U.S.C. 6304, is used to enter into a relationship—

(a) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Federal Government's direct benefit or use; and

(b) In which substantial involvement is not expected between the Federal agency and the recipient when carrying out the activity contemplated by the award.

§ __.655 Individual.

Individual means a natural person.

§ __.660 Recipient.

Recipient means any individual, corporation, partnership, association, unit of government (except a Federal agency) or legal entity, however organized, that receives an award directly from a Federal agency.

§ __.665 State.

State means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ __.670 Suspension.

Suspension means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions for a temporary period, pending completion of an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Nonprocurement), that implements Executive Order 12549 and Executive Order 12689. Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.

Adoption of Common Rules

The adoption of the common rules by the participating agencies, as modified by agency-specific text, is set forth below.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 970

RIN 3206–AJ31

FOR FURTHER INFORMATION CONTACT: J. David Cope, Debarring Official, Office of the Inspector General, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, e-mail *debar@opm.gov,* fax (202) 606–2153.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management adopted the Nonprocurement Debarment and Suspension Common Rule on May 17, 1993, following the text of the governmentwide rule as published on May 26, 1988 [53 FR 19160]. OPM did not adopt subpart F of the common rule, pertaining to requirements for drug-free workplace (grants), because the agency

did not issue assistance awards, grants, or other forms of financial or nonfinancial assistance that would be covered by those provisions. For the same reasons, OPM is not adopting the separate regulatory part on drug-free workplace requirements that has been developed as part of this governmentwide regulatory package.

List of Subjects in 5 CFR Part 970

Administrative practice and procedure, Debarment and suspension, Government employees, Health facilities, Health insurance, and Health professions.

Dated: August 28, 2003.
U.S. Office of Personnel Management.

Kay Cole James,

Director.

■ For the reasons stated in the common preamble, the Office of Personnel Management amends 5 CFR, Code of Federal Regulations as follows:
■ 1. Part 970 is revised as set forth in instruction 1 at the end of the common preamble.

PART 970—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
970.25 How is this part organized?
970.50 How is this part written?
970.75 Do terms in this part have special meanings?

Subpart A—General

970.100 What does this part do?
970.105 Does this part apply to me?
970.110 What is the purpose of the nonprocurement debarment and suspension system?
970.115 How does an exclusion restrict a person's involvement in covered transactions?
970.120 May we grant an exception to let an excluded person participate in a covered transaction?
970.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
970.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
970.135 May the OPM exclude a person who is not currently participating in a nonprocurement transaction?
970.140 How do I know if a person is excluded?
970.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

970.200 What is a covered transaction?
970.205 Why is it important to know if a particular transaction is a covered transaction?
970.210 Which nonprocurement transactions are covered transactions?
970.215 Which nonprocurement transactions are not covered transactions?
970.220 Are any procurement contracts included as covered transactions?
970.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

970.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
970.305 May I enter into a covered transaction with an excluded or disqualified person?
970.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
970.315 May I use the services of an excluded person as a principal under a covered transaction?
970.320 Must I verify that principals of my covered transactions are eligible to participate?
970.325 What happens if I do business with an excluded person in a covered transaction?
970.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

970.335 What information must I provide before entering into a covered transaction with the OPM?
970.340 If I disclose unfavorable information required under § 970.335, will I be prevented from participating in the transaction?
970.345 What happens if I fail to disclose the information required under § 970.335?
970.350 What must I do if I learn of the information required under § 970.335 after entering into a covered transaction with the OPM?

Disclosing information—Lower Tier Participants

970.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
970.360 What happens if I fail to disclose the information required under § 970.355?
970.365 What must I do if I learn of information required under § 970.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of OPM Officials Regarding Transactions

970.400 May I enter into a transaction with an excluded or disqualified person?
970.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
970.410 May I approve a participant's use of the services of an excluded person?
970.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
970.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
970.425 When do I check to see if a person is excluded or disqualified?
970.430 How do I check to see if a person is excluded or disqualified?
970.435 What must I require of a primary tier participant?
970.440 What method do I use to communicate those requirements to participants?
970.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
970.450 What action may I take if a primary tier participant fails to disclose the information required under § 970.335?
970.455 What may I do if a lower tier participant fails to disclose the information required under § 970.355 to the next higher tier?

Subpart E—Excluded Parties List System

970.500 What is the purpose of the Excluded Parties List System (EPLS)?
970.505 Who uses the EPLS?
970.510 Who maintains the EPLS?
970.515 What specific information is in the EPLS?
970.520 Who places the information into the EPLS?
970.525 Whom do I ask if I have questions about a person in the EPLS?
970.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

970.600 How do suspension and debarment actions start?
970.605 How does suspension differ from debarment?
970.610 What procedures does the OPM use in suspension and debarment actions?
970.615 How does the OPM notify a person of a suspension and debarment action?
970.620 Do Federal agencies coordinate suspension and debarment actions?
970.625 What is the scope of a suspension or debarment action?
970.630 May the OPM impute the conduct of one person to another?
970.635 May the OPM settle a debarment or suspension action?
970.640 May a settlement include a voluntary exclusion?
970.645 Do other Federal agencies know if the OPM agrees to a voluntary exclusion?

Subpart G—Suspension

970.700 When may the suspending official issue a suspension?
970.705 What does the suspending official consider in issuing a suspension?
970.710 When does a suspension take effect?
970.715 What notice does the suspending official give me if I am suspended?
970.720 How may I contest a suspension?
970.725 How much time do I have to contest a suspension?
970.730 What information must I provide to the suspending official if I contest a suspension?

970.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
970.740 Are suspension proceedings formal?
970.745 How is fact-finding conducted?
970.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
970.755 When will I know whether the suspension is continued or terminated?
970.760 How long may my suspension last?

Subpart H—Debarment

970.800 What are the causes for debarment?
970.805 What notice does the debarring official give me if I am proposed for debarment?
970.810 When does a debarment take effect?
970.815 How may I contest a proposed debarment?
970.820 How much time do I have to contest a proposed debarment?
970.825 What information must I provide to the debarring official if I contest a proposed debarment?
970.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?
970.835 Are debarment proceedings formal?
970.840 How is fact-finding conducted?
970.845 What does the debarring official consider in deciding whether to debar me?
970.850 What is the standard of proof in a debarment action?
970.855 Who has the burden of proof in a debarment action?
970.860 What factors may influence the debarring official's decision?
970.865 How long may my debarment last?
970.870 When do I know if the debarring official debars me?
970.875 May I ask the debarring official to reconsider a decision to debar me?
970.880 What factors may influence the debarring official during reconsideration?
970.885 May the debarring official extend a debarment?

Subpart I—Definitions

970.900 Adequate evidence.
970.905 Affiliate.
970.910 Agency.
970.915 Agent or representative.
970.920 Civil judgment.
970.925 Conviction.
970.930 Debarment.
970.935 Debarring official.
970.940 Disqualified.
970.945 Excluded or exclusion.
970.950 Excluded Parties List System.
970.955 Indictment.
970.960 Ineligible or ineligibility.
970.965 Legal proceedings.
970.970 Nonprocurement transaction.
970.975 Notice.
970.980 Participant.
970.985 Person.
970.990 Preponderance of the evidence.
970.995 Principal.
970.1000 Respondent.
970.1005 State.
970.1010 Suspending official.
970.1015 Suspension.
970.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 970—Covered Transactions

Authority: Sec. 2455, Pub.L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p.189; E.O. 12689, 3 CFR, 1989 Comp., p.235.

■ 2. Part 970 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''OPM'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''OPM'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Debarring Official'' is added in its place wherever it occurs.

■ 3. Section 970.440 is added to read as follows:

§ 970.440 What method do I use to communicate those requirements to participants?

To communicate the requirement, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

DEPARTMENT OF AGRICULTURE

7 CFR Parts 3017 and 3021

RIN 0505–AA11

SUMMARY: The United States Department of Agriculture (USDA) adopts the common rule on nonprocurement debarment and suspension and drug-free workplace on an interim final basis solely in order to request further comment on §§ 3017.765 and 3017.890.

DATES: Comments should be submitted on or before January 26, 2004 in order to be ensured of consideration. Comments received after this date may be considered to the extent practicable.

ADDRESSES: Comments should be sent to Tyson Whitney, OCFO–PAD Room 3448A, Mail Stop 9020, 1400 Independence Avenue, SW., Washington, DC 20250–9020, (202) 720–8978. Comments may also be submitted via electronic mail to *twhitney@cfo.usda.gov.* All comments, including names and addresses, will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Tyson Whitney, OCFO–PAD Room 3448A, Mail Stop 9020, 1400 Independence Avenue, SW., Washington, DC 20250–9020, (202) 720–8978.

SUPPLEMENTARY INFORMATION:

Sections 3017.765 and 3017.890 supplement the procedures in the common rule for contesting the decision of the suspending or debarring official by allowing for a further appeal of the decision of the suspending or debarring official, made in response to a contested suspension or debarment, to an administrative law judge (''ALJ'') of the Department of Agriculture (''USDA''). While at present adopting those provisions as they were proposed on January 23, 2002, USDA seeks further comment on whether these provisions are necessary or add substantive value to the suspension and debarment process.

These provisions originally were included in the current USDA nonprocurement suspension and debarment regulation (7 CFR 3017.515) because it was thought that the courts would give more deference to the findings of an ALJ than to those of an executive branch agency's suspending or debarring official. That has not been the experience of USDA, and in fact the decisions of other executive agencies without appeal from decisions made by the suspending or debarring official under the contest provision in the common rule have withstood judicial scrutiny. Accordingly, since the common rule does not require appeal to an ALJ, USDA is considering removing sections 3017.765 and 3017.890 in the final rule in order to eliminate an unnecessary, time-consuming, and costly stage of litigation.

Section 3017.935(b) and 3017.1010(b) of the proposed rule would have authorized the Secretary of Agriculture to delegate the authority to be the debarring or suspending official, respectively, to the Administrators of USDA program agencies, who further would have been authorized to redelegate that authority except for the authority to make a final debarment or suspension decision. The proposed rule, if adopted as final, would have had the effect of repealing the authority in the current rule in 7 CFR 3017.105 authorizing the Chief of the Forest Service to redelegate the authority to make final debarment or suspension decisions to the Deputy Chief or an Associate Deputy Chief for the National Forest System. In the interim final rule, USDA is revising the text of sections 3017.935(b) and 3017.1010(b) to preserve the authority of the Chief of the Forest Service to redelegate his authority to the Deputy Chief or an Associate Deputy Chief. Since this is a rule of internal agency management, notice and comment for this change is

not required. The text is also revised to reflect the delegation to the head of an organizational unit of the Department, instead of an administrator, because not all organizational units of the Department are headed by an administrator. Some additional changes to the proposed rule language are made in this interim final rule to improve grammar and conform to the plain English model of regulatory drafting.

List of Subjects

7 CFR Part 3017

Administrative practice and procedure, Debarment and suspension, Grant programs-agriculture, Loan programs-agriculture, Reporting and recordkeeping requirements.

7 CFR Part 3021

Administrative practice and procedure, Drug abuse, Grant programs-agriculture, Loan programs-agriculture, Reporting and recordkeeping requirements.

Dated: August 6, 2003.

Ann M. Veneman,

Secretary of Agriculture.

■ For the reasons stated in the common preamble, the United States Department of Agriculture amends 7 CFR chapter XXX, as follows:

■ 1. Part 3017 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 3017—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

3017.25 How is this part organized?
3017.50 How is this part written?
3017.75 Do terms in this part have special meanings?

Subpart A—General

3017.100 What does this part do?
3017.105 Does this part apply to me?
3017.110 What is the purpose of the nonprocurement debarment and suspension system?
3017.115 How does an exclusion restrict a person's involvement in covered transactions?
3017.120 May we grant an exception to let an excluded person participate in a covered transaction?
3017.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
3017.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
3017.135 May the Department of Agriculture exclude a person who is not currently participating in a nonprocurement transaction?
3017.140 How do I know if a person is excluded?
3017.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

3017.200 What is a covered transaction?
3017.205 Why is it important to know if a particular transaction is a covered transaction?
3017.210 Which nonprocurement transactions are covered transactions?
3017.215 Which nonprocurement transactions are not covered transactions?
3017.220 Are any procurement contracts included as covered transactions?
3017.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

3017.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
3017.305 May I enter into a covered transaction with an excluded or disqualified person?
3017.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
3017.315 May I use the services of an excluded person as a principal under a covered transaction?
3017.320 Must I verify that principals of my covered transactions are eligible to participate?
3017.325 What happens if I do business with an excluded person in a covered transaction?
3017.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

3017.335 What information must I provide before entering into a covered transaction with the Department of Agriculture?
3017.340 If I disclose unfavorable information required under § 3017.335, will I be prevented from participating in the transaction?
3017.345 What happens if I fail to disclose the information required under § 3017.335?
3017.350 What must I do if I learn of the information required under § 3017.335 after entering into a covered transaction with the Department of Agriculture?

Disclosing Information—Lower Tier Participants

3017.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
3017.360 What happens if I fail to disclose the information required under § 3017.355?
3017.365 What must I do if I learn of information required under § 3017.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Department of Agriculture Officials Regarding Transactions

3017.400 May I enter into a transaction with an excluded or disqualified person?
3017.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
3017.410 May I approve a participant's use of the services of an excluded person?
3017.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
3017.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
3017.425 When do I check to see if a person is excluded or disqualified?
3017.430 How do I check to see if a person is excluded or disqualified?
3017.435 What must I require of a primary tier participant?
3017.440 What method do I use to communicate those requirements to participants?
3017.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
3017.450 What action may I take if a primary tier participant fails to disclose the information required under § 3017.335?
3017.455 What may I do if a lower tier participant fails to disclose the information required under § 3017.355 to the next higher tier?

Subpart E—Excluded Parties List System

3017.500 What is the purpose of the Excluded Parties List System (EPLS)?
3017.505 Who uses the EPLS?
3017.510 Who maintains the EPLS?
3017.515 What specific information is in the EPLS?
3017.520 Who places the information into the EPLS?
3017.525 Whom do I ask if I have questions about a person in the EPLS?
3017.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

3017.600 How do suspension and debarment actions start?
3017.605 How does suspension differ from debarment?
3017.610 What procedures does the Department of Agriculture use in suspension or debarment actions?
3017.615 How does the Department of Agriculture notify a person of a suspension and debarment action?
3017.620 Do Federal agencies coordinate suspension and debarment actions?
3017.625 What is the scope of a suspension or debarment action?
3017.630 May the Department of Agriculture impute the conduct of one person to another?

3017.635 May the Department of Agriculture settle a debarment or suspension action?
3017.640 May a settlement include a voluntary exclusion?
3017.645 Do other Federal agencies know if the Department of Agriculture agrees to a voluntary exclusion?

Subpart G—Suspension

3017.700 When may the suspending official issue a suspension?
3017.705 What does the suspending official consider in issuing a suspension?
3017.710 When does a suspension take effect?
3017.715 What notice does the suspending official give me if I am suspended?
3017.720 How may I contest a suspension?
3017.725 How much time do I have to contest a suspension?
3017.730 What information must I provide to the suspending official if I contest a suspension?
3017.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
3017.740 Are suspension proceedings formal?
3017.745 How is fact-finding conducted?
3017.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
3017.755 When will I know whether the suspension is continued or terminated?
3017.760 How long may my suspension last?
3017.765 How may I appeal my suspension?

Subpart H—Debarment

3017.800 What are the causes for debarment?
3017.805 What notice does the debarring official give me if I am proposed for debarment?
3017.810 When does a debarment take effect?
3017.815 How may I contest a proposed debarment?
3017.820 How much time do I have to contest a proposed debarment?
3017.825 What information must I provide to the debarring official if I contest a proposed debarment?
3017.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
3017.835 Are debarment proceedings formal?
3017.840 How is fact-finding conducted?
3017.845 What does the debarring official consider in deciding whether to debar me?
3017.850 What is the standard of proof in a debarment action?
3017.855 Who has the burden of proof in a debarment action?
3017.860 What factors may influence the debarring official's decision?
3017.865 How long may my debarment last?
3017.870 When do I know if the debarring official debars me?
3017.875 May I ask the debarring official to reconsider a decision to debar me?
3017.880 What factors may influence the debarring official during reconsideration?
3017.885 May the debarring official extend a debarment?
3017.890 How may I appeal my debarment?

Subpart I—Definitions

3017.900 Adequate evidence.
3017.905 Affiliate.
3017.910 Agency.
3017.915 Agent or representative.
3017.920 Civil judgment.
3017.925 Conviction.
3017.930 Debarment.
3017.935 Debarring official.
3017.940 Disqualified.
3017.945 Excluded or exclusion.
3017.950 Excluded Parties List System.
3017.955 Indictment.
3017.960 Ineligible or ineligibility.
3017.965 Legal proceedings.
3017.970 Nonprocurement transaction.
3017.975 Notice.
3017.980 Participant.
3017.985 Person.
3017.990 Preponderance of the evidence.
3017.995 Principal.
3017.1000 Respondent.
3017.1005 State.
3017.1010 Suspending official.
3017.1015 Suspension.
3017.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 3017—Covered Transactions

Authority: 5 U.S.C. 301; Pub. L. 101–576, 104 Stat. 2838; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12698 (3 CFR, 1989 Comp., p. 235); 7 CFR 2.28.

■ 2. Part 3017 is further amended as set forth below:

■ a. ''[Agency noun]'' is removed and ''Department of Agriculture'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''Department of Agriculture'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''the Secretary of Agriculture or designee'' is added in its place wherever it occurs.

■ 3. Section 3017.50 is further amended by adding a sentence at the end of paragraph (c) to read as follows:

§ 3017.50 How is this part written?

* * * * *

(c) * * * However, this diagram shows only the general model for the levels or ''tiers'' at which the Department of Agriculture enforces an exclusion under this part, and the model will vary for certain categories of transactions in accordance with the exclusions from covered transactions in § 3017.215 and § 3017.220.

■ 4. Section 3017.215 is further amended by adding paragraphs (h) through (p) to read as follows:

§ 3017.215 Which nonprocurement transactions are not covered transactions?

* * * * *

(h) An entitlement or mandatory award required by a statute, including a lower tier entitlement or mandatory award that is required by a statute.

(i) With respect to the Department of Agriculture's export and foreign assistance programs, any transaction below the primary tier covered transaction other than a nonprocurement transaction under the Market Access Program between a nonprofit trade association or state regional group and a U.S. entity, as defined in part 1485 of this title.

(j) Any transaction under the Department of Agriculture's conservation programs, warehouse licensing programs, or programs that provide statutory entitlements and make available loans to individuals and entities in their capacity as producers of agricultural commodities.

(k) The export or substitution of Federal timber governed by the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. 620 *et seq.* (The ''Export Act''), which provides separate statutory authority to debar.

(l) The receipt of licenses, permits, certificates, and indemnification under regulatory programs conducted in the interest of public health and safety, and animal and plant health and safety.

(m) The receipt of official grading and inspection services, animal damage control services, public health and safety inspection services, and animal and plant health and safety inspection services.

(n) If the person is a State or local government, the provision of official grading and inspection services, animal damage control services, animal and plant health and safety inspection services.

(o) The receipt of licenses, permit, or certificates under regulatory programs conducted in the interest of ensuring fair trade practices.

(p) Permits, licenses, exchanges and other acquisitions of real property, rights of way, and easements under natural resource management programs.

■ 5. Section 3017.220 is amended by adding paragraph (c) to read as follows:

§ 3017.220 Are any procurement contracts included as covered transactions?

* * * * *

(c) A contract for the procurement of ocean transportation in connection with the Department of Agriculture's foreign

assistance programs is a covered transaction. With respect to the Department of Agriculture's export and foreign assistance programs, such contracts are the only procurement contracts included as covered transactions, notwithstanding the provisions in paragraphs (a) and (b) of this section.

■ 6. Section 3017.440 is added to read as follows:

§ 3017.440 What method do I use to communicate those requirements to participants?

To communicate the requirement, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in their lower-tier covered transactions.

■ 7. Section 3017.755 is further amended by adding a sentence at the end to read as follows:

§ 3017.755 When will I know whether the suspension is continued or terminated?

* * * However, the record will remain open for the full 30 days, as called for in § 3017.725, even when you make a submission before the 30 days expire.

■ 8. Section 3017.765 is added to subpart G to read as follows:

§ 3017.765 How may I appeal my suspension?

(a) You may file an appeal only after you have exhausted the option provided for in § 3017.720 to contest the suspension. You must file your appeal within 30 days of receiving the decision required by § 3017.755 and your filing must specify the basis of the appeal. You must submit your appeal in writing to the Hearing Clerk in the Office of Administrative Law Judges (OALJ), United States Department of Agriculture (USDA), Washington, DC 20250. The assigned appeals officer may vacate the decision of the suspending official only if the officer determines that the decision is:

(1) Not in accordance with law;

(2) Not based on the applicable standard of evidence; or

(3) Arbitrary and capricious and an abuse of discretion.

(b) The appeals officer will base the decision solely on the administrative record.

(c) Within 90 days of the date that you file your appeal with USDA's OALJ Hearing Clerk, the appeals officer will give written notification of the decision to you and to the suspending official who took the action being appealed.

(d) The appeals officer's decision is final and is not appealable within USDA.

■ 9. Section 3017.800 is further amended by adding paragraph (e) to read as follows:

§ 3017.800 What are the causes of debarment?

* * * * *

(e) Notwithstanding paragraph (c) (1) of this section, within the Department of Agriculture a nonprocurement debarment by any Federal agency taken before March 1, 1989.

■ 10. Section 3017.870 is further amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 3017.870 When do I know if the debarring official debars me?

(a) * * * However, the record will remain open for the full 30 days, as called for in § 3017.820, even when you make a submission before the 30 days expire.

* * * * *

■ 11. Section 3017.890 is added to subpart H to read as follows:

§ 3017.890 How may I appeal my debarment?

(a) You may file an appeal only after you have exhausted the option provided for in § 3017.815 to contest the debarment. You must file your appeal within 30 days of receiving the decision required by § 3017.870 and your filing must specify the basis of the appeal. You must submit your appeal in writing to the Hearing Clerk in the Office of Administrative Law Judges (OALJ), United States Department of Agriculture (USDA), Washington, DC 20250. The assigned appeals officer may vacate the decision of the debarring official only if the officer determines that the decision is:

(1) Not in accordance with law;

(2) Not based on the applicable standard of evidence; or

(3) Arbitrary and capricious and an abuse of discretion.

(b) The appeals officer will base the decision solely on the administrative record.

(c) Within 90 days of the date that you file your appeal with USDA's OALJ Hearing Clerk, the appeals officer will give written notification of the decision to you and to the debarring official who took the action being appealed.

(d) The appeals officer's decision is final and is not appealable within USDA.

■ 12. Section 3017.935 is further amended by adding paragraph (b) to read as follows:

§ 3017.935 Debarring official.

* * * * *

(b) The head of an organizational unit within the Department of Agriculture (*e.g.*, Administrator, Food and Nutrition Service), who has been delegated authority in part 2 of this title to carry out a covered transaction, is delegated authority to act as the debarring official in connection with such transaction. This authority to act as a debarring official may not be redelegated below the head of the organizational unit, except that, in the case of the Forest Service, the Chief may redelegate the authority to act as a debarring official to the Deputy Chief or an Associate Deputy Chief for the National Forest System.

■ 13. Section 3017.1010 is further amended by adding paragraph (b) to read as follows:

§ 3017.1010 Suspending official.

* * * * *

(b) The head of an organizational unit within the Department of Agriculture (*e.g.*, Administrator, Food and Nutrition Service), who has been delegated authority in part 2 of this title to carry out a covered transaction, is delegated authority to act as the suspending official in connection with such transaction. This authority to act as a suspending official may not be redelegated below the head of the organizational unit, except that, in the case of the Forest Service, the Chief may redelegate the authority to act as a suspending official to the Deputy Chief or an Associate Deputy Chief for the National Forest System.

■ 14. Part 3021 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 3021—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.

3021.100 What does this part do?
3021.105 Does this part apply to me?
3021.110 Are any of my Federal assistance awards exempt from this part?
3021.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

3021.200 What must I do to comply with this part?
3021.205 What must I include in my drug-free workplace statement?
3021.210 To whom must I distribute my drug-free workplace statement?
3021.215 What must I include in my drug-free awareness program?

3021.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
3021.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
3021.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

3021.300 What must I do to comply with this part if I am an individual recipient?
3021.301 [Reserved]

Subpart D—Responsibilities of Department of Agriculture Awarding Officials

3021.400 What are my responsibilities as a Department of Agriculture awarding official?

Subpart E—Violations of This Part and Consequences

3021.500 How are violations of this part determined for recipients other than individuals?
3021.505 How are violations of this part determined for recipients who are individuals?
3021.510 What actions will the Federal Government take against a recipient determined to have violated this part?
3021.515 Are there any exceptions to those actions?

Subpart F—Definitions

3021.605 Award.
3021.610 Controlled substance.
3021.615 Conviction.
3021.620 Cooperative agreement.
3021.625 Criminal drug statute.
3021.630 Debarment.
3021.635 Drug-free workplace.
3021.640 Employee.
3021.645 Federal agency or agency.
3021.650 Grant.
3021.655 Individual.
3021.660 Recipient.
3021.665 State.
3021.670 Suspension.

Authority: 5 U.S.C. 301; 41 U.S.C. 701 *et seq.*; Pub. L. 101–576, 104 Stat. 2838; 7 CFR § 2.28.

■ 15. Part 3021 is further amended as set forth below:

■ a. ''[Agency noun]'' is removed and ''Department of Agriculture'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''Department of Agriculture'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''the Secretary of Agriculture or designee'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''the Secretary of Agriculture'' is added in its place wherever it occurs.

■ 16. Section 3021.510(c) is further amended by removing ''[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]'' and adding ''7 CFR part 3017'' in its place.

■ 17. Section 3021.605(a)(2) is further amended by removing ''[Agency-specific CFR citation]'' and adding ''7 CFR part 3016'' in its place.

DEPARTMENT OF ENERGY

10 CFR Parts 606, 607 and 1036

RIN 1991–AB56

FOR FURTHER INFORMATION CONTACT: Cynthia G. Yee, 202–586–1140; *cynthia.yee@hq.doe.gov.*

List of Subjects

10 CFR Part 606

Administrative practice and procedure, Debarment and suspension, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

10 CFR Parts 607 and 1036

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Issuance of this final rule has been approved by the Office of the Secretary of Energy.

Dated: August 22, 2003.

Richard H. Hopf,

Director, Office of Procurement and Assistance Management, Office of Management, Budget and Evaluation, Department of Energy.

Dated: August 22, 2003.

Robert C. Braden, Jr.,

Director, Office of Procurement and Assistance Management, National Nuclear Security Administration.

■ For the reason stated in the common preamble, and under the authority of 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*, the Department of Energy amends 10 CFR Chapters II and X, as follows.

■ 1. Part 606 is added to subchapter H to read as set forth in instruction 1 at the end of the common preamble.

PART 606—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
606.25 How is this part organized?
606.50 How is this part written?
606.75 Do terms in this part have special meanings?

Subpart A—General

606.100 What does this part do?
606.105 Does this part apply to me?
606.110 What is the purpose of the nonprocurement debarment and suspension system?
606.115 How does an exclusion restrict a person's involvement in covered transactions?
606.120 May we grant an exception to let an excluded person participate in a covered transaction?
606.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
606.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
606.135 May the Department of Energy exclude a person who is not currently participating in a nonprocurement transaction?
606.140 How do I know if a person is excluded?
606.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

606.200 What is a covered transaction?
606.205 Why is it important to know if a particular transaction is a covered transaction?
606.210 Which nonprocurement transactions are covered transactions?
606.215 Which nonprocurement transactions are not covered transactions?
606.220 Are any procurement contracts included as covered transactions?
606.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

606.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
606.305 May I enter into a covered transaction with an excluded or disqualified person?
606.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
606.315 May I use the services of an excluded person as a principal under a covered transaction?
606.320 Must I verify that principals of my covered transactions are eligible to participate?
606.325 What happens if I do business with an excluded person in a covered transaction?
606.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

606.335 What information must I provide before entering into a covered transaction with the Department of Energy?
606.340 If I disclose unfavorable information required under § 606.335, will I be prevented from participating in the transaction?
606.345 What happens if I fail to disclose the information required under § 606.335?
606.350 What must I do if I learn of the information required under § 606.335

after entering into a covered transaction with the Department of Energy?

Disclosing Information—Lower Tier Participants

606.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
606.360 What happens if I fail to disclose the information required under § 606.355?
606.365 What must I do if I learn of information required under § 606.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of DOE Officials Regarding Transactions

606.400 May I enter into a transaction with an excluded or disqualified person?
606.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
606.410 May I approve a participant's use of the services of an excluded person?
606.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
606.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
606.425 When do I check to see if a person is excluded or disqualified?
606.430 How do I check to see if a person is excluded or disqualified?
606.435 What must I require of a primary tier participant?
606.440 What method do I use to communicate those requirement to participants?
606.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
606.450 What action may I take if a primary tier participant fails to disclose the information required under § 606.335?
606.455 What may I do if a lower tier participant fails to disclose the information required under § 606.355 to the next higher tier?

Subpart E—Excluded Parties List System

606.500 What is the purpose of the Excluded Parties List System (EPLS)?
606.505 Who uses the EPLS?
606.510 Who maintains the EPLS?
606.515 What specific information is in the EPLS?
606.520 Who places the information into the EPLS?
606.525 Whom do I ask if I have questions about a person in the EPLS?
606.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

606.600 How do suspension and debarment actions start?
606.605 How does suspension differ from debarment?
606.610 What procedures does the Department of Energy use in suspension and debarment actions?
606.615 How does the Department of Energy notify a person of a suspension and debarment action?
606.620 Do Federal agencies coordinate suspension and debarment actions?
606.625 What is the scope of a suspension or debarment action?
606.630 May the Department of Energy impute the conduct of one person to another?
606.635 May the Department of Energy settle a debarment or suspension action?
606.640 May a settlement include a voluntary exclusion?
606.645 Do other Federal agencies know if the Department of Energy agrees to a voluntary exclusion?

Subpart G—Suspension

606.700 When may the suspending official issue a suspension?
606.705 What does the suspending official consider in issuing a suspension?
606.710 When does a suspension take effect?
606.715 What notice does the suspending official give me if I am suspended?
606.720 How may I contest a suspension?
606.725 How much time do I have to contest a suspension?
606.730 What information must I provide to the suspending official if I contest a suspension?
606.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
606.740 Are suspension proceedings formal?
606.745 How is fact-finding conducted?
606.746 Who conducts fact-finding conferences for DOE?
606.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
606.755 When will I know whether the suspension is continued or terminated?
606.760 How long may my suspension last?

Subpart H—Debarment

606.800 What are the causes for debarment?
606.805 What notice does the debarring official give me if I am proposed for debarment?
606.810 When does a debarment take effect?
606.815 How may I contest a proposed debarment?
606.820 How much time do I have to contest a proposed debarment?
606.825 What information must I provide to the debarring official if I contest a proposed debarment?
606.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
606.835 Are debarment proceedings formal?
606.836 Who conducts fact-finding conferences for DOE?
606.840 How is fact-finding conducted?
606.845 What does the debarring official consider in deciding whether to debar me?
606.850 What is the standard of proof in a debarment action?
606.855 Who has the burden of proof in a debarment action?
606.860 What factors may influence the debarring official's decision?
606.865 How long may my debarment last?
606.870 When do I know if the debarring official debars me?
606.875 May I ask the debarring official to reconsider a decision to debar me?
606.880 What factors may influence the debarring official during reconsideration?
606.885 May the debarring official extend a debarment?

Subpart I—Definitions

606.900 Adequate evidence.
606.905 Affiliate.
606.910 Agency.
606.915 Agent or representative.
606.920 Civil judgment.
606.925 Conviction.
606.930 Debarment.
606.935 Debarring official.
606.940 Disqualified.
606.945 Excluded or exclusion.
606.950 Excluded Parties List System.
606.955 Indictment.
606.960 Ineligible or ineligibility.
606.965 Legal proceedings.
606.970 Nonprocurement transaction.
606.975 Notice.
606.980 Participant.
606.985 Person.
606.990 Preponderance of the evidence.
606.995 Principal.
606.1000 Respondent.
606.1005 State.
606.1010 Suspending official.
606.1015 Suspension.
606.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 606—Covered Transactions

Authority: E.O. 12549 (3 CFR, 1986 Comp., p.189); E.O. 12689 (3 CFR, 1989 Comp., p.235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

■ 2. Part 606 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''Department of Energy'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''DOE'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Director, Office of Procurement and Assistance Management, DOE, for DOE actions, and Director, Office of Procurement and Assistance Management, NNSA, for NNSA actions'' are added in its place wherever it occurs.

■ 3. Section 606.440 is added to read as follows:

§ 606.440 What method do I use to communicate those requirements to participants?

To communicate the requirements, you must include a term or condition in the transaction requiring the

participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

■ 4. Section 606.746 is added to read as follows:

§ 606.746 Who conducts fact-finding conferences for DOE?

The Energy Board of Contract Appeals conducts fact-finding conferences for DOE, in accordance with the rules promulgated by the Energy Board of Contract Appeals.

■ 5. Section 606.836 is added to read as follows:

§ 606.836 Who conducts fact-finding conferences for DOE?

The Energy Board of Contract Appeals conducts fact-finding conferences for DOE, in accordance with the rules promulgated by the Energy Board of Contract Appeals.

■ 6. Section 606.910 is further amended by adding a definition for Department of Energy in alphabetical order to read as follows:

§ 606.910 Agency.

* * * * *

Department of Energy means the U.S. Department of Energy, including the National Nuclear Security Administration (NNSA).

■ 7. Section 606.935 is further amended by adding paragraph (b) to read as follows:

§ 606.935 Debarring official.

* * * * *

(b) The debarring official for the Department of Energy, exclusive of NNSA, is the Director, Office of Procurement and Assistance Management, DOE. The debarring official for NNSA is the Director, Office of Procurement and Assistance Management, NNSA.

■ 8. Section 606.1010 is further amended by adding paragraph (b) to read as follows:

§ 606.1010 Suspending official.

* * * * *

(b) The suspending official for the Department of Energy, exclusive of NNSA, is the Director, Office of Procurement and Assistance Management, DOE. The suspending official for NNSA is the Director, Office of Procurement and Assistance Management, NNSA.

■ 9. Part 607 is added to subchapter H to read as set forth in instruction 2 at the end of the common preamble.

PART 607—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.

607.100 What does this part do?
607.105 Does this part apply to me?
607.110 Are any of my Federal assistance awards exempt from this part?
607.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

607.200 What must I do to comply with this part?
607.205 What must I include in my drug-free workplace statement?
607.210 To whom must I distribute my drug-free workplace statement?
607.215 What must I include in my drug-free awareness program?
607.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
607.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
607.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

607.300 What must I do to comply with this part if I am an individual recipient?
607.301 [Reserved]

Subpart D—Responsibilities of DOE Awarding Officials

607.400 What are my responsibilities as a DOE awarding official?

Subpart E—Violations of This Part and Consequences

607.500 How are violations of this part determined for recipients other than individuals?
607.505 How are violations of this part determined for recipients who are individuals?
607.510 What actions will the Federal Government take against a recipient determined to have violated this part?
607.515 Are there any exceptions to those actions?

Subpart F—Definitions

607.605 Award.
607.610 Controlled substance.
607.615 Conviction.
607.620 Cooperative agreement.
607.625 Criminal drug statute.
607.630 Debarment.
607.635 Drug-free workplace.
607.640 Employee.
607.645 Federal agency or agency.
607.650 Grant.
607.655 Individual.
607.660 Recipient.
607.665 State.
607.670 Suspension.

Authority: 41 U.S.C. 701, *et seq.*; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

■ 10. Part 607 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''Department of Energy'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''DOE'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Director, Office of Procurement and Assistance Management, DOE, for DOE actions, and Director, Office of Procurement and Assistance Management, NNSA, for NNSA actions'' are added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''Secretary of Energy'' is added in its place wherever it occurs.

■ 11. Section 607.510(c) is further amended by removing ''[CFR citation for the Federal agency's regulations implementing Executive order 12549 and Executive Order 12689]'' and adding ''10 CFR Part 606'' in its place.

■ 12. Section 607.605(a)(2) is further amended by removing ''[Agency-specific CFR citation]'' and adding ''10 CFR Part 600'' in its place.

■ 13. Section 607.645 is further amended by adding the definition for Department of Energy in alphabetical order to read as follows:

§ 607.645 Federal Agency or agency.

Department of Energy means the U.S. Department of Energy, including the National Nuclear Security Administration (NNSA).

* * * * *

PART 1036—[Removed]

■ 14. Part 1036 is removed.

EXPORT-IMPORT BANK OF THE UNITED STATES

12 CFR Part 413

RIN 3048–ZA03

ADDRESSES: Comments should be sent to Howard Schweitzer, Assistant General Counsel for Administration, Export-Import Bank of the United States, 811 Vermont Ave., NW., Washington, DC 20571, or to *howard.schweitzer@exim.gov.*

FOR FURTHER INFORMATION CONTACT: Howard Schweitzer, Assistant General Counsel for Administration, Export-Import Bank of the United States, (202) 565–3229, or at *howard.schweitzer@exim.gov.*

SUPPLEMENTARY INFORMATION: Ex-Im Bank publishes this interim final rule in order to join the publication of regulations amending the common rule

on nonprocurement suspension and debarment. As discussed in detail in the common preamble to this rule, the substantive provisions of the common rule have previously been the subject of a notice and comment period. Ex-Im Bank is not at this time adopting any optional provisions contained in the common rule that depart from the substance of the base text of the common rule. For these reasons, Ex-Im Bank finds, pursuant to 5 U.S.C. 553 (b)(B), that a notice and comment period is unnecessary with respect to its adoption of the base text of the common rule.

It should also be noted that Ex-Im Bank will not be adopting those provisions of the common preamble concerning the Government-wide Requirements for Drug-Free Workplace (Grants). Ex-Im Bank does not issue cooperative agreements, awards, grants or other financial assistance covered by these provisions.

List of Subjects in 12 CFR Part 413

Administrative practice and procedure, Debarment and suspension, Government contracts, Loan programs, Reporting and recordkeeping requirements.

Dated: August 4, 2003.

Peter B. Saba,

General Counsel, The Export-Import Bank of the United States.

■ For the reasons stated in the preamble, the Export-Import Bank of the United States amends 12 CFR chapter IV as follows:

■ 1. Part 413 is added to read as set forth in instruction 1 at the end of the common preamble.

PART 413—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
413.25 How is this part organized?
413.50 How is this part written?
413.75 Do terms in this part have special meanings?

Subpart A—General

413.100 What does this part do?
413.105 Does this part apply to me?
413.110 What is the purpose of the nonprocurement debarment and suspension system?
413.115 How does an exclusion restrict a person's involvement in covered transactions?
413.120 May we grant an exception to let an excluded person participate in a covered transaction?
413.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
413.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
413.135 May the Ex-Im Bank exclude a person who is not currently participating in a nonprocurement transaction?
413.140 How do I know if a person is excluded?
413.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

413.200 What is a covered transaction?
413.205 Why is it important to know if a particular transaction is a covered transaction?
413.210 Which nonprocurement transactions are covered transactions?
413.215 Which nonprocurement transactions are not covered transactions?
413.220 Are any procurement contracts included as covered transactions?
413.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

413.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
413.305 May I enter into a covered transaction with an excluded or disqualified person?
413.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
413.315 May I use the services of an excluded person as a principal under a covered transaction?
413.320 Must I verify that principals of my covered transactions are eligible to participate?
413.325 What happens if I do business with an excluded person in a covered transaction?
413.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

413.335 What information must I provide before entering into a covered transaction with the Ex-Im Bank?
413.340 If I disclose unfavorable information required under § 413.335, will I be prevented from participating in the transaction?
413.345 What happens if I fail to disclose the information required under § 413.335?
413.350 What must I do if I learn of the information required under § 413.335 after entering into a covered transaction with the Ex-Im Bank?

Disclosing Information—Lower Tier Participants

413.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
413.360 What happens if I fail to disclose the information required under § 413.355?
413.365 What must I do if I learn of information required under § 413.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Ex-Im Bank Officials Regarding Transactions

413.400 May I enter into a transaction with an excluded or disqualified person?
413.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
413.410 May I approve a participant's use of the services of an excluded person?
413.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
413.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
413.425 When do I check to see if a person is excluded or disqualified?
413.430 How do I check to see if a person is excluded or disqualified?
413.435 What must I require of a primary tier participant?
413.440 What method do I use to communicate those requirements to participants?
413.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
413.450 What action may I take if a primary tier participant fails to disclose the information required under § 413.335?
413.455 What may I do if a lower tier participant fails to disclose the information required under § 413.355 to the next higher tier?

Subpart E—Excluded Parties List System

413.500 What is the purpose of the Excluded Parties List System (EPLS)?
413.505 Who uses the EPLS?
413.510 Who maintains the EPLS?
413.515 What specific information is in the EPLS?
413.520 Who places the information into the EPLS?
413.525 Whom do I ask if I have questions about a person in the EPLS?
413.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

413.600 How do suspension and debarment actions start?
413.605 How does suspension differ from debarment?
413.610 What procedures does the Ex-Im Bank use in suspension and debarment actions?
413.615 How does the Ex-Im Bank notify a person of a suspension and debarment action?
413.620 Do Federal agencies coordinate suspension and debarment actions?
413.625 What is the scope of a suspension or debarment action?
413.630 May the Ex-Im Bank impute the conduct of one person to another?

413.635 May the Ex-Im Bank settle a debarment or suspension action?
413.640 May a settlement include a voluntary exclusion?
413.645 Do other Federal agencies know if the Ex-Im Bank agrees to a voluntary exclusion?

Subpart G—Suspension

413.700 When may the suspending official issue a suspension?
413.705 What does the suspending official consider in issuing a suspension?
413.710 When does a suspension take effect?
413.715 What notice does the suspending official give me if I am suspended?
413.720 How may I contest a suspension?
413.725 How much time do I have to contest a suspension?
413.730 What information must I provide to the suspending official if I contest a suspension?
413.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
413.740 Are suspension proceedings formal?
413.745 How is fact-finding conducted?
413.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
413.755 When will I know whether the suspension is continued or terminated?
413.760 How long may my suspension last?

Subpart H—Debarment

413.800 What are the causes for debarment?
413.805 What notice does the debarring official give me if I am proposed for debarment?
413.810 When does a debarment take effect?
413.815 How may I contest a proposed debarment?
413.820 How much time do I have to contest a proposed debarment?
413.825 What information must I provide to the debarring official if I contest a proposed debarment?
413.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
413.835 Are debarment proceedings formal?
413.840 How is fact-finding conducted?
413.845 What does the debarring official consider in deciding whether to debar me?
413.850 What is the standard of proof in a debarment action?
413.855 Who has the burden of proof in a debarment action?
413.860 What factors may influence the debarring official's decision?
413.865 How long may my debarment last?
413.870 When do I know if the debarring official debars me?
413.875 May I ask the debarring official to reconsider a decision to debar me?
413.880 What factors may influence the debarring official during reconsideration?
413.885 May the debarring official extend a debarment?

Subpart I—Definitions

413.900 Adequate evidence.
413.905 Affiliate.
413.910 Agency.
413.915 Agent or representative.
413.920 Civil judgment.
413.925 Conviction.
413.930 Debarment.
413.935 Debarring official.
413.940 Disqualified.
413.945 Excluded or exclusion.
413.950 Excluded Parties List System.
413.955 Indictment.
413.960 Ineligible or ineligibility.
413.965 Legal proceedings.
413.970 Nonprocurement transaction.
413.975 Notice.
413.980 Participant.
413.985 Person.
413.990 Preponderance of the evidence.
413.995 Principal.
413.1000 Respondent.
413.1005 State.
413.1010 Suspending official.
413.1015 Suspension.
413.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 413—Covered Transactions

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

■ 2. Part 413 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''Ex-Im Bank'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''Ex-Im Bank'' is added in its place wherever it occurs.

■ c. '[Agency head or designee]'' is removed and ''Ex-Im Bank agency head or designee'' is added in its place wherever it occurs.

■ 3. Section 413.440 is added to read as follows:

§ 413.440 What method do I use to communicate those requirements to participants?

To communicate the requirements, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 145 and 147

RIN 3245–AE61

FOR FURTHER INFORMATION CONTACT: Darryl K. Hairston, SBA Debarring Official, Assistant Administrator for Administration (5331), U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, (202) 205–6630, e-mail: *darryl.hairston@sba.gov.*

List of Subjects

13 CFR Part 145

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 147

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: September 12, 2003.

Hector V. Barreto,

Administrator, U.S. Small Business Administration.

■ For the reasons stated in the common preamble, the U.S. Small Business Administration proposes to amend 13 CFR Chapter I as follows:

■ 1. Part 145 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 145—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
145.25 How is this part organized?
145.50 How is this part written?
145.75 Do terms in this part have special meanings?

Subpart A—General

145.100 What does this part do?
145.105 Does this part apply to me?
145.110 What is the purpose of the nonprocurement debarment and suspension system?
145.115 How does an exclusion restrict a person's involvement in covered transactions?
145.120 May we grant an exception to let an excluded person participate in a covered transaction?
145.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
145.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
145.135 May the SBA exclude a person who is not currently participating in a nonprocurement transaction?
145.140 How do I know if a person is excluded?
145.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

145.200 What is a covered transaction?

145.205 Why is it important to know if a particular transaction is a covered transaction?
145.210 Which nonprocurement transactions are covered transactions?
145.215 Which nonprocurement transactions are not covered transactions?
145.220 Are any procurement contracts included as covered transactions?
145.225 How do I know if a transaction in which I may participate in is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

145.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
145.305 May I enter into a covered transaction with an excluded or disqualified person?
145.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
145.315 May I use the services of an excluded person as a principal under a covered transaction?
145.320 Must I verify that principals of my covered transactions are eligible to participate?
145.325 What happens if I do business with an excluded person in a covered transaction?
145.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

145.335 What information must I provide before entering into a covered transaction with the SBA?
145.340 If I disclose unfavorable information required under § 145.335, will I be prevented from participating in the transaction?
145.345 What happens if I fail to disclose the information required under § 145.335?
145.350 What must I do if I learn of the information required under § 145.335 after entering into a covered transaction with the SBA?

Disclosing Information—Lower Tier Participants

145.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
145.360 What happens if I fail to disclose the information required under § 145.355?
145.365 What must I do if I learn of information required under § 145.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of SBA Officials Regarding Transactions

145.400 May I enter into a transaction with an excluded or disqualified person?
145.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
145.410 May I approve a participant's use of the services of an excluded person?
145.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
145.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
145.425 When do I check to see if a person is excluded or disqualified?
145.430 How do I check to see if a person is excluded or disqualified?
145.435 What must I require of a primary tier participant?
145.440 What method do I use to communicate those requirements to participants?
145.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
145.450 What action may I take if a primary tier participant fails to disclose the information required under § 145.335?
145.455 What may I do if a lower tier participant fails to disclose the information required under § 145.355 to the next higher tier?

Subpart E—Excluded Parties List System

145.500 What is the purpose of the Excluded Parties List System (EPLS)?
145.505 Who uses the EPLS?
145.510 Who maintains the EPLS?
145.515 What specific information is in the EPLS?
145.520 Who places the information into the EPLS?
145.525 Whom do I ask if I have questions about a person in the EPLS?
145.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

145.600 How do suspension and debarment actions start?
145.605 How does suspension differ from debarment?
145.610 What procedures does the SBA use in suspension and debarment actions?
145.615 How does the SBA notify a person of a suspension and debarment action?
145.620 Do Federal agencies coordinate suspension and debarment actions?
145.625 What is the scope of a suspension or debarment action?
145.630 May the SBA impute the conduct of one person to another?
145.635 May the SBA settle a debarment or suspension action?
145.640 May a settlement include a voluntary exclusion?
145.645 Do other Federal agencies know if the SBA agrees to a voluntary exclusion?

Subpart G—Suspension

145.700 When may the suspending official issue a suspension?
145.705 What does the suspending official consider in issuing a suspension?
145.710 When does a suspension take effect?
145.715 What notice does the suspending official give me if I am suspended?
145.720 How may I contest a suspension?
145.725 How much time do I have to contest a suspension?
145.730 What information must I provide to the suspending official if I contest a suspension?
145.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
145.740 Are suspension proceedings formal?
145.745 How is fact-finding conducted?
145.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
145.755 When will I know whether the suspension is continued or terminated?
145.760 How long may my suspension last?
145.765 How may I appeal my suspension?

Subpart H—Debarment

145.800 What are the causes for debarment?
145.805 What notice does the debarring official give me if I am proposed for debarment?
145.810 When does a debarment take effect?
145.815 How may I contest a proposed debarment?
145.820 How much time do I have to contest a proposed debarment?
145.825 What information must I provide to the debarring official if I contest a proposed debarment?
145.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
145.835 Are debarment proceedings formal?
145.840 How is fact-finding conducted?
145.845 What does the debarring official consider in deciding whether to debar me?
145.850 What is the standard of proof in a debarment action?
145.855 Who has the burden of proof in a debarment action?
145.860 What factors may influence the debarring official's decision?
145.865 How long may my debarment last?
145.870 When do I know if the debarring official debars me?
145.875 May I ask the debarring official to reconsider a decision to debar me?
145.880 What factors may influence the debarring official during reconsideration?
145.885 May the debarring official extend a debarment?
145.890 How may I appeal my debarment?

Subpart I—Definitions

145.900 Adequate evidence.
145.905 Affiliate.
145.910 Agency.
145.915 Agent or representative.
145.920 Civil judgment.
145.925 Conviction.
145.930 Debarment.
145.935 Debarring official.
145.940 Disqualified.
145.945 Excluded or exclusion.
145.950 Excluded Parties List System.
145.955 Indictment.
145.960 Ineligible or ineligibility.
145.965 Legal proceedings.
145.970 Nonprocurement transaction.

145.975 Notice.
145.980 Participant.
144.985 Person.
145.990 Preponderance of the evidence.
145.995 Principal.
145.1000 Respondent.
145.1005 State.
145.1010 Suspending official.
145.1015 Suspension.
145.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 145—Covered Transactions

Authority: 5 U.S.C. 301 *et seq.*; 15 U.S.C. 631 *et seq.*; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738, 3 CFR, 1973 Comp., p. 799; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

■ 2. Part 145 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and the ''SBA'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and the ''SBA'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and the ''SBA Debarring Official'' is added in its place wherever it occurs.

■ 3. Section 145.220 is further amended by adding a paragraph (c) to read as follows:

§ 145.220 Are any procurement contracts included as covered transactions?

* * * * *

(c) The contract is awarded by any contractor, subcontractor, supplier, consultant or its agent or representative in any transaction, regardless of tier, to be funded or provided by the SBA under a nonprocurement transaction that is expected to equal or exceed $25,000. (See optional lower tier coverage shown in the diagram in the appendix to this part.)

■ 4. Section 145.440 is added to read as follows:

§ 145.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

■ 5. Section 145.765 is added to subpart G to read as follows:

§ 145.765 How may I appeal my suspension?

(a) If the SBA suspending official issues a decision under § 145.755 to continue your suspension after you present information in opposition to that suspension under § 145.720, you can ask for review of the suspending official's decision in two ways:

(1) You may ask the suspending official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request that the SBA Office of Hearings and Appeals (OHA), review the suspending official's decision to continue your suspension within 30 days of your receipt of the suspending official's decision under § 145.755 or paragraph (a)(1) of this section. However, OHA can reverse the suspending official's decision only where OHA finds that the decision is based on a clear error of material fact or law, or where OHA finds that the suspending official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) OHA, in its discretion, may stay the suspension pending review of the suspending official's decision.

(d) The SBA suspending official and OHA must notify you of their decisions under this section, in writing, using the notice procedures at §§ 145.615 and 145.975.

■ 6. Section 145.890 is added to subpart H to read as follows:

§ 145.890 How may I appeal my debarment?

(a) If the SBA debarring official issues a decision under § 145.870 to debar you after you present information in opposition to a proposed debarment under § 145.815, you can ask for review of the debarring official's decision in two ways:

(1) You may ask the debarring official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request that the SBA Office of Hearings and Appeals (OHA), review the debarring official's decision to debar you within 30 days of your receipt of the debarring official's decision under § 145.870 or paragraph (a)(1) of this section. However, OHA can reverse the debarring official's decision only where OHA finds that the decision is based on a clear error of material fact or law, or where OHA finds that the debarring official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) OHA may, in its discretion, stay the debarment pending review of the debarring official's decision.

(d) The SBA debarring official and OHA must notify you of their decisions under this section, in writing, using the notice procedures at §§ 145.615 and 145.975.

■ 7. Section 145.935 is further amended by adding a paragraph (b) to read as follows:

§ 145.935 Debarring official.

* * * * *

(b) For SBA, the debarring official for financial assistance programs means the Assistant Administrator for Lender Oversight; for all other programs, the debarring official means the Assistant Administrator for Administration.

■ 8. Section 145.995 is further amended by adding a paragraph (c) to read as follows:

§ 145.995 Principal.

* * * * *

(c) Other examples of individuals who are principals in SBA covered transactions include:

(1) Principal investigators.

(2) Securities brokers and dealers under the section 7(a) Loan, Certified Development Company (CDC) and Small Business Investment Company (SBIC) programs.

(3) Applicant representatives under the section 7(a) Loan, Certified Development Company (CDC), Small Business Investment Company (SBIC), Small Business Development Center (SBDC), and section 7(j) programs.

(4) Providers of professional services under section 7(a) Loan, Certified Development Company (CDC), Small Business Investment Company (SBIC), Small Business Development Center (SBDC), and section 7(j) programs.

(5) Individuals that certify, authenticate or authorize billings.

■ 9. Section 145.1010 is further amended by adding a paragraph (b) to read as follows:

§ 145.1010 Suspending official.

* * * * *

(b) For SBA, the suspending official for financial assistance programs means the Assistant Administrator for Lender Oversight; for all other programs, the suspending official means the Assistant Administrator for Administration.

■ 10. Part 147 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 147—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (NONPROCUREMENT)

Subpart A—Purpose and Coverage

Sec.
147.100 What does this part do?
147.105 Does this part apply to me?
147.110 Are any of my Federal assistance awards exempt from this part?
147.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

147.200 What must I do to comply with this part?
147.205 What must I include in my drug-free workplace statement?
147.210 To whom must I distribute my drug-free workplace statement?
147.215 What must I include in my drug-free awareness program?
147.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
147.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
147.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

147.300 What must I do to comply with this part if I am an individual recipient?
147.301 [Reserved]

Subpart D—Responsibilities of SBA Awarding Officials

147.400 What are my responsibilities as an SBA awarding official?

Subpart E—Violations of This Part and Consequences

147.500 How are violations of this part determined for recipients other than individuals?
147.505 How are violations of this part determined for recipients who are individuals?
147.510 What actions will the Federal Government take against a recipient determined to have violated this part?
147.515 Are there any exceptions to those actions?

Subpart F—Definitions

147.605 Award.
147.610 Controlled substance.
147.615 Conviction.
147.620 Cooperative agreement.
147.625 Criminal drug statute.
147.630 Debarment.
147.635 Drug-free workplace.
147.640 Employee.
147.645 Federal agency or agency.
147.650 Grant.
147.655 Individual.
147.660 Recipient.
147.665 State.
147.670 Suspension.

Authority: 41 U.S.C. 701–707.

■ 11. Part 147 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and the ''SBA'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and the ''SBA'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and the ''SBA Administrator or designee'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and the ''SBA Administrator'' is added in its place wherever it occurs.

■ 12. Section 147.510(c) is further amended by removing ''[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]'' and adding ''13 CFR Part 145'' in its place.

■ 13. Section 147.605(a)(2) is amended by removing ''[Agency specific CFR citation]'' and adding ''13 CFR Part 147'' in its place.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Parts 1265 and 1267

RIN 2700–AC76

FOR FURTHER INFORMATION CONTACT: Paul Brundage, NASA Headquarters, 300 E Street, SW, Washington, DC 20546–0001, (202) 358–0481, e-mail: *paul.d.brundage@nasa.gov.*

List of Subjects

14 CFR Part 1265

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

14 CFR Part 1267

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: July 8, 2003.

Tom Luedtke,

Assistant Administrator for Procurement.

■ For the reasons stated in the common preamble, the National Aeronautics and Space Administration amends 14 CFR chapter V as follows:

■ 1. Part 1265 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1265—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
1265.25 How is this part organized?
1265.50 How is this part written?
1265.75 Do terms in this part have special meanings?

Subpart A—General

1265.100 What does this part do?
1265.105 Does this part apply to me?
1265.110 What is the purpose of the nonprocurement debarment and suspension system?
1265.115 How does an exclusion restrict a person's involvement in covered transactions?
1265.120 May we grant an exception to let an excluded person participate in a covered transaction?
1265.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
1265.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
1265.135 May NASA exclude a person who is not currently participating in a nonprocurement transaction?
1265.140 How do I know if a person is excluded?
1265.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

1265.200 What is a covered transaction?
1265.205 Why is it important to know if a particular transaction is a covered transaction?
1265.210 Which nonprocurement transactions are covered transactions?
1265.215 Which nonprocurement transactions are not covered transactions?
1265.220 Are any procurement contracts included as covered transactions?
1265.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

1265.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
1265.305 May I enter into a covered transaction with an excluded or disqualified person?
1265.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
1265.315 May I use the services of an excluded person as a principal under a covered transaction?
1265.320 Must I verify that principals of my covered transactions are eligible to participate?
1265.325 What happens if I do business with an excluded person in a covered transaction?
1265.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

1265.335 What information must I provide before entering into a covered transaction with NASA?
1265.340 If I disclose unfavorable information required under § 1265.335, will I be prevented from participating in the transaction?
1265.345 What happens if I fail to disclose the information required under § 1265.335?
1265.350 What must I do if I learn of the information required under § 1265.335 after entering into a covered transaction with NASA?

Disclosing Information—Lower Tier Participants

1265.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
1265.360 What happens if I fail to disclose the information required under § 1265.355?
1265.365 What must I do if I learn of information required under § 1265.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of NASA Officials Regarding Transactions

1265.400 May I enter into a transaction with an excluded or disqualified person?
1265.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
1265.410 May I approve a participant's use of the services of an excluded person?
1265.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
1265.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
1265.425 When do I check to see if a person is excluded or disqualified?
1265.430 How do I check to see if a person is excluded or disqualified?
1265.435 What must I require of a primary tier participant?
1265.440 What method do I use to communicate those requirements to participants?
1265.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
1265.450 What action may I take if a primary tier participant fails to disclose the information required under § 1265.335?
1265.455 What may I do if a lower tier participant fails to disclose the information required under § 1265.355 to the next higher tier?

Subpart E—Excluded Parties List System

1265.500 What is the purpose of the Excluded Parties List System (EPLS)?
1265.505 Who uses the EPLS?
1265.510 Who maintains the EPLS?
1265.515 What specific information is in the EPLS?
1265.520 Who places the information into the EPLS?
1265.525 Whom do I ask if I have questions about a person in the EPLS?
1265.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

1265.600 How do suspension and debarment actions start?
1265.605 How does suspension differ from debarment?
1265.610 What procedures does NASA use in suspension and debarment actions?
1265.615 How does NASA notify a person of a suspension and debarment action?
1265.620 Do Federal agencies coordinate suspension and debarment actions?
1265.625 What is the scope of a suspension or debarment action?
1265.630 May NASA impute the conduct of one person to another?
1265.635 May NASA settle a debarment or suspension action?
1265.640 May a settlement include a voluntary exclusion?
1265.645 Do other Federal agencies know if NASA agrees to a voluntary exclusion?

Subpart G—Suspension

1265.700 When may the suspending official issue a suspension?
1265.705 What does the suspending official consider in issuing a suspension?
1265.710 When does a suspension take effect?
1265.715 What notice does the suspending official give me if I am suspended?
1265.720 How may I contest a suspension?
1265.725 How much time do I have to contest a suspension?
1265.730 What information must I provide to the suspending official if I contest a suspension?
1265.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
1265.740 Are suspension proceedings formal?
1265.745 How is fact-finding conducted?
1265.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
1265.755 When will I know whether the suspension is continued or terminated?
1265.760 How long may my suspension last?

Subpart H—Debarment

1265.800 What are the causes for debarment?
1265.805 What notice does the debarring official give me if I am proposed for debarment?
1265.810 When does a debarment take effect?
1265.815 How may I contest a proposed debarment?
1265.820 How much time do I have to contest a proposed debarment?
1265.825 What information must I provide to the debarring official if I contest a proposed debarment?
1265.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
1265.835 Are debarment proceedings formal?
1265.840 How is fact-finding conducted?
1265.845 What does the debarring official consider in deciding whether to debar me?
1265.850 What is the standard of proof in a debarment action?
1265.855 Who has the burden of proof in a debarment action?
1265.860 What factors may influence the debarring official's decision?
1265.865 How long may my debarment last?
1265.870 When do I know if the debarring official debars me?
1265.875 May I ask the debarring official to reconsider a decision to debar me?
1265.880 What factors may influence the debarring official during reconsideration?
1265.885 May the debarring official extend a debarment?

Subpart I—Definitions

1265.900 Adequate evidence.
1265.905 Affiliate.
1265.910 Agency.
1265.915 Agent or representative.
1265.920 Civil judgment.
1265.925 Conviction.
1265.930 Debarment.
1265.935 Debarring official.
1265.940 Disqualified.
1265.945 Excluded or exclusion.
1265.950 Excluded Parties List System.
1265.955 Indictment.
1265.960 Ineligible or ineligibility.
1265.965 Legal proceedings.
1265.970 Nonprocurement transaction.
1265.975 Notice.
1265.980 Participant.
1265.985 Person.
1265.990 Preponderance of the evidence.
1265.995 Principal.
1265.1000 Respondent.
1265.1005 State.
1265.1010 Suspending official.
1265.1015 Suspension.
1265.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 1265—Covered Transactions

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738, 3 CFR, 1973 Comp., p.799; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; 42 U.S.C. 2473(c)(1).

■ 2. Part 1265 is further amended as set forth below.

■ a. ''The [Agency noun]'' is removed and ''NASA'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''NASA'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Assistant Administrator for Procurement'' is added in its place wherever it occurs.

■ 3. Section 1265.440 is added to read as follows:

§ 1265.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

■ 4. Part 1267 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1267—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.

1267.100 What does this part do?
1267.105 Does this part apply to me?
1267.110 Are any of my Federal assistance awards exempt from this part?
1267.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

1267.200 What must I do to comply with this part?
1267.205 What must I include in my drug-free workplace statement?
1267.210 To whom must I distribute my drug-free workplace statement?
1267.215 What must I include in my drug-free awareness program?
1267.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
1267.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
1267.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

1267.300 What must I do to comply with this part if I am an individual recipient?
1267.301 [Reserved]

Subpart D—Responsibilities of NASA Awarding Officials

1267.400 What are my responsibilities as a NASA awarding official?

Subpart E—Violations of This Part and Consequences

1267.500 How are violations of this part determined for recipients other than individuals?
1267.505 How are violations of this part determined for recipients who are individuals?
1267.510 What actions will the Federal Government take against a recipient determined to have violated this part?
1267.515 Are there any exceptions to those actions?

Subpart F—Definitions

1267.605 Award.
1267.610 Controlled substance.
1267.615 Conviction.
1267.620 Cooperative agreement.
1267.625 Criminal drug statute.
1267.630 Debarment.
1267.635 Drug-free workplace.
1267.640 Employee.
1267.645 Federal agency or agency.
1267.650 Grant.
1267.655 Individual.
1267.660 Recipient.
1267.665 State.
1267.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*; 42 U.S.C. 2473c.

■ 5. Part 1267 is further amended as set forth below.

■ a. ''The [Agency noun]'' is removed and ''NASA'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''NASA'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Assistant Administrator for Procurement'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''Assistant Administrator for Procurement'' is added in its place wherever it occurs.

■ 6. Section 1267.510(c) is further amended by removing ''[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]'' and adding ''14 CFR Part 1265'' in its place.

■ 7. Section 1267.605(a)(2) is further amended by removing ''[Agency-specific CFR citation]''and adding ''14 CFR Part 1273'' in its place.

DEPARTMENT OF COMMERCE

15 CFR Parts 26 and 29

[Docket No. 030723184–3184–01]

RIN 0605–AA16

FOR FURTHER INFORMATION CONTACT: Christine Makris, Office of Acquisition Management, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room HCHB 6422, Washington, DC 20230, 202–482–6131, e-mail: *CMakris@doc.gov*.

List of Subjects

15 CFR Part 26

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

15 CFR Part 29

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: July 23, 2003.

Lucia Homick,

Acting Director, Office of Executive Budgeting and Assistance Management.

■ For the reasons stated in the common preamble, the Department of Commerce amends 15 CFR subtitle A, as follows:

■ 1. Part 26 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 26—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

26.25 How is this part organized?
26.50 How is this part written?
26.75 Do terms in this part have special meanings?

Subpart A—General

26.100 What does this part do?
26.105 Does this part apply to me?
26.110 What is the purpose of the nonprocurement debarment and suspension system?
26.115 How does an exclusion restrict a person's involvement in covered transactions?
26.120 May we grant an exception to let an excluded person participate in a covered transaction?
26.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
26.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
26.135 May the Department of Commerce exclude a person who is not currently participating in a nonprocurement transaction?
26.140 How do I know if a person is excluded?
26.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

26.200 What is a covered transaction?
26.205 Why is it important to know if a particular transaction is a covered transaction?
26.210 Which nonprocurement transactions are covered transactions?
26.215 Which nonprocurement transactions are not covered transactions?
26.220 Are any procurement contracts included as covered transactions?
26.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

26.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

26.305 May I enter into a covered transaction with an excluded or disqualified person?
26.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
26.315 May I use the services of an excluded person as a principal under a covered transaction?
26.320 Must I verify that principals of my covered transactions are eligible to participate?
26.325 What happens if I do business with an excluded person in a covered transaction?
26.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

26.3357 What information must I provide before entering into a covered transaction with the Department of Commerce?
26.340 If I disclose unfavorable information required under § 26.335, will I be prevented from participating in the transaction?
26.345 What happens if I fail to disclose the information required under § 26.335?
26.350 What must I do if I learn of the information required under § 26.335 after entering into a covered transaction with the Department of Commerce?

Disclosing Information—Lower Tier Participants

26.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
26.360 What happens if I fail to disclose the information required under § 26.355?
26.365 What must I do if I learn of information required under § 26.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of DoC Officials Regarding Transactions

26.400 May I enter into a transaction with an excluded or disqualified person?
26.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
26.410 May I approve a participant's use of the services of an excluded person?
26.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
26.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
26.425 When do I check to see if a person is excluded or disqualified?
26.430 How do I check to see if a person is excluded or disqualified?
26.435 What must I require of a primary tier participant?
26.440 What method do I use to communicate those requirements to participants?
26.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
26.450 What action may I take if a primary tier participant fails to disclose the information required under § 26.335?
26.455 What may I do if a lower tier participant fails to disclose the information required under § 26.355 to the next higher tier?

Subpart E—Excluded Parties List System

26.500 What is the purpose of the Excluded Parties List System (EPLS)?
26.505 Who uses the EPLS?
26.510 Who maintains the EPLS?
26.515 What specific information is in the EPLS?
26.520 Who places the information into the EPLS?
26.525 Whom do I ask if I have questions about a person in the EPLS?
26.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

26.600 How do suspension and debarment actions start?
26.605 How does suspension differ from debarment?
26.610 What procedures does the Department of Commerce use in suspension and debarment actions?
26.615 How does the Department of Commerce notify a person of a suspension and debarment action?
26.620 Do Federal agencies coordinate suspension and debarment actions?
26.625 What is the scope of a suspension or debarment action?
26.630 May the Department of Commerce impute the conduct of one person to another?
26.635 May the Department of Commerce settle a debarment or suspension action?
26.640 May a settlement include a voluntary exclusion?
26.645 Do other Federal agencies know if the Department of Commerce agrees to a voluntary exclusion?

Subpart G—Suspension

26.700 When may the suspending official issue a suspension?
26.705 What does the suspending official consider in issuing a suspension?
26.710 When does a suspension take effect?
26.715 What notice does the suspending official give me if I am suspended?
26.720 How may I contest a suspension?
26.725 How much time do I have to contest a suspension?
26.730 What information must I provide to the suspending official if I contest a suspension?
26.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
26.740 Are suspension proceedings formal?
26.745 How is fact-finding conducted?
26.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
26.755 When will I know whether the suspension is continued or terminated?
26.760 How long may my suspension last?

Subpart H—Debarment

26.800 What are the causes for debarment?
26.805 What notice does the debarring official give me if I am proposed for debarment?
26.810 When does a debarment take effect?
26.815 How may I contest a proposed debarment?
26.820 How much time do I have to contest a proposed debarment?
26.825 What information must I provide to the Debarring official if I contest a proposed debarment?
26.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
26.835 Are debarment proceedings formal?
26.840 How is fact-finding conducted?
26.845 What does the debarring official consider in deciding whether to debar me?
26.850 What is the standard of proof in a debarment action?
26.855 Who has the burden of proof in a debarment action?
26.860 What factors may influence the debarring official's decision?
26.865 How long may my debarment last?
26.870 When do I know if the debarring official debars me?
26.875 May I ask the debarring official to reconsider a decision to debar me?
26.880 What factors may influence the debarring official during reconsideration?
26.885 May the debarring official extend a debarment?

Subpart I—Definitions

26.900 Adequate evidence.
26.905 Affiliate.
26.910 Agency.
26.915 Agent or representative.
26.920 Civil judgment.
26.925 Conviction.
26.930 Debarment.
26.935 Debarring official.
26.940 Disqualified.
26.945 Excluded or exclusion.
26.950 Excluded Parties List System.
26.955 Indictment.
26.960 Ineligible or ineligibility.
26.965 Legal proceedings.
26.970 Nonprocurement transaction.
26.975 Notice.
26.980 Participant.
26.985 Person.
26.990 Preponderance of the evidence.
26.995 Principal.
26.1000 Respondent.
26.1005 State.
26.1010 Suspending official.
26.1015 Suspension.
26.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 26—Covered Transactions

Authority: 5 U.S.C. 301; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

■ 2. Part 26 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''Department of Commerce'' is added in its place wherever it occurs.
■ b. ''[Agency adjective]'' is removed and ''DoC'' is added in its place wherever it occurs.
■ c. ''[Agency head or designee]'' is removed and ''Secretary of Commerce or designee'' is added in its place wherever it occurs.

■ 3. Section 26.215 is amended as follows:
■ a. Add paragraph (d)(1) and add and reserve paragraph (d)(2).
■ b. Add paragraph (f)(1) and add and reserve paragraph (f)(2).
■ c. Add paragraph (g)(1) and add and reserve paragraph (g)(2).

The additions read as follows:

§ 26.215 Which nonprocurement transactions are not covered transactions?

* * * * *

(d) * * *

(1) For the purposes of the DoC this means:

(i) Fisherman's Contingency Fund.

(ii) [Reserved]

(2) [Reserved]

* * * * *

(f) * * *

(1) For purposes of the DoC this means:

(i) Export Promotion, Trade Information and Counseling, and Trade Policy.

(ii) Geodetic Surveys and Services (Specialized Services).

(iii) Fishery Products Inspection Certification.

(iv) Standard Reference Materials.

(v) Calibration, Measurement and Testing.

(vi) Critically Evaluated Data (Standard Reference Data).

(vii) Phoenix Data System.

(viii) The sale or provision of products, information, and services to the general public.

(2) [Reserved]

(g) * * *

(1) For purposes of the DoC this means:

(i) The Administration of the Antidumping and Countervailing Duty Statutes.

(ii) The Export Trading Company Act Certificate of Review Program.

(iii) Trade Adjustment Assistance Program Certification.

(iv) Foreign Trade Zones Act of 1934, as amended.

(v) Statutory Import Program.

(2) [Reserved]

■ 4. Section 26.220 is amended to add paragraph (c) to read as follows:

§ 26.220 Are any procurement contracts included as covered transactions?

* * * * *

(c) The contract is a subcontract awarded by a participant in a procurement transaction that is covered under paragraph (a) of this section, and the amount of the contract exceeds or is expected to exceed $25,000. This extends the coverage of paragraph (a) of this section to one additional tier of contracts, as shown in the diagram in the Appendix to this part.

■ 5. Section 26.440 is added to read as follows:

§ 26.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

■ 6. Section 26.970 is amended to add paragraphs (a)(12) through (16) to read as follows:

§ 26.970 Nonprocurement transaction

(a) * * *

(12) Joint Project Agreements under 15 U.S.C. 1525.

(13) Cooperative research and development agreements.

(14) Joint statistical agreements.

(15) Patent licenses under 35 U.S.C. 207.

(16) NTIS joint ventures, 15 U.S.C. 3704b.

* * * * *

■ 7. Part 29 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 29—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

29.100 What does this part do?
29.105 Does this part apply to me?
29.110 Are any of my Federal assistance awards exempt from this part?
29.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

29.200 What must I do to comply with this part?
29.205 What must I include in my drug-free workplace statement?
29.210 To whom must I distribute my drug-free workplace statement?
29.215 What must I include in my drug-free awareness program?
29.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
29.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
29.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

29.300 What must I do to comply with this part if I am an individual recipient?
29.301 [Reserved]

Subpart D—Responsibilities of DoC Awarding Officials

29.400 What are my responsibilities as a DoC awarding official?

Subpart E—Violations of This Part and Consequences

29.500 How are violations of this part determined for recipients other than individuals?
29.505 How are violations of this part determined for recipients who are individuals?
29.510 What actions will the Federal Government take against a recipient determined to have violated this part?
29.515 Are there any exceptions to those actions?

Subpart F—Definitions

29.605 Award.
29.610 Controlled substance.
29.615 Conviction.
29.620 Cooperative agreement.
29.625 Criminal drug statute.
29.630 Debarment.
29.635 Drug-free workplace.
29.640 Employee.
29.645 Federal agency or agency.
29.650 Grant.
29.655 Individual.
29.660 Recipient.
29.665 State.
29.670 Suspension.

Authority: 5 U.S.C. 301; 41 U.S.C. 701 *et seq.*

■ 8. Part 29 is further amended as set forth below.
■ a. ''[Agency noun]'' is removed and ''Department of Commerce'' is added in its place wherever it occurs.
■ b. ''[Agency adjective]'' is removed and ''DoC'' is added in its place wherever it occurs.
■ c. ''[Agency head or designee]'' is removed and ''Secretary of Commerce or designee'' is added in its place wherever it occurs.
■ d. ''[Agency head]'' is removed and ''Secretary of Commerce'' is added in its place wherever it occurs.

■ 9. Section 29.510(c) is further amended by removing ''[CFR citation for the Federal agency's regulations implementing Executive Order 12549 and Executive Order 12689]'' and adding ''15 CFR Part 26'' in its place.

■ 10. Section 29.605(a)(2) is further amended by removing ''[Agency-specific CFR citation]'' and adding ''15 CFR Part 24'' in its place.

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 436 and 439

RIN 0960–AE27

FOR FURTHER INFORMATION CONTACT: Phyllis Y. Smith, Grants Management Officer, Office of Acquisition and Grants, Grants Management Team, 1710 Gwynn Oak Ave, Baltimore, MD 21207, (410) 965–9518, e-mail: *phyllis.y.smith@ssa.gov.*

SUPPLEMENTARY INFORMATION: Prior to March 31, 1995, SSA was an operating component of the Department of Health and Human Services (HHS). As a result of Public Law 103–296, the Social Security Administration (SSA) became an independent agency on March 31, 1995. However, pursuant to section 106(b) of that law, the HHS regulations at 45 CFR part 76 dealing with nonprocurement, debarment and suspension, and the requirements for a drug-free workplace have remained applicable to SSA. In order to implement its own set of regulations on these topics, SSA is adopting the common rules on nonprocurement, debarment and suspension, and requirements for a drug-free workplace with one amendment as new parts 436 and 439 in title 20 of the Code of Federal Regulations. HHS regulations at 45 CFR Part 76 will cease to be applicable to SSA on the effective date of these regulations, in accordance with section 106(b) of Pub. L. 103–296.

List of Subjects

20 CFR Part 436

Administrative practice and procedures, Debarment and suspension, Grant programs, and reporting and recordkeeping requirements.

20 CFR Part 439

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: July 15, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons stated in the common preamble, the Social Security Administration amends 20 CFR chapter III, as follows:

■ 1. Part 436 is added to read as set forth in instruction 1 at the end of the common preamble.

PART 436—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

436.25 How is this part organized?
436.50 How is this part written?
436.75 Do terms in this part have special meanings?

Subpart A—General

436.100 What does this part do?
436.105 Does this part apply to me?
436.110 What is the purpose of the nonprocurement debarment and suspension system?
436.115 How does an exclusion restrict a person's involvement in covered transactions?
436.120 May we grant an exception to let an excluded person participate in a covered transaction?
436.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
436.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
436.135 May the SSA exclude a person who is not currently participating in a nonprocurement transaction?
436.140 How do I know if a person is excluded?
436.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

436.200 What is a covered transaction?
436.205 Why is it important to know if a particular transaction is a covered transaction?
436.210 Which nonprocurement transactions are covered transactions?
436.215 Which nonprocurement transactions are not covered transactions?
436.220 Are any procurement contracts included as covered transactions?
436.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

436.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
436.305 May I enter into a covered transaction with an excluded or disqualified person?
436.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
436.315 May I use the services of an excluded person as a principal under a covered transaction?
436.320 Must I verify that principals of my covered transactions are eligible to participate?
436.325 What happens if I do business with an excluded person in a covered transaction?
436.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

436.335 What information must I provide before entering into a covered transaction with the SSA?
436.340 If I disclose unfavorable information required under § 436.335, will I be prevented from participating in the transaction?
436.345 What happens if I fail to disclose the information required under § 436.335?
436.350 What must I do if I learn of information required under § 436.335 after entering into a covered transaction with the SSA?

Disclosing Information—Lower Tier Participants

436.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
436.360 What happens if I fail to disclose the information required under § 436.355?
436.365 What must I do if I learn of information required under § 436.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of SSA Officials Regarding Transactions

436.400 May I enter into a transaction with an excluded or disqualified person?
436.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
436.410 May I approve a participant's use of the services of an excluded person?
436.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
436.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
436.425 When do I check to see if a person is excluded or disqualified?
436.430 How do I check to see if a person is excluded or disqualified?
436.435 What must I require of a primary tier participant?
436.440 What method do I use to communicate those requirements to participants?
436.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
436.450 What action may I take if a primary tier participant fails to disclose the information required under § 436.335?
436.455 What may I do if a lower tier participant fails to disclose the information required under § 436.355 to the next higher tier?

Subpart E—Excluded Parties List System

436.500 What is the purpose of the Excluded Parties List System (EPLS)?
436.505 Who uses the EPLS?
436.510 Who maintains the EPLS?
436.515 What specific information is in the EPLS?
436.520 Who places the information into the EPLS?
436.525 Whom do I ask if I have questions about a person in the EPLS?

436.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

436.600 How do suspension and debarment actions start?
436.605 How does suspension differ from debarment?
436.610 What procedures does the SSA use in suspension and debarment actions?
436.615 How does the SSA notify a person of a suspension and debarment action?
436.620 Do Federal agencies coordinate suspension and debarment actions?
436.625 What is the scope of a suspension or debarment action?
436.630 May the SSA impute the conduct of one person to another?
436.635 May the SSA settle a debarment or suspension action?
436.640 May a settlement include a voluntary exclusion?
436.645 Do other Federal agencies know if the SSA agrees to a voluntary exclusion?

Subpart G—Suspension

436.700 When may the suspending official issue a suspension?
436.705 What does the suspending official consider in issuing a suspension?
436.710 When does a suspension take effect?
436.715 What notice does the suspending official give me if I am suspended?
436.720 How may I contest a suspension?
436.725 How much time do I have to contest a suspension?
436.730 What information must I provide to the suspending official if I contest a suspension?
436.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
436.740 Are suspension proceedings formal?
436.745 How is fact-finding conducted?
436.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
436.755 When will I know whether the suspension is continued or terminated?
436.760 How long may my suspension last?

Subpart H—Debarment

436.800 What are the causes for debarment?
436.805 What notice does the debarring official give me if I am proposed for debarment?
436.810 When does a debarment take effect?
436.815 How may I contest a proposed debarment?
436.820 How much time do I have to contest a proposed debarment?
436.825 What information must I provide to the debarring official if I contest a proposed debarment?
436.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
436.835 Are debarment proceedings formal?
436.840 How is fact-finding conducted?
436.845 What does the debarring official consider in deciding whether to debar me?
436.850 What is the standard of proof in a debarment action?
436.855 Who has the burden of proof in a debarment action?
436.860 What factors may influence the debarring official's decision?
436.865 How long may my debarment last?
436.870 When do I know if the debarring official debars me?
436.875 May I ask the debarring official to reconsider a decision to debar me?
436.880 What factors may influence the debarring official during reconsideration?
436.885 May the debarring official extend a debarment?

Subpart I—Definitions

436.900 Adequate evidence.
436.905 Affiliate.
436.910 Agency.
436.915 Agent or representative.
436.920 Civil judgment.
436.925 Conviction.
436.930 Debarment.
436.935 Debarring official.
436.940 Disqualified.
436.945 Excluded or exclusion.
436.950 Excluded Parties List System.
436.955 Indictment.
436.960 Ineligible or ineligibility.
436.965 Legal proceedings.
436.970 Nonprocurement transaction.
436.975 Notice.
436.980 Participant.
436.985 Person.
436.990 Preponderance of the evidence.
436.995 Principal.
436.1000 Respondent.
436.1005 State.
436.1010 Suspending official.
436.1015 Suspension.
436.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 436—Covered Transactions

Authority: 42 U.S.C. 902(a)(5); Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

■ 2. Part 436 is further amended as follows:

■ a. ''[Agency noun]'' is removed and ''SSA'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''SSA'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''SSA Debarring/Suspension Official'' is added in its place wherever it occurs.

■ 3. Section 436.440 is added to read as follows:

§ 436.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

■ 4. Part 439 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 439—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
439.100 What does this part do?
439.105 Does this part apply to me?
439.110 Are any of my Federal assistance awards exempt from this part?
439.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

439.200 What must I do to comply with this part?
439.205 What must I include in my drug-free workplace statement?
439.210 To whom must I distribute my drug-free workplace statement?
439.215 What must I include in my drug-free awareness program?
439.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
439.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
439.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

439.300 What must I do to comply with this part if I am an individual recipient?
439.301 [Reserved]

Subpart D—Responsibilities of SSA Awarding Officials

439.400 What are my responsibilities as an SSA awarding official?

Subpart E—Violations of This Part and Consequences

439.500 How are violations of this part determined for recipients other than individuals?
439.505 How are violations of this part determined for recipients who are individuals?
439.510 What actions will the Federal Government take against a recipient determined to have violated this part?
439.515 Are there any exceptions to those actions?

Subpart F—Definitions

439.605 Award.
439.610 Controlled substance.
439.615 Conviction.
439.620 Cooperative agreement.
439.625 Criminal drug statute.
439.630 Debarment.
439.635 Drug-free workplace.

439.640 Employee.
439.645 Federal agency or agency.
439.650 Grant.
439.655 Individual.
439.660 Recipient.
439.665 State.
439.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*

■ 5. Part 439 is further amended as follows:

■ a. ''[Agency noun]'' is removed and ''SSA'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''SSA'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''SSA Official or designee'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''the Commissioner of SSA'' is added in its place wherever it occurs.

■ 6. Section 439.510(c) is further amended by removing ''[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]''and adding ''20 CFR Part 436'' in its place.

■ 7. Section 439.605(a)(2) is further amended by removing ''[Agency-specific CFR citation]''and adding ''20 CFR Part 439'' in its place.

OFFICE OF NATIONAL DRUG CONTROL POLICY

21 CFR Parts 1404 and 1405

RIN 3201–ZA03

FOR FURTHER INFORMATION CONTACT: ONDCP, Attn: Daniel R. Petersen, Washington, DC 20503, (202) 395–6745, *Daniel_R._Petersen@ondcp.eop.gov.*

List of Subjects

21 CFR Part 1404

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

21 CFR Part 1405

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

John Walters,

Director.

■ For the reason stated in the common preamble, the Office of National Drug Control Policy amends 21 CFR chapter III, as follows.

■ 1. Part 1404 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1404—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
1404.25 How is this part organized?
1404.50 How is this part written?
1404.75 Do terms in this part have special meanings?

Subpart A—General

1404.100 What does this part do?
1404.105 Does this part apply to me?
1404.110 What is the purpose of the nonprocurement debarment and suspension system?
1404.115 How does an exclusion restrict a person's involvement in covered transactions?
1404.120 May we grant an exception to let an excluded person participate in a covered transaction?
1404.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
1404.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
1404.135 May the Office of National Drug Control Policy exclude a person who is not currently participating in a nonprocurement transaction?
1404.140 How do I know if a person is excluded?
1404.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

1404.200 What is a covered transaction?
1404.205 Why is it important to know if a particular transaction is a covered transaction?
1404.210 Which nonprocurement transactions are covered transactions?
1404.215 Which nonprocurement transactions are not covered transactions?
1404.220 Are any procurement contracts included as covered transactions?
1404.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

1404.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
1404.305 May I enter into a covered transaction with an excluded or disqualified person?
1404.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
1404.315 May I use the services of an excluded person as a principal under a covered transaction?
1404.320 Must I verify that principals of my covered transactions are eligible to participate?
1404.325 What happens if I do business with an excluded person in a covered transaction?
1404.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

1404.335 What information must I provide before entering into a covered transaction with the Office of National Drug Control Policy?
1404.340 If I disclose unfavorable information required under § 1404.335, will I be prevented from participating in the transaction?
1404.345 What happens if I fail to disclose the information required under § 1404.335?
1404.350 What must I do if I learn of the information required under § 1404.335 after entering into a covered transaction with the Office of National Drug Control Policy?

Disclosing Information—Lower Tier Participants

1404.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
1404.360 What happens if I fail to disclose the information required under § 1404.355?
1404.365 What must I do if I learn of information required under § 1404.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Office of National Drug Control Policy Officials Regarding Transactions

1404.400 May I enter into a transaction with an excluded or disqualified person?
1404.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
1404.410 May I approve a participant's use of the services of an excluded person?
1404.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
1404.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
1404.425 When do I check to see if a person is excluded or disqualified?
1404.430 How do I check to see if a person is excluded or disqualified?
1404.435 What must I require of a primary tier participant?
1404.440 What method do I use to communicate those requirements to participants?
1404.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
1404.450 What action may I take if a primary tier participant fails to disclose the information required under § 1404.335?
1404.455 What may I do if a lower tier participant fails to disclose the

information required under § 1404.355 to the next higher tier?

Subpart E—Excluded Parties List System

1404.500 What is the purpose of the Excluded Parties List System (EPLS)?
1404.505 Who uses the EPLS?
1404.510 Who maintains the EPLS?
1404.515 What specific information is in the EPLS?
1404.520 Who places the information into the EPLS?
1404.525 Whom do I ask if I have questions about a person in the EPLS?
1404.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

1404.600 How do suspension and debarment actions start?
1404.605 How does suspension differ from debarment?
1404.610 What procedures does the Office of National Drug Control Policy use in suspension and debarment actions?
1404.615 How does the Office of National Drug Control Policy notify a person of a suspension and debarment action?
1404.620 Do Federal agencies coordinate suspension and debarment actions?
1404.625 What is the scope of a suspension or debarment action?
1404.630 May the Office of National Drug Control Policy impute the conduct of one person to another?
1404.635 May the Office of National Drug Control Policy settle a debarment or suspension action?
1404.640 May a settlement include a voluntary exclusion?
1404.645 Do other Federal agencies know if the Office of National Drug Control Policy agrees to a voluntary exclusion?

Subpart G—Suspension

1404.700 When may the suspending official issue a suspension?
1404.705 What does the suspending official consider in issuing a suspension?
1404.710 When does a suspension take effect?
1404.715 What notice does the suspending official give me if I am suspended?
1404.720 How may I contest a suspension?
1404.725 How much time do I have to contest a suspension?
1404.730 What information must I provide to the suspending official if I contest a suspension?
1404.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
1404.740 Are suspension proceedings formal?
1404.745 How is fact-finding conducted?
1404.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
1404.755 When will I know whether the suspension is continued or terminated?
1404.760 How long may my suspension last?

Subpart H—Debarment

1404.800 What are the causes for debarment?
1404.805 What notice does the debarring official give me if I am proposed for debarment?
1404.810 When does a debarment take effect?
1404.815 How may I contest a proposed debarment?
1404.820 How much time do I have to contest a proposed debarment?
1404.825 What information must I provide to the debarring official if I contest a proposed debarment?
1404.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
1404.835 Are debarment proceedings formal?
1404.840 How is fact-finding conducted?
1404.845 What does the debarring official consider in deciding whether to debar me?
1404.850 What is the standard of proof in a debarment action?
1404.855 Who has the burden of proof in a debarment action?
1404.860 What factors may influence the debarring official's decision?
1404.865 How long may my debarment last?
1404.870 When do I know if the debarring official debars me?
1404.875 May I ask the debarring official to reconsider a decision to debar me?
1404.880 What factors may influence the debarring official during reconsideration?
1404.885 May the debarring official extend a debarment?

Subpart I—Definitions

1404.900 Adequate evidence.
1404.905 Affiliate.
1404.910 Agency.
1404.915 Agent or representative.
1404.920 Civil judgment.
1404.925 Conviction.
1404.930 Debarment.
1404.935 Debarring official.
1404.940 Disqualified.
1404.945 Excluded or exclusion.
1404.950 Excluded Parties List System.
1404.955 Indictment.
1404.960 Ineligible or ineligibility.
1404.965 Legal proceedings.
1404.970 Nonprocurement transaction.
1404.975 Notice.
1404.980 Participant.
1404.985 Person.
1404.990 Preponderance of the evidence.
1404.995 Principal.
1404.1000 Respondent.
1404.1005 State.
1404.1010 Suspending official.
1404.1015 Suspension.
1404.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 1404—Covered Transactions

Authority: E.O. 12549 3 CFR 1986 Comp., p. 189; E.O. 12689 3 CFR 1989 Comp., p. 235; sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 21 U.S.C. 1701.

■ 2. Part 1404 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''Office of National Drug Control Policy'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''Office of National Drug Control Policy'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Director of National Drug Control Policy'' is added in its place wherever it occurs.

■ 3. Section 1404.440 is added to read as follows:

§ 1404.440 What method do I use to communicate those requirements to participants?

You must obtain certifications from participants that they will comply with subpart C of this part and that they will obtain similar certifications from lower-tier participants.

■ 4. Part 1405 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1405—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

1405.100 What does this part do?
1405.105 Does this part apply to me?
1405.110 Are any of my Federal assistance awards exempt from this part?
1405.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

1405.200 What must I do to comply with this part?
1405.205 What must I include in my drug-free workplace statement?
1405.210 To whom must I distribute my drug-free workplace statement?
1405.215 What must I include in my drug-free awareness program?
1405.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
1405.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
1405.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

1405.300 What must I do to comply with this part if I am an individual recipient?
1405.301 [Reserved]

Subpart D—Responsibilities of Office of National Drug Control Policy Awarding Officials

1405.400 What are my responsibilities as an Office of National Drug Control Policy awarding official?

Subpart E—Violations of This Part and Consequences

1405.500 How are violations of this part determined for recipients other than individuals?
1405.505 How are violations of this part determined for recipients who are individuals?
1405.510 What actions will the Federal Government take against a recipient determined to have violated this part?
1405.515 Are there exceptions to those actions?

Subpart F—Definitions

1405.605 Award.
1405.610 Controlled substance.
1405.615 Conviction.
1405.620 Cooperative agreement.
1405.625 Criminal drug statute.
1405.630 Debarment.
1405.635 Drug-free workplace.
1405.640 Employee.
1405.645 Federal agency or agency.
1405.650 Grant.
1405.655 Individual.
1405.660 Recipient.
1405.665 State.
1405.670 Suspension.

Authority: 21 U.S.C. 1701; 41 U.S.C. 701, *et seq.*

■ 5. Part 1405 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''Office of National Drug Control Policy'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''Office of National Drug Control Policy'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Director of National Drug Control Policy'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''Director of National Drug Control Policy'' is added in its place wherever it occurs.

■ 6. Section 1405.510 (c) is further amended by removing ''[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]'' and adding ''21 CFR Part 1404'' in its place.

■ 7. Section 1405.605 (a) (2) is further amended by removing ''[Agency-specific CFR citation]'' and adding ''21 CFR Part 1403'' in its place.

DEPARTMENT OF STATE

22 CFR Parts 133 and 137

RIN 1400–AB83

FOR FURTHER INFORMATION CONTACT: Susan Catington, Department Competition Advocate, Policy Division, Office of the Procurement Executive, U.S. Department of State, Washington, DC 20522, (703) 516–1693.

List of Subjects

22 CFR Part 133

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

22 CFR Part 137

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

Dated: June 17, 2003.

Georgia K. Hubert,

Acting Procurement Executive, Department of State.

■ For the reasons stated in the common preamble, the Department of State amends 22 CFR chapter I, as follows:

■ 1. Part 133 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 133—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

133.100 What does this part do?
133.105 Does this part apply to me?
133.110 Are any of my Federal assistance awards exempt from this part?
133.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

133.200 What must I do to comply with this part?
133.205 What must I include in my drug-free workplace statement?
133.210 To whom must I distribute my drug-free workplace statement?
133.215 What must I include in my drug-free awareness program?
133.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
133.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
133.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

133.300 What must I do to comply with this part if I am an individual recipient?
133.301 [Reserved]

Subpart D—Responsibilities of Department of State Awarding Officials

133.400 What are my responsibilities as a Department of State awarding official?

Subpart E—Violations of This Part and Consequences

133.500 How are violations of this part determined for recipients other than individuals?
133.505 How are violations of this part determined for recipients who are individuals?
133.510 What actions will the Federal Government take against a recipient determined to have violated this part?
133.515 Are there any exceptions to those actions?

Subpart F—Definitions

133.605 Award.
133.610 Controlled substance.
133.615 Conviction.
133.620 Cooperative agreement.
133.625 Criminal drug statute.
133.630 Debarment.
133.635 Drug-free workplace.
133.640 Employee.
133.645 Federal agency or agency.
133.650 Grant.
133.655 Individual.
133.660 Recipient.
133.665 State.
133.670 Suspension.

Authority: 22 U.S.C. 2658; 41 U.S.C. 701, *et seq.*

■ 2. Part 133 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''Department of State'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''Department of State'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Procurement Executive'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''Procurement Executive'' is added in its place wherever it occurs.

■ 3. Section 133.510(c) is further amended by removing ''[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]'' and adding ''22 CFR Part 137'' in its place.

■ 4. Section 133.605(a)(2) is further amended by removing ''[Agency-specific CFR citation]'' and adding ''22 CFR Part 135'' in its place.

■ 5. Part 137 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 137—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
137.25 How is this part organized?
137.50 How is this part written?
137.75 Do terms in this part have special meanings?

Subpart A—General

137.100 What does this part do?
137.105 Does this part apply to me?
137.110 What is the purpose of the nonprocurement debarment and suspension system?
137.115 How does an exclusion restrict a person's involvement in covered transactions?

137.120 May we grant an exception to let an excluded person participate in a covered transaction?
137.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
137.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
137.135 May the Department of State exclude a person who is not currently participating in a nonprocurement transaction?
137.140 How do I know if a person is excluded?
137.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

137.200 What is a covered transaction?
137.205 Why is it important to know if a particular transaction is a covered transaction?
137.210 Which nonprocurement transactions are covered transactions?
137.215 Which nonprocurement transactions are not covered transactions?
137.220 Are any procurement contracts included as covered transactions?
137.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

137.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
137.305 May I enter into a covered transaction with an excluded or disqualified person?
137.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
137.315 May I use the services of an excluded person as a principal under a covered transaction?
137.320 Must I verify that principals of my covered transactions are eligible to participate?
137.325 What happens if I do business with an excluded person in a covered transaction?
137.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

137.335 What information must I provide before entering into a covered transaction with the Department of State?
137.340 If I disclose unfavorable information required under § 137.335, will I be prevented from participating in the transaction?
137.345 What happens if I fail to disclose the information required under § 137.335?
137.350 What must I do if I learn of the information required under § 137.335 after entering into a covered transaction with the Department of State?

Disclosing Information—Lower Tier Participants

137.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
137.360 What happens if I fail to disclose the information required under § 137.355?
137.365 What must I do if I learn of information required under § 137.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Department of State Officials Regarding Transactions

137.400 May I enter into a transaction with an excluded or disqualified person?
137.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
137.410 May I approve a participant's use of the services of an excluded person?
137.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
137.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
137.425 When do I check to see if a person is excluded or disqualified?
137.430 How do I check to see if a person is excluded or disqualified?
137.435 What must I require of a primary tier participant?
137.440 What method do I use to communicate those requirements to participants?
137.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
137.450 What action may I take if a primary tier participant fails to disclose the information required under § 137.335?
137.455 What may I do if a lower tier participant fails to disclose the information required under § 137.355 to the next higher tier?

Subpart E—Excluded Parties List System

137.500 What is the purpose of the Excluded Parties List System?
137.505 Who uses the EPLS?
137.510 Who maintains the EPLS?
137.515 What specific information is in the EPLS?
137.520 Who places the information into the EPLS?
137.525 Whom do I ask if I have questions about a person in the EPLS?
137.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

137.600 How do suspension and debarment actions start?
137.605 How does suspension differ from debarment?
137.610 What procedures does the Department of State use in suspension and debarment actions?
137.615 How does the Department of State notify a person of a suspension and debarment action?
137.620 Do Federal agencies coordinate suspension and debarment actions?
137.625 What is the scope of a suspension or debarment action?
137.630 May the Department of State impute the conduct of one person to another?
137.635 May the Department of State settle a debarment or suspension action?
137.640 May a settlement include a voluntary exclusion?
137.645 Do other Federal agencies know if the Department of State agrees to a voluntary exclusion?

Subpart G—Suspension

137.700 When may the suspending official issue a suspension?
137.705 What does the suspending official consider in issuing a suspension?
137.710 When does a suspension take effect?
137.715 What notice does the suspending official give me if I am suspended?
137.720 How may I contest a suspension?
137.725 How much time do I have to contest a suspension?
137.730 What information must I provide to the suspending official if I contest a suspension?
137.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
137.740 Are suspension proceedings formal?
137.745 How is fact-finding conducted?
137.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
137.755 When will I know whether the suspension is continued or terminated?
137.760 How long may my suspension last?

Subpart H—Debarment

137.800 What are the causes for debarment?
137.805 What notice does the debarring official give me if I am proposed for debarment?
137.810 When does a debarment take effect?
137.815 How may I contest a proposed debarment?
137.820 How much time do I have to contest a proposed debarment?
137.825 What information must I provide to the debarring official if I contest a proposed debarment?
137.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
137.835 Are debarment proceedings formal?
137.840 How is fact-finding conducted?
137.845 What does the debarring official consider in deciding whether to debar me?
137.850 What is the standard of proof in a debarment action?
137.855 Who has the burden of proof in a debarment action?
137.860 What factors may influence the debarring official's decision?
137.865 How long may my debarment last?

137.870 When do I know if the debarring official debars me?
137.875 May I ask the debarring official to reconsider a decision to debar me?
137.880 What factors may influence the debarring official during reconsideration?
137.885 May the debarring official extend a debarment?

Subpart I—Definitions

137.900 Adequate evidence.
137.905 Affiliate.
137.910 Agency.
137.915 Agent or representative.
137.920 Civil judgment.
137.925 Conviction.
137.930 Debarment.
137.935 Debarring official.
137.940 Disqualified.
137.945 Excluded or exclusion.
137.950 Excluded Parties List System.
137.955 Indictment.
137.960 Ineligible or ineligibility.
137.965 Legal proceedings.
137.970 Nonprocurement transaction.
137.975 Notice.
137.980 Participant.
137.985 Person.
137.990 Preponderance of the evidence.
137.995 Principal.
137.1000 Respondent.
137.1005 State.
137.1010 Suspending official.
137.1015 Suspension.
137.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 137—Covered Transactions

Authority: 22 U.S.C. 2658; sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549, 3 CFR 1986 Comp., p.189; E.O. 12689, 3 CFR 1989 Comp., p. 235.

■ 6. Part 137 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''Department of State'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''Department of State'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Procurement Executive'' is added in its place wherever it occurs.

■ 7. Section 137.440 is added to read as follows:

§ 137.440 What method do I use to communicate those requirements to participants?

To communicate the requirement to participants, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Parts 208 and 210

RIN 0412–AA47

FOR FURTHER INFORMATION CONTACT: Raquel Powell, M/OP/POL, 1300 Pennsylvania Avenue, NW., Washington, DC 20523–7801, (202) 712–0778.

List of Subjects

22 CFR Part 208

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

22 CFR Part 210

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: July 15, 2003.

Timothy T. Beans,

Director, Office of Procurement.

■ For the reason stated in the common preamble, the Agency for International Development amends 22 CFR Chapter II, as follows:

■ 1. Part 208 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 208—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
208.25 How is this part organized?
208.50 How is this part written?
208.75 Do terms in this part have special meanings?

Subpart A—General

208.100 What does this part do?
208.105 Does this part apply to me?
208.110 What is the purpose of the nonprocurement debarment and suspension systems?
208.115 How does an exclusion restrict a person's involvement in covered transactions?
208.120 May we grant an exception to let an excluded person participate in a covered transaction?
208.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
208.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
208.135 May the U.S. Agency for International Development exclude a person who is not currently participating in a nonprocurement transaction?
208.140 How do I know if a person is excluded?
208.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

208.200 What is a covered transaction?
208.205 Why is it important to know if a particular transaction is a covered transaction?
208.210 Which nonprocurement transactions are covered transactions?
208.215 Which nonprocurement transactions are not covered transactions?
208.220 Are any procurement contracts included as covered transactions?
208.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

208.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
208.305 May I enter into a covered transaction with an excluded or disqualified person?
208.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
208.315 May I use the services of an excluded person as a principal under a covered transaction?
208.320 Must I verify that principals of my covered transactions are eligible to participate?
208.325 What happens if I do business with an excluded person in a covered transaction?
208.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

208.335 What information must I provide before entering into a covered transaction with the U.S. Agency for International Development?
208.340 If I disclose unfavorable information required under § 208.335, will I be prevented from participating in the transaction?
208.345 What happens if I fail to disclose the information required under § 208.335?
208.350 What must I do if I learn of the information required under § 208.335 after entering into a covered transaction with the U.S. Agency for International Development?

Disclosing Information—Lower Tier Participants

208.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
208.360 What happens if I fail to disclose the information required under § 208.355?
208.365 What must I do if I learn of information required under § 208.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of USAID Officials Regarding Transactions

208.400 May I enter into a transaction with an excluded or disqualified person?
208.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
208.410 May I approve a participant's use of the services of an excluded person?
208.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
208.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
208.425 When do I check to see if a person is excluded or disqualified?
208.430 How do I check to see if a person is excluded or disqualified?
208.435 What must I require of a primary tier participant?
208.440 What method do I use to communicate those requirements to participants?
208.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
208.450 What action may I take if a primary tier participant fails to disclose the information required under § 208.335?
208.455 What may I do if a lower tier participant fails to disclose the information required under § 208.355 to the next higher tier?

Subpart E—Excluded Parties List System

208.500 What is the purpose of the Excluded Parties List System (EPLS)?
208.505 Who uses the EPLS?
208.510 Who maintains the EPLS?
208.515 What specific information is in the EPLS?
208.520 Who places the information into the EPLS?
208.525 Whom do I ask if I have questions about a person in the EPLS?
208.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

208.600 How do suspension and debarment actions start?
208.605 How does suspension differ from debarment?
208.610 What procedures does the U.S. Agency for International Development use in suspension and debarment actions?
208.615 How does the U.S. Agency for International Development notify a person of a suspension and debarment action?
208.620 Do Federal agencies coordinate suspension and debarment actions?
208.625 What is the scope of a suspension or debarment action?
208.630 May the U.S. Agency for International Development impute the conduct of one person to another?
208.635 May the U.S. Agency for International Development settle a debarment or suspension action?
208.640 May a settlement include a voluntary exclusion?
208.645 Do other Federal agencies know if the U.S. Agency for International Development agrees to a voluntary exclusion?

Subpart G—Suspension

208.700 When may the suspending official issue a suspension?
208.705 What does the suspending official consider in issuing a suspension?
208.710 When does a suspension take effect?
208.715 What notice does the suspending official give me if I am suspended?
208.720 How may I contest a suspension?
208.725 How much time do I have to contest a suspension?
208.730 What information must I provide to the suspending official if I contest a suspension?
208.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
208.740 Are suspension proceedings formal?
208.745 How is fact-finding conducted?
208.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
208.755 When will I know whether the suspension is continued or terminated?
208.760 How long may my suspension last?

Subpart H—Debarment

208.800 What are the causes for debarment?
208.805 What notice does the debarring official give me if I am proposed for debarment?
208.810 When does a debarment take effect?
208.815 How may I contest a proposed debarment?
208.820 How much time do I have to contest a proposed debarment?
208.825 What information must I provide to the debarring official if I contest a proposed debarment?
208.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
208.835 Are debarment proceedings formal?
208.840 How is fact-finding conducted?
208.845 What does the debarring official consider in deciding whether to debar me?
208.850 What is the standard of proof in a debarment action?
208.855 Who has the burden of proof in a debarment action?
208.860 What factors may influence the debarring official's decision?
208.865 How long may my debarment last?
208.870 When do I know if the debarring official debars me?
208.875 May I ask the debarring official to reconsider a decision to debar me?
208.880 What factors may influence the debarring official during reconsideration?
208.885 May the debarring official extend a debarment?

Subpart I—Definitions

208.900 Adequate evidence.
208.905 Affiliate.
208.910 Agency.
208.915 Agent or representative.
208.920 Civil judgment
208.925 Conviction.
208.930 Debarment.
208.935 Debarring official.
208.940 Disqualified.
208.945 Excluded or exclusion.
208.950 Excluded Parties List System.
208.955 Indictment.
208.960 Ineligible or ineligibility.
208.965 Legal proceedings.
208.970 Nonprocurement transaction.
208.975 Notice.
208.980 Participant.
208.985 Person.
208.990 Preponderance of the evidence.
208.995 Principal.
208.1000 Respondent.
208.1005 State.
208.1010 Suspending official.
208.1015 Suspension.
208.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 208—Covered Transactions

Authority: E.O. 12163, 3 CFR 1979 Comp., p. 435; E.O. 12549 3 CFR 1986 Comp., p. 189; E.O. 12698, 3 CFR 1989 Comp., p. 235; sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended.

■ 2. Part 208 is further amended as set forth below.

■ a. ''[Agency Noun]'' is removed and ''U.S. Agency for International Development'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''USAID'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Director, Office of Procurement'' is added in its place wherever it occurs.

■ 3. Section 208.440 is added to read as follows:

§ 208.440 What method do I use to communicate those requirements to participants?

To communicate the requirements in § 208.35, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

■ 4. Section 208.935 is further amended by adding paragraph (b) to read as follows:

§ 208.935 Debarring official.

* * * * *

(b) The U.S. Agency for International Development's debarring official is the Director of the Office of Procurement.

■ 5. Section 208.1010 is further amended by adding paragraph (b) to read as follows:

§ 208.1010 Suspending official.

* * * * *

(b) The U.S. Agency for International Development's suspending official is the Director of the Office of Procurement.

■ 6. Part 210 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 210—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
210.100 What does this part do?
210.105 Does this part apply to me?
210.110 Are any of my Federal assistance awards exempt from this part?
210.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

210.200 What must I do to comply with this part?
210.205 What must I include in my drug-free workplace statement?
210.210 To whom must I distribute my drug-free workplace statement?
210.215 What must I include in my drug-free awareness program?
210.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
210.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
210.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

210.300 What must I do to comply with this part if I am an individual recipient?
210.301 [Reserved]

Subpart D—Responsibilities of USAID Awarding Officials

210.400 What are my responsibilities as a USAID awarding official?

Subpart E—Violations of This Part and Consequences

210.500 How are violations of this part determined for recipients other than individuals?
210.505 How are violations of this part determined for recipients who are individuals?
210.510 What actions will the Federal Government take against a recipient determined to have violated this part?
210.515 Are there any provisions for exceptions to those actions?

Subpart F—Definitions

210.605 Award.
210.610 Controlled substance.
210.615 Conviction.
210.620 Cooperative agreement.
210.625 Criminal drug statute.
210.630 Debarment 210.635 Drug-free workplace.
210.640 Employee.
210.645 Federal agency or agency.
210.650 Grant.
210.655 Individual.
210.660 Recipient.
210.665 State.
210.670 Suspension.

Authority: 41 U.S.C. 701, *et seq.*; sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, 3 CFR 1979 Comp., p. 435.

■ 7. Part 210 is further amended as set forth below.

■ a. ''[Agency Noun]'' is removed and ''U.S. Agency for International Development'' is added in its place wherever it occurs.

■ b. ''[Agency Adjective]'' is removed and ''USAID'' is added in its place wherever it occurs.

■ c. ''[Agency Head or Designee]'' is removed and ''Director of the Office of Procurement'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''USAID Administrator or designee'' is added in its place wherever it occurs.

■ 8. Section 210.510(c) is further amended by removing ''[CFR citation for the Federal Agency's regulation implementing Executive Order 12549 and Executive Order 12689]'' and adding ''22 CFR Part 208'' in its place.

■ 9. Section 210.605 is further amended by adding a paragraph (c) to read as follows:

§ 210.605 Award

* * * * *

(c) Notwithstanding paragraph (a)(2) of this section, this paragraph is not applicable to AID.

PEACE CORPS

22 CFR Parts 310 and 312

RIN 0420–AA17

FOR FURTHER INFORMATION CONTACT: Suzanne Glasow, Associate General Counsel, Office of the General Counsel, Peace Corps, 1111 20th Street, NW., Washington, DC 20526, (202) 692–2157.

List of Subjects

22 CFR Part 310

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Technical assistance.

22 CFR Part 312

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: July 24, 2003.

Keith A. Vance,

Director, Office of Administrative Services, Peace Corps.

■ For the reasons stated in the common preamble, the Peace Corps amends 22 CFR chapter III, as follows:

■ 1. Part 310 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 310—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT).

Sec.
310.25 How is this part organized?
310.50 How is this part written?
310.75 Do terms in this part have special meanings?

Subpart A—General

310.100 What does this part do?
310.105 Does this part apply to me?
310.110 What is the purpose of the nonprocurement debarment and suspension system?
310.115 How does an exclusion restrict a person's involvement in covered transactions?
310.120 May we grant an exception to let an excluded person participate in a covered transaction?
310.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
310.130 Does exclusion under the federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
310.135 May the Peace Corps exclude a person who is not currently participating in a nonprocurement transaction?
310.140 How do I know if a person is excluded?
310.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

310.200 What is a covered transaction?
310.205 Why is it important to know if a particular transaction is a covered transaction?
310.210 Which nonprocurement transactions are covered transactions?
310.215 Which nonprocurement transactions are not covered transactions?
310.220 Are any procurement contracts included as covered transactions?
310.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

310.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
310.305 May I enter into a covered transaction with an excluded or disqualified person?
310.310 What must I do if a federal agency excludes a person with whom I am already doing business in a covered transaction?
310.315 May I use the services of an excluded person as a principal under a covered transaction?
310.320 Must I verify that principals of my covered transactions are eligible to participate?
310.325 What happens if I do business with an excluded person in a covered transaction?
310.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

310.335 What information must I provide before entering into a covered transaction with the Peace Corps?
310.340 If I disclose unfavorable information required under § 310.335, will I be prevented from participating in the transaction?
310.345 What happens if I fail to disclose the information required under § 310.335?
310.350 What must I do if I learn of the information required under § 310.335 after entering into a covered transaction with the Peace Corps?

Disclosing Information—Lower Tier Participants

310.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
310.360 What happens if I fail to disclose the information required under § 310.355?
310.365 What must I do if I learn of information required under § 310.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Peace Corps Officials Regarding Transactions

310.400 May I enter into a transaction with an excluded or disqualified person?
310.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
310.410 May I approve a participant's use of the services of an excluded person?
310.415 What must I do if a federal agency excludes the participant or a principal after I enter into a covered transaction?
310.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
310.425 When do I check to see if a person is excluded or disqualified?
310.430 How do I check to see if a person is excluded or disqualified?
310.435 What must I require of a primary tier participant?
310.440 What method do I use to communicate those requirements to participants?
310.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
310.450 What action may I take if a primary tier participant fails to disclose the information required under § 310.335?
310.455 What may I do if a lower tier participant fails to disclose the information required under § 310.355 to the next higher tier?

Subpart E—Excluded Parties List System

310.500 What is the purpose of the Excluded Parties List System (EPLS)?
310.505 Who uses the EPLS?
310.510 Who maintains the EPLS?
310.515 What specific information is in the EPLS?
310.520 Who places the information into the EPLS?
310.525 Whom do I ask if I have questions about a person in the EPLS?
310.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

310.600 How do suspension and debarment actions start?
310.605 How does suspension differ from debarment?
310.610 What procedures does the Peace Corps use in suspension and debarment actions?
310.615 How does the Peace Corps notify a person of a suspension and debarment action?
310.620 Do federal agencies coordinate suspension and debarment actions?
310.625 What is the scope of a suspension or debarment action?
310.630 May the Peace Corps impute the conduct of one person to another?
310.635 May the Peace Corps settle a debarment or suspension action?
310.640 May a settlement include a voluntary exclusion?
310.645 Do other federal agencies know if the Peace Corps agrees to a voluntary exclusion?

Subpart G—Suspension

310.700 When may the suspending official issue a suspension?
310.705 What does the suspending official consider in issuing a suspension?
310.710 When does a suspension take effect?
310.715 What notice does the suspending official give me if I am suspended?
310.720 How may I contest a suspension?
310.725 How much time do I have to contest a suspension?
310.730 What information must I provide to the suspending official if I contest a suspension?
310.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
310.740 Are suspension proceedings formal?
310.745 How is fact-finding conducted?
310.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
310.755 When will I know whether the suspension is continued or terminated?
310.760 How long may my suspension last?

Subpart H—Debarment

310.800 What are the causes for debarment?
310.805 What notice does the debarring official give me if I am proposed for debarment?
310.810 When does a debarment take effect?
310.815 How may I contest a proposed debarment?
310.820 How much time do I have to contest a proposed debarment?
310.825 What information must I provide to the debarring official if I contest a proposed debarment?
310.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
310.835 Are debarment proceedings formal?
310.840 How is fact-finding conducted?
310.845 What does the debarring official consider in deciding whether to debar me?
310.850 What is the standard of proof in a debarment action?
310.855 Who has the burden of proof in a debarment action?
310.860 What factors may influence the debarring official's decision?
310.865 How long may my debarment last?
310.870 When do I know if the debarring official debars me?
310.875 May I ask the debarring official to reconsider a decision to debar me?
310.880 What factors may influence the debarring official during reconsideration?
310.885 May the debarring official extend a debarment?

Subpart I—Definitions

310.900 Adequate evidence.
310.905 Affiliate.
310.910 Agency.
310.915 Agent or representative.
310.920 Civil judgment.
310.925 Conviction.
310.930 Debarment.
310.935 Debarring official.
310.940 Disqualified.
310.945 Excluded or exclusion.
310.950 Excluded Parties List System.
310.955 Indictment.
310.960 Ineligible or ineligibility.
310.965 Legal proceedings.
310.970 Nonprocurement transaction.
310.975 Notice.
310.980 Participant.
310.985 Person.
310.990 Preponderance of the evidence.
310.995 Principal.
310.100 Respondent.
310.1005 State.
310.1010 Suspending official.
310.1015 Suspension.
310.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—Reserved

Appendix to Part 310—Covered Transactions

Authority: 22 U.S.C. 2503; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

■ 2. Part 310 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''Peace Corps'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''Peace Corps'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Peace Corps Director or designee ''is added in its place wherever it occurs.

■ 3. Section 310.440 is added to read as follows:

§ 310.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

■ 4. Part 312 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 312—GOVERNMENTWIDE REQUIREMENTS FOR DRUG—FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
312.100 What does this part do?
312.105 Does this part apply to me?
312.110 Are any of my federal assistance awards exempt from this part?
312.115 Does this part affect the federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

312.200 What must I do to comply with this part?
312.205 What must I include in my drug-free workplace statement?
312.210 To whom must I distribute my drug-free workplace statement?
312.215 What must I include in my drug-free awareness program?
312.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
312.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
312.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

312.300 What must I do to comply with this part if I am an individual recipient?
312.301 [Reserved]

Subpart D—Responsibilities of Peace Corps Awarding Officials

312.400 What are my responsibilities as a Peace Corps awarding official?

Subpart E—Violations of This Part and Consequences

312.500 How are violations of this part determined for recipients other than individuals?
312.505 How are violations of this part determined for recipients who are individuals?
312.510 What actions will the Federal Government take against a recipient determined to have violated this part?
312.515 Are there any exceptions to those actions?

Subpart F—Definitions

312.605 Award.
312.610 Controlled substance.
312.615 Conviction.
312.620 Cooperative agreement.
312.625 Criminal drug statute.
312.630 Debarment.
312.635 Drug-free workplace.
312.640 Employee.
312.645 Federal agency or agency.
312.650 Grant.
312.655 Individual.
312.660 Recipient.
312.665 State.
312.670 Suspension.

Authority: 22 U.S.C. 2503 (b); 41 U.S.C. 701 *et seq.*

■ 5. Part 312 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''Peace Corps'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''Peace Corps'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Peace Corps Director or designee'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''Peace Corps Director'' is added in its place wherever it occurs.

■ 6. Section 312.510(c) is further amended by removing ''[CFR citation for the federal agency's regulations implementing Executive Order 12549 and Executive Order 12689]'' and adding ''22 CFR Part 310'' in its place.

■ 7. Section 312.605 is further amended by adding a paragraph (c) to read as follows:

§ 312.605 Award.

* * * * *

(c) Notwithstanding paragraph (a)(2) of this section, this paragraph is not applicable for the Peace Corps.

INTER-AMERICAN FOUNDATION

22 CFR Parts 1006 and 1008

RIN 3200–ZA05

FOR FURTHER INFORMATION CONTACT: Carolyn Karr, General Counsel, Inter-American Foundation, 901 N. Stuart Street, Arlington, Virginia 22203, (703) 306–4350, *ckarr@iaf.gov.*

List of Subjects

22 CFR Part 1006

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Technical assistance.

22 CFR Part 1008

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: August 1, 2003.

David Valenzuela,

President, Inter-American Foundation.

■ For the reasons stated in the common preamble, the Inter-American Foundation amends 22 CFR Chapter X, as follows:

■ 1. Part 1006 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1006—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
1006.25 How is this part organized?
1006.50 How is this part written?
1006.75 Do terms in this part have special meanings?

Subpart A—General

1006.100 What does this part do?
1006.105 Does this part apply to me?
1006.110 What is the purpose of the nonprocurement debarment and suspension system?
1006.115 How does an exclusion restrict a person's involvement in covered transactions?
1006.120 May we grant an exception to let an excluded person participate in a covered transaction?
1006.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
1006.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
1006.135 May the Inter-American Foundation exclude a person who is not currently participating in a nonprocurement transaction?
1006.140 How do I know if a person is excluded?

1006.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

1006.200 What is a covered transaction?
1006.205 Why is it important to know if a particular transaction is a covered transaction?
1006.210 Which nonprocurement transactions are covered transactions?
1006.215 Which nonprocurement transactions are not covered transactions?
1006.220 Are any procurement contracts included as covered transactions?
1006.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

1006.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
1006.305 May I enter into a covered transaction with an excluded or disqualified person?
1006.310 What Must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
1006.315 May I use the services of an excluded person as a principal under a covered transaction?
1006.320 I verify that principals of my covered transactions are eligible to participate?
1006.325 What happens if I do business with an excluded person in a covered transaction?
1006.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

1006.335 What information must I provide before a covered transaction with the Inter-American Foundation?
1006.340 If I disclose unfavorable information required under § 1006.335, will I be prevented from participating in the transaction?
1006.345 What happens if I fail to disclose the information required under § 1006.335?
1006.350 What must I do if I learn of the information required under § 1006.335 after entering into a covered transaction with the Inter-American Foundation?

Disclosing Information—Lower Tier Participants

1006.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
1006.360 What happens if I fail to disclose the information required under § 1006.355?
1006.365 What must I do if I learn of information required under § 1006.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Inter-American Foundation Officials Regarding Transactions

1006.400 May I enter into a transaction with an excluded or disqualified person?
1006.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
1006.410 May I approve a participant's use of the services of an excluded person?
1006.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
1006.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
1006.425 When do I check to see if a person is excluded or disqualified?
1006.430 How do I check to see if a person is excluded or disqualified?
1006.435 What must I require of a primary tier participant?
1006.440 What method do I use to communicate those requirements to participants?
1006.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
1006.450 What action may I take if a primary tier participant fails to disclose the information required under § 1006.335?
1006.455 What may I do if a lower tier participant fails to disclose the information required under § 1006.355 to the next higher tier?

Subpart E—Excluded Parties List System

1006.500 What is the purpose of the Excluded Parties List System (EPLS)?
1006.505 Who uses the EPLS?
1006.510 Who maintains the EPLS?
1006.515 What specific information is in the EPLS?
1006.520 Who places the information into the EPLS?
1006.525 Whom do I ask if I have questions about a person in the EPLS?
1006.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

1006.600 How do suspension and debarment actions start?
1006.605 How does suspension differ from debarment?
1006.610 What procedures does the Inter-American Foundation use in suspension and debarment actions?
1006.615 How does the Inter-American Foundation notify a person of a suspension and debarment action?
1006.620 Do Federal agencies coordinate suspension and debarment actions?
1006.625 What is the scope of a suspension or debarment action?
1006.630 May the Inter-American Foundation impute the conduct of one person to another?
1006.635 May the Inter-American Foundation settle a debarment or suspension action?
1006.640 May a settlement include a voluntary exclusion?
1006.645 Do other Federal agencies know if the Inter-American Foundation agrees to a voluntary exclusion?

Subpart G—Suspension

1006.700 When may the suspending official issue a suspension?
1006.705 What does the suspending official consider in issuing a suspension?
1006.710 When does a suspension take effect?
1006.715 What notice does the suspending official give me if I am suspended?
1006.720 How may I contest a suspension?
1006.725 How much time do I have to contest a suspension?
1006.730 What information must I provide to the suspending official if I contest a suspension?
1006.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
1006.740 Are suspension proceedings formal?
1006.745 How is fact-finding conducted?
1006.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
1006.755 When will I know whether the suspension is continued or terminated?
1006.760 How long may my suspension last?

Subpart H—Debarment

1006.800 What are the causes for debarment?
1006.805 What notice does the debarring official give me if I am proposed for debarment?
1006.810 When does a debarment take effect?
1006.815 How may I contest a proposed debarment?
1006.820 How much time do I have to contest a proposed debarment?
1006.825 What information must I provide to the debarring official if I contest a proposed debarment?
1006.830 Under what conditions do I get an additional opportunity to challenge the fact on which the proposed debarment is based?
1006.835 Are debarment proceedings formal?
1006.840 How is fact-finding conducted?
1006.845 What does the debarring official consider in deciding whether to debar me?
1006.850 What is the standard of proof in a debarment action?
1006.855 Who has the burden of proof in a debarment action?
1006.860 What factors may influence the debarring official's decision?
1006.865 How long may my debarment last?
1006.870 When do I know if the debarring official debars me?
1006.875 May I ask the debarring official to reconsider a decision to debar me?
1006.880 What factors may influence the debarring official during reconsideration?
1006.885 May the debarring official extend a debarment?

Subpart I—Definitions

1006.900 Adequate evidence.
1006.905 Affiliate.
1006.910 Agency.
1006.915 Agent or representative.
1006.920 Civil judgment.
1006.925 Conviction.
1006.930 Debarment.
1006.935 Debarring official.
1006.940 Disqualified.
1006.945 Excluded or exclusion.
1006.950 Excluded Parties List System.
1006.955 Indictment.
1006.960 Ineligible or ineligibility.
1006.965 Legal proceedings.
1006.970 Nonprocurement transaction.
1006.975 Notice.
1006.980 Participant.
1006.985 Person.
1006.990 Preponderance of the evidence.
1006.995 Principal.
1006.1000 Respondent.
1006.1005 State.
1006.1010 Suspending official.
1006.1015 Suspension.
1006.1020 Voluntary exclusion or voluntarily excluded

Subpart J—[Reserved]

Appendix to Part 1006—Covered Transactions

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

■ 2. Part 1006 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''Inter-American Foundation'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''Inter-American Foundation'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Inter-American Foundation Debarring Official'' is added in its place wherever it occurs.

■ 3. Section 1006.440 is added to read as follows:

§ 1006.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with Subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

■ 4. Part 1008 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1008—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
1008.100 What does this part do?
1008.105 Does this part apply to me?
1008.110 Are any of my Federal assistance awards exempt from this part?
1008.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

1008.200 What must I do to comply with this part?
1008.205 What must I include in my drug-free workplace statement?
1008.210 To whom must I distribute my drug-free workplace statement?
1008.215 What must I include in my drug-free awareness program?
1008.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
1008.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
1008.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

1008.300 What must I do to comply with this part if I am an individual recipient?
1008.301 [Reserved]

Subpart D—Responsibilities of Inter-American Foundation Awarding Officials

1008.400 What are my responsibilities as an Inter-American Foundation awarding official?

Subpart E—Violations of This Part and Consequences

1008.500 How are violations of this part determined for recipients other than individuals?
1008.505 How are violations of this part determined for recipients who are individuals?
1008.510 What actions will the Federal Government take against a recipient determined to have violated this part?
1008.515 Are there any exceptions to those actions?

Subpart F—Definitions

1008.605 Award.
1008.610 Controlled substance.
1008.615 Conviction.
1008.620 Cooperative agreement.
1008.625 Criminal drug statute.
1008.630 Debarment.
1008.635 Drug-free workplace.
1008.640 Employee.
1008.645 Federal agency or agency.
1008.650 Grant.
1008.655 Individual.
1008.660 Recipient.
1008.665 State.
1008.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*

■ 5. Part 1008 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''Inter-American Foundation'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''Inter-American Foundation'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Inter-American Foundation President or designee'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''Inter-American Foundation'' is added in its place wherever it occurs.

■ 6. Section 1008.510(c) is further amended by removing ''[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]'' and adding ''22 CFR Part 1006'' in its place.

■ 7. Section 1008.605 is further amended by adding a paragraph (c) to read as follows:

§ 1008.605 Award.

* * * * *

(c) Notwithstanding paragraph (a)(2) of this section, this paragraph is not applicable for the Inter-American Foundation.

AFRICAN DEVELOPMENT FOUNDATION

22 CFR Parts 1508 and 1509

RIN 3005–ZA01

FOR FURTHER INFORMATION CONTACT: Doris Martin at 202–673–3916 (phone) or *domartin@adf.gov.*

List of Subjects

22 CFR Part 1508

Administrative practice and procedure, Debarment and suspension, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

22 CFR Part 1509

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: June 30, 2003.

Doris Martin,

General Counsel.

■ For the reasons stated in the common preamble, the African Development Foundation amends 22 CFR chapter XV, as follows:

■ 1. Part 1508 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1508—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
1508.25 How is this part organized?
1508.50 How is this part written?
1508.75 Do terms in this part have special meanings?

Subpart A—General

1508.100 What does this part do?
1508.105 Does this part apply to me?
1508.110 What is the purpose of the nonprocurement debarment and suspension system?
1508.115 How does an exclusion restrict a person's involvement in covered transactions?
1508.120 May we grant an exception to let an excluded person participate in a covered transaction?
1508.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
1508.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
1508.135 May the African Development Foundation exclude a person who is not currently participating in a nonprocurement transaction?
1508.140 How do I know if a person is excluded?
1508.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

1508.200 What is a covered transaction?
1508.205 Why is it important to know if a particular transaction is a covered transaction?
1508.210 Which nonprocurement transactions are covered transactions?
1508.215 Which nonprocurement transactions are not covered transactions?
1508.220 Are any procurement contracts included as covered transactions?
1508.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

1508.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
1508.305 May I enter into a covered transaction with an excluded or disqualified person?
1508.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
1508.315 May I use the services of an excluded person as a principal under a covered transaction?
1508.320 Must I verify that principals of my covered transactions are eligible to participate?
1508.325 What happens if I do business with an excluded person in a covered transaction?
1508.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

1508.335 What information must I provide before entering into a covered transaction with the African Development Foundation?
1508.340 If I disclose unfavorable information required under § 1508.335, will I be prevented from participating in the transaction?
1508.345 What happens if I fail to disclose the information required under § 1508.335?
1508.350 What must I do if I learn of the information required under § 1508.335 after entering into a covered transaction with the African Development Foundation?

Disclosing Information—Lower Tier Participants

1508.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
1508.360 What happens if I fail to disclose the information required under § 1508.355?
1508.365 What must I do if I learn of information required under § 1508.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of ADF Officials Regarding Transactions

1508.400 May I enter into a transaction with an excluded or disqualified person?
1508.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
1508.410 May I approve a participant's use of the services of an excluded person?
1508.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
1508.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
1508.425 When do I check to see if a person is excluded or disqualified?
1508.430 How do I check to see if a person is excluded or disqualified?
1508.435 What must I require of a primary tier participant?
1508.440 What method do I use to communicate those requirements to participants?
1508.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
1508.450 What action may I take if a primary tier participant fails to disclose the information required under § 1508.335?
1508.455 What may I do if a lower tier participant fails to disclose the information required under § 1508.355 to the next higher tier?

Subpart E—Excluded Parties List System

1508.500 What is the purpose of the Excluded Parties List System (EPLS)?
1508.505 Who uses the EPLS?
1508.510 Who maintains the EPLS?
1508.515 What specific information is in the EPLS?
1508.520 Who places the information into the EPLS?
1508.525 Whom do I ask if I have questions about a person in the EPLS?
1508.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

1508.600 How do suspension and debarment actions start?
1508.605 How does suspension differ from debarment?
1508.610 What procedures does the African Development Foundation use in suspension and debarment actions?
1508.615 How does the African Development Foundation notify a person of a suspension and debarment action?
1508.620 Do Federal agencies coordinate suspension and debarment actions?
1508.625 What is the scope of a suspension or debarment action?
1508.630 May the African Development Foundation impute the conduct of one person to another?
1508.635 May the African Development Foundation settle a debarment or suspension action?
1508.640 May a settlement include a voluntary exclusion?
1508.645 Do other Federal agencies know if the African Development Foundation agrees to a voluntary exclusion?

Subpart G—Suspension

1508.700 When may the suspending official issue a suspension?
1508.705 What does the suspending official consider in issuing a suspension?
1508.710 When does a suspension take effect?
1508.715 What notice does the suspending official give me if I am suspended?
1508.720 How may I contest a suspension?
1508.725 How much time do I have to contest a suspension?
1508.730 What information must I provide to the suspending official if I contest a suspension?
1508.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
1508.740 Are suspension proceedings formal?
1508.745 How is fact-finding conducted?
1508.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
1508.755 When will I know whether the suspension is continued or terminated?
1508.760 How long may my suspension last?

Subpart H—Debarment

1508.800 What are the causes for debarment?
1508.805 What notice does the debarring official give me if I am proposed for debarment?

1508.810 When does a debarment take effect?
1508.815 How may I contest a proposed debarment?
1508.820 How much time do I have to contest a proposed debarment?
1508.825 What information must I provide to the debarring official if I contest a proposed debarment?
1508.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
1508.835 Are debarment proceedings formal?
1508.840 How is fact-finding conducted?
1508.845 What does the debarring official consider in deciding whether to debar me?
1508.850 What is the standard of proof in a debarment action?
1508.855 Who has the burden of proof in a debarment action?
1508.860 What factors may influence the debarring official's decision?
1508.865 How long may my debarment last?
1508.870 When do I know if the debarring official debars me?
1508.875 May I ask the debarring official to reconsider a decision to debar me?
1508.880 What factors may influence the debarring official during reconsideration?
1508.885 May the debarring official extend a debarment?

Subpart I—Definitions

1508.900 Adequate evidence.
1508.905 Affiliate.
1508.910 Agency.
1508.915 Agent or representative.
1508.920 Civil judgment.
1508.925 Conviction.
1508.930 Debarment.
1508.935 Debarring official.
1508.940 Disqualified.
1508.945 Excluded or exclusion.
1508.950 Excluded Parties List System.
1508.955 Indictment.
1508.960 Ineligible or ineligibility.
1508.965 Legal proceedings.
1508.970 Nonprocurement transaction.
1508.975 Notice.
1508.980 Participant.
1508.985 Person.
1508.990 Preponderance of the evidence.
1508.995 Principal.
1508.1000 Respondent.
1508.1005 State.
1508.1010 Suspending official.
1508.1015 Suspension.
1508.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 1508—Covered Transactions

Authority: Sec. 2455, Pub.L. 103–355, 108 Stat. 3327; E.O. 12549, 3CFR, 1986 Comp., p.89; E.O. 12689, 3CFR, 1989 Comp., p. 235.

■ 2. Part 1508 is further amended as set forth below:

■ a. ''[Agency noun]'' is removed and ''African Development Foundation'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''ADF'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''ADF President'' is added in its place wherever it occurs.

■ 3. Section 1508.440 is added to read as follows:

§ 1508.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part, and requiring them to include a similar term or condition in lower tier covered transactions.

■ 4. Part 1509 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1509—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
1509.100 What does this part do?
1509.105 Does this part apply to me?
1509.110 Are any of my Federal assistance awards exempt from this part?
1509.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

1509.200 What must I do to comply with this part?
1509.205 What must I include in my drug-free workplace statement?
1509.210 To whom must I distribute my drug-free workplace statement?
1509.215 What must I include in my drug-free awareness program?
1509.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
1509.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
1509.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

1509.300 What must I do to comply with this part if I am an individual recipient?
1509.301 [Reserved]

Subpart D—Responsibilities of ADF Awarding Officials

1509.400 What are my responsibilities as an ADF awarding official?

Subpart E—Violations of This Part and Consequences

1509.500 How are violations of this part determined for recipients other than individuals?
1509.505 How are violations of this part determined for recipients who are individuals?
1509.510 What actions will the Federal Government take against a recipient determined to have violated this part?
1509.515 Are there any exceptions to those actions?

Subpart F—Definitions

1509.605 Award.
1509.610 Controlled substance.
1509.615 Conviction.
1509.620 Cooperative agreement.
1509.625 Criminal drug statute.
1509.630 Debarment.
1509.635 Drug-free workplace.
1509.640 Employee.
1509.645 Federal agency or agency.
1509.650 Grant.
1509.655 Individual.
1509.660 Recipient.
1509.665 State.
1509.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*

■ 5. Part 1509 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''African Development Foundation'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''ADF'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''ADF President'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''ADF President'' is added in its place wherever it occurs.

■ 6. Section 1509.310(c) is further amended by removing ''[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]'' and adding ''22 CFR Part 1508'' in its place.

■ 7. Section 1509.605 is further amended by adding a paragraph (c) to read as follows:

§ 1509.605 Award.

* * * * *

(c) Notwithstanding paragraph (a)(2) of this section, this paragraph is not applicable for ADF.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 21 and 24

[Docket No. FR–4692–F–01]

RIN 2501–AC81

FOR FURTHER INFORMATION CONTACT: Dane Narode, Assistant General Counsel, Office of Program

Enforcement, Administrative Proceedings Division, Department of Housing and Urban Development, 1250 Maryland Avenue, Suite 200, Washington, DC 20024–0500; telephone (202) 708–2350 (this is not a toll-free number); e-mail: *Dane_M._Narode@hud.gov.* Hearing-or speech-impaired individuals may access the voice telephone number listed above by calling the toll-free Federal Information Relay Service during working hours at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

The January 23, 2002, Common Rule

On January 23, 2002 (67 FR 3266), a governmentwide common rule was published that proposed substantive changes and amendments to the governmentwide nonprocurement common rule for debarment and suspension and the governmentwide rule implementing the Drug-Free Workplace Act of 1988. The publication is available at *http://www.access.gpo.gov/su_docs.*

HUD's July 22, 2002, Proposed Rule

HUD published a proposed rule on July 22, 2002 (67 FR 48006), to adopt the changes and amendments made in the common rule. Additionally, HUD proposed to adopt specific requirements that, along with the provisions in the common rule, would best serve HUD's programs. HUD's proposed rule added a paragraph regarding employment contracts to the definition of ''covered transaction'' found at § 24.200. HUD's addition made clear that each payment under an employment contract constitutes a new ''covered transaction.'' HUD also enhanced the exclusion review that takes place in § 24.300. Under HUD's rule, a participant must ensure it is not entering into a covered transaction with an excluded or disqualified person. In reviewing for an exclusion, however, HUD's rule, at § 24.300(d), exempts participants from checking on the exemption status of their principals while making salary payments pursuant to an employment contract. Additionally, § 24.440 proposed to use terms or conditions to the award transaction as a means to enforce exclusions under HUD transactions rather than the use of written certifications.

HUD proposed rule provided examples for the debarment and suspension common rule definition of ''principal'' found at § 24.995. The expansion contains minor modifications consistent with HUD's present practice regarding the definition of ''principal'' for the purpose of debarments and suspensions. The proposed rule advised that HUD would retain its definitions of ''Hearing Officer'' at § 24.947 and ''Ultimate Beneficiary'' at § 24.1017 as found in the current common rule. The proposed rule made clear in § 24.750 and § 24.845 that all fact-finding referrals for HUD suspensions and debarments will be made to hearing officers.

Subpart J of part 24, which addressed limited denial of participation, was revised stylistically so that the rule conforms to the question and answer format of the common rule. HUD also removed the term ''contractor'' from § 24.1105 because the common rule deleted the definition of the term. The revised definition of ''participant'' in the proposed rule covered individuals previously defined as ''contractors'' in the current rule. Section 24.1145, which addresses imputing the conduct of one person to another in a limited denial of participation, was revised to be consistent with the provisions of § 24.630.

Finally, HUD's rule proposed to enact the requirements for maintaining a drug-free workplace as a new part 21, codifying HUD's drug-free workplace requirements.

The public comment period on the proposed rule closed on September 20, 2002. One commenter submitted comments on the proposed rule.

This Final Rule

This final rule follows publication of the July 22, 2002, proposed rule and takes into consideration the one public comment received. The public comment, along with the Department's responses to the comment, is treated below. However, the Department was not persuaded to change the rule. Accordingly, this final rule adopts the July 22, 2002, proposed rule without change except for the minor modifications identified below necessary to keep the Department's rule consistent with the common rule and existing practice.

In response to an internal comment, the Department has replaced the formulation used to refer to the ''Agency head or designee'' wherever used in the common rule. The proposed rule originally referred to the ''HUD Debarring Official or designee.'' That formulation has been replaced with the ''Secretary or designee'' in the final rule. This text change does not modify the meaning of the proposed rule as all debarring authority within the Agency stems from the Secretary's delegable authority. Similarly, the textual modification is consistent with current practice in the Department.

The Department, based upon another internal comment, has made a minor modification to its procedures for when a suspension or proposed debarment has been issued subsequent to the issuance of a limited denial of participation. Under this modification, the hearing officer's jurisdiction over a limited denial of participation will not be immediately divested upon consolidation of the matter with a suspension or a proposed debarment. Upon consolidation, the suspending or debarring official must determine whether material facts are in dispute within 90 days of consolidation unless good cause exists to extend this time. In the event material facts are in dispute, the matters will be referred to the original hearing officer for fact-finding. The Department does not regard this as a material modification.

Comment: The commenter requested that the Department clarify the extent to which the drug-free workplace requirements apply to the residences of telecommuters and other remote workers.

HUD Response: The Department believes this issue was adequately addressed in the final governmentwide rule of May 25, 1990 (55 FR 21681), in response to comments regarding regulations promulgated pursuant to the Drug-Free Workplace Act of 1988. (See especially, 55 FR 21683.)

Comment: The commenter also asked whether the proposed rule intended that collective bargaining agreements be included in the term ''employment contracts.'' The commenter wrote that the rule should clarify that the term ''employment contracts'' does not include a collective bargaining agreement between an employer and its employees' unions. According to the commenter, the exclusion of collective bargaining agreements as employment contracts is important because, if a principal of a union were excluded, the state would not be permitted to ''contracts'' with that union. The commenter further wrote that if ''employment contracts'' mean a consulting contract, it is a redundancy because consultant contracts are already covered in § 24.200.

HUD Response: The Department's proposal does not enlarge the scope of employment contracts (*i.e.*, those that are covered transactions, *e.g.*, a Housing Authority's employment of a Public Housing Executive Director using funds provided pursuant to a Consolidated Annual Contributions Contract) to include a collective bargaining agreement. The proposal merely reinforces the concept that each payment made under an employment

contract that is a covered transaction will constitute an independent covered transaction.

Comment: The commenter argued that if each salary payment is made a covered transaction, employers would be prohibited from making future salary payments to employees who happened to have been excluded since the last salary payment. In the commenter's view, because an employee's salary is paid after the work is performed, the rule would prohibit paying the employee for work he/she has already performed, notwithstanding that the exclusion may be unrelated to the employee's present activity.

HUD Response: The Department has elected to retain the provision as written. Payment for work completed prior to the current activity of the employee does not raise a compliance concern. The provision, as written, allows payment for the work previously performed (work completed before the debarment), but would not allow a continuation of payments subsequent to the imposition of a debarment or suspension absent an exception specified in the Suspension and Debarment regulations. Treating each compensation payment as a separate covered transaction ensures that public funds are adequately protected (which is one of the objectives of the Suspension and Debarment regulations), while not appreciably increasing the administrative burden on the regulated entity. (See, for example, HUD's proposed language at 24 CFR 300(d), exempting salary payments from a requirement to check the Excluded Parties List System (EPLS).)

Comment: The commenter suggested that the Department strike its detailed list of principals in § 24.995(c) accompanying the definition of ''Principal.'' The commenter wrote that the list provided invites readers to make a mechanical comparison of individuals they (*i.e.*, the readers) may be involved with to the principals on the list, as opposed to an evaluation of whether the principals have influence or critical control over the covered transaction.

HUD Response: The Department has elected to retain the detailed list of principals. In the Department's view, the addition of paragraph (c) to the definition of the term ''principal'' in § 24.995 does not, in any way, expand or detract from the definition stated in the common rule on Suspensions and Debarments. Rather, the section is intended as a convenience to HUD program users to facilitate their understanding of the rule.

The Department has tracked changes to § 24.630 for the imputation provisions found in § 24.1145 of the proposed rule. The minor modifications to § 24.1145 were made to ensure consistency with the common rule. Likewise, the Department has adopted EPLS when referring to the list of excluded parties.

List of Subjects

24 CFR Part 21

Administrative practice and procedure, Grant programs, Drug-free workplace, Reporting and recordkeeping requirements.

24 CFR Part 24

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Technical assistance, Reporting and recordkeeping requirements.

Dated: September 3, 2003.

Mel Martinez,

Secretary.

■ For the reasons stated in the common preamble, the Department of Housing and Urban Development amends 24 CFR Subtitle A, as follows:

■ 1. A new part 21 is added to read as follows:

PART 21—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Subpart A—Purpose and Coverage

Sec.

21.100 What does this part do?
21.105 Does this part apply to me?
21.110 Are any of my federal assistance awards exempt from this part?
21.115 Does this part affect the federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

21.200 What must I do to comply with this part?
21.205 What must I include in my drug-free workplace statement?
21.210 To whom must I distribute my drug-free workplace statement?
21.215 What must I include in my drug-free awareness program?
21.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
21.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
21.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

21.300 What must I do to comply with this part if I am an individual recipient?
21.301 [Reserved]

Subpart D—Responsibilities of HUD Awarding Officials

21.400 What are my responsibilities as a HUD awarding official?

Subpart E—Violations of This Part and Consequences

21.500 How are violations of this part determined for recipients other than individuals?
21.505 How are violations of this part determined for recipients who are individuals?
21.510 What actions will the federal government take against a recipient determined to have violated this part?
21.515 Are there any exceptions to those actions?

Subpart F—Definitions

21.605 Award.
21.610 Controlled substance.
21.615 Conviction.
21.620 Cooperative agreement.
21.625 Criminal drug statute.
21.630 Debarment.
21.635 Drug-free workplace.
21.640 Employee.
21.645 Federal agency or agency.
21.650 Grant.
21.655 Individual.
21.660 Recipient.
21.665 State.
21.670 Suspension.

Authority: 41 U.S.C. 701; 42 U.S.C. 3535(d).

■ 2. Part 21 is further amended as follows:

■ a. ''[Agency noun]'' is removed and ''Department of Housing and Urban Development'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''HUD'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Secretary or designee'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''Secretary'' is added in its place wherever it occurs.

■ 3. Part 24 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 24—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

24.25 How is this part organized?
24.50 How is this part written?
24.75 Do terms in this part have special meanings?

Subpart A—General

24.100 What does this part do?
24.105 Does this part apply to me?
24.110 What is the purpose of the nonprocurement debarment and suspension system?

24.115 How does an exclusion restrict a person's involvement in covered transactions?
24.120 May we grant an exception to let an excluded person participate in a covered transaction?
24.125 Does an exclusion under the nonprocurement system affect a person's eligibility for federal procurement contracts?
24.130 Does exclusion under the federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
24.135 May the Department of Housing and Urban Development exclude a person who is not currently participating in a nonprocurement transaction?
24.140 How do I know if a person is excluded?
24.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

24.200 What is a covered transaction?
24.205 Why is it important to know if a particular transaction is a covered transaction?
24.210 Which nonprocurement transactions are covered transactions?
24.215 Which nonprocurement transactions are not covered transactions?
24.220 Are any procurement contracts included as covered transactions?
24.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

24.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
24.305 May I enter into a covered transaction with an excluded or disqualified person?
24.310 What must I do if a federal agency excludes a person with whom I am already doing business in a covered transaction?
24.315 May I use the services of an excluded person as a principal under a covered transaction?
24.320 Must I verify that principals of my covered transactions are eligible to participate?
24.325 What happens if I do business with an excluded person in a covered transaction?
24.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

24.335 What information must I provide before entering into a covered transaction with the Department of Housing and Urban Development?
24.340 If I disclose unfavorable information required under § 24.335, will I be prevented from entering into the transaction?
24.345 What happens if I fail to disclose the information required under § 24.335?
24.350 What must I do if I learn of the information required under § 24.335 after entering into a covered transaction with the Department of Housing and Urban Development?

Disclosing Information—Lower Tier Participants

24.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
24.360 What happens if I fail to disclose the information required under § 24.355?
24.365 What must I do if I learn of information required under § 24.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of HUD Officials Regarding Transactions

24.400 May I enter into a transaction with an excluded or disqualified person?
24.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
24.410 May I approve a participant's use of the services of an excluded person?
24.415 What must I do if a federal agency excludes the participant or a principal after I enter into a covered transaction?
24.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
24.425 When do I check to see if a person is excluded or disqualified?
24.430 How do I check to see if a person is excluded or disqualified?
24.435 What must I require of a primary tier participant?
24.440 What method do I use to communicate those requirements to participants?
24.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
24.450 What action may I take if a primary tier participant fails to disclose the information required under § 24.335?
24.455 What may I do if a lower tier participant fails to disclose the information required under § 24.355 to the next higher tier?

Subpart E—Excluded Parties List System

24.500 What is the purpose of the Excluded Parties List System (EPLS)?
24.505 Who uses the EPLS?
24.510 Who maintains the EPLS?
24.515 What specific information is in the EPLS?
24.520 Who places the information into the EPLS?
24.525 Whom do I ask if I have questions about a person in the EPLS?
24.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

24.600 How do suspension and debarment actions start?
24.605 How does suspension differ from debarment?
24.610 What procedures does the Department of Housing and Urban Development use in suspension and debarment actions?
24.615 How does the Department of Housing and Urban Development notify a person of a suspension or debarment action?
24.620 Do federal agencies coordinate suspension and debarment actions?
24.625 What is the scope of a suspension or debarment action?
24.630 May the Department of Housing and Urban Development impute the conduct of one person to another?
24.635 May the Department of Housing and Urban Development settle a debarment or suspension action?
24.640 May a settlement include a voluntary exclusion?
24.645 Do other federal agencies know if the Department of Housing and Urban Development agrees to a voluntary exclusion?

Subpart G—Suspension

24.700 When may the suspending official issue a suspension?
24.705 What does the suspending official consider in issuing a suspension?
24.710 When does a suspension take effect?
24.715 What notice does the suspending official give me if I am suspended?
24.720 How may I contest a suspension?
24.725 How much time do I have to contest a suspension?
24.730 What information must I provide to the suspending official if I contest a suspension?
24.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
24.740 Are suspension proceedings formal?
24.745 How is fact-finding conducted?
24.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
24.755 When will I know whether the suspension is continued or terminated?
24.760 How long may my suspension last?

Subpart H—Debarment

24.800 What are the causes for debarment?
24.805 What notice does the debarring official give me if I am proposed for debarment?
24.810 When does a debarment take effect?
24.815 How may I contest a proposed debarment?
24.820 How much time do I have to contest a proposed debarment?
24.825 What information must I provide to the debarring official if I contest a proposed debarment?
24.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
24.835 Are debarment proceedings formal?
24.840 How is fact-finding conducted?
24.845 What does the debarring official consider in deciding whether to debar me?
24.850 What is the standard of proof in a debarment action?
24.855 Who has the burden of proof in a debarment action?
24.860 What factors may influence the debarring official's decision?

24.865 How long may my debarment last?
24.870 When do I know if the debarring official debars me?
24.875 May I ask the debarring official to reconsider a decision to debar me?
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24.1120 How long may a limited denial of participation last?
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24.1130 How may I contest my limited denial of participation?
24.1135 Do federal agencies coordinate limited denial of participation actions?
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24.1145 May HUD impute the conduct of one person to another in a limited denial of participation?
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24.1160 May a limited denial of participation be terminated before the term of the limited denial of participation expires?
24.1165 How is a limited denial of participation reported?

Appendix to Part 24—Covered Transactions

Authority: 41 U.S.C. 701 *et seq.*; 42 U.S.C. 3535(d); Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

■ 4. Part 24 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''the Department of Housing and Urban Development'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''HUD'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Secretary or designee'' is added in its place wherever it occurs.

■ 5. Section 24.200 is further amended by adding a paragraph (c) to read as follows:

§ 24.200 What is a covered transaction?

* * * * *

(c) In the case of employment contracts that are covered transactions, each salary payment under the contract is a separate covered transaction.

■ 6. Section 24.300 is further amended by adding paragraphs (d) and (e) to read as follows:

§ 24.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

* * * * *

(d) You, as a participant, are responsible for determining whether you are entering into a covered transaction with an excluded or disqualified person. You may decide the method by which you do so. You may, but are not required to, check the EPLS.

(e) In the case of an employment contract, HUD does not require employers to check the EPLS prior to making salary payments pursuant to that contract.

■ 7. Section 24.440 is added to read as follows:

§ 24.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

■ 8. Section 24.750 is further amended by adding a paragraph (c) to read as follows:

§ 24.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?

* * * * *

(c) The official receiving the referral for findings of fact regarding disputed material facts must be a hearing officer in all HUD suspensions.

■ 9. Section 24.845 is further amended by adding a paragraph (d) to read as follows:

§ 24.845 What does the debarring official consider in deciding whether to debar me?

* * * * *

(d) The official receiving the referral for findings of fact regarding disputed material facts must be a hearing officer in all HUD debarments.

■ 10. Section 24.947 is added to read as follows:

§ 24.947 Hearing officer.

Hearing officer means an Administrative Law Judge or Board of Contract Appeals Judge authorized by HUD's Secretary or by the Secretary's designee, to conduct proceedings under this part.

■ 11. Section 24.995 is further amended by adding a paragraph (c) to read as follows:

§ 24.995 Principal.

* * * * *

(c) A person who has a critical influence on, or substantive control over, a covered transaction, whether or not employed by the participant. Persons who have a critical influence on, or substantive control over, a covered transaction may include, but are not limited to:

(1) Loan officers;
(2) Staff appraisers and inspectors;
(3) Underwriters;
(4) Bonding companies;
(5) Borrowers under programs financed by HUD or with loans guaranteed, insured, or subsidized through HUD programs;
(6) Purchasers of properties with HUD-insured or Secretary-held mortgages;
(7) Recipients under HUD assistance agreements;
(8) Ultimate beneficiaries of HUD programs;
(9) Fee appraisers and inspectors;
(10) Real estate agents and brokers;
(11) Management and marketing agents;
(12) Accountants, consultants, investment bankers, architects, engineers, and attorneys who are in a business relationship with participants in connection with a covered transaction under a HUD program;
(13) Contractors involved in the construction or rehabilitation of

properties financed by HUD, with HUD insured loans, or acquired properties, including properties held by HUD as mortgagee-in-possession;

(14) Closing agents;

(15) Turnkey developers of projects financed by or with financing insured by HUD;

(16) Title companies;

(17) Escrow agents;

(18) Project owners;

(19) Administrators of hospitals, nursing homes, and projects for the elderly financed or insured by HUD; and

(20) Developers, sellers or owners of property financed with loans insured under title I or title II of the National Housing Act.

■ 12. Subpart J is added to Part 24 to read as follows:

Subpart J—Limited Denial of Participation

§ 24.1100 What is a limited denial of participation?

A limited denial of participation excludes a specific person from participating in a specific program, or programs, within a HUD field office's geographic jurisdiction, for a specific period of time. A limited denial of participation is normally issued by a HUD field office, but may be issued by a Headquarters office. The decision to impose a limited denial of participation is discretionary and in the best interests of the government.

§ 24.1105 Who may issue a limited denial of participation?

The Secretary designates HUD officials who are authorized to impose a limited denial of participation, affecting any participant and/or their affiliates, except FHA-approved mortgagees.

§ 24.1110 When may a HUD official issue a limited denial of participation?

(a) An authorized HUD official may issue a limited denial of participation against a person based upon adequate evidence of any of the following causes:

(1) Approval of an applicant for insurance would constitute an unsatisfactory risk;

(2) Irregularities in a person's past performance in a HUD program;

(3) Failure of a person to maintain the prerequisites of eligibility to participate in a HUD program;

(4) Failure to honor contractual obligations or to proceed in accordance with contract specifications or HUD regulations;

(5) Failure to satisfy, upon completion, the requirements of an assistance agreement or contract;

(6) Deficiencies in ongoing construction projects;

(7) Falsely certifying in connection with any HUD program, whether or not the certification was made directly to HUD;

(8) Commission of an offense listed in § 24.800;

(9) Violation of any law, regulation, or procedure relating to the application for financial assistance, insurance, or guarantee, or to the performance of obligations incurred pursuant to a grant of financial assistance or pursuant to a conditional or final commitment to insure or guarantee;

(10) Making or procuring to be made any false statement for the purpose of influencing in any way an action of the Department;

(11) Imposition of a limited denial of participation by any other HUD office; or

(12) Debarment or suspension by another federal agency for any cause substantially the same as provided in § 24.800.

(b) Filing of a criminal Indictment or Information shall constitute adequate evidence for the purpose of limited denial of participation actions. The Indictment or Information need not be based on offenses against HUD.

(c) Imposition of a limited denial of participation by any other HUD office shall constitute adequate evidence for a concurrent limited denial of participation. Where such a concurrent limited denial of participation is imposed, participation may be restricted on the same basis without the need for additional conference or further hearing.

(d) An affiliate or organizational element may be included in a limited denial of participation solely on the basis of its affiliation, and regardless of its knowledge of or participation in the acts providing cause for the sanction. The burden of proving that a particular affiliate or organizational element is currently responsible and not controlled by the primary sanctioned party (or by an entity that itself is controlled by the primary sanctioned party) is on the affiliate or organizational element.

§ 24.1115 When does a limited denial of participation take effect?

A limited denial of participation is effective immediately upon issuance of the notice.

§ 24.1120 How long may a limited denial of participation last?

A limited denial of participation may remain effective up to 12 months.

§ 24.1125 How does a limited denial of participation start?

A limited denial of participation is made effective by providing the person, and any specifically named affiliate, with notice:

(a) That the limited denial of participation is being imposed;

(b) Of the cause(s) under § 24.1110 for the sanction;

(c) Of the potential effect of the sanction, including the length of the sanction and the HUD program(s) and geographic area affected by the sanction;

(d) Of the right to request, in writing, within 30 days of receipt of the notice, a conference under § 24.1130; and

(e) Of the right to contest the limited denial of participation under § 24.1130.

§ 24.1130 How may I contest my limited denial of participation?

(a) Within 30 days after receiving a notice of limited denial of participation, you may request a conference with the official who issued such notice. The conference shall be held within 15 days after the Department's receipt of the request for a conference, unless you waive this time limit. The official or designee who imposed the sanction shall preside. At the conference, you may appear with a representative and may present all relevant information and materials to the official or designee. Within 20 days after the conference, or within 20 days after any agreed upon extension of time for submission of additional materials, the official or designee shall, in writing, advise you of the decision to terminate, modify, or affirm the limited denial of participation. If all or a portion of the remaining period of exclusion is affirmed, the notice of affirmation shall advise you of the opportunity to contest the notice and request a hearing before a Departmental Hearing Officer. You have 30 days after receipt of the notice of affirmation to request this hearing. If the official or designee does not issue a decision within the 20-day period, you may contest the sanction before a Departmental Hearing Officer. Again, you have 30 days from the expiration of the 20-day period to request this hearing. If you request a hearing before the Departmental Hearing Officer, you must submit your request to the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW, B–133 Portals 200, Washington DC 20410–0500.

(b) You may skip the conference with the official and you may request a hearing before a Departmental Hearing Officer. This must also be done within 30 days after receiving a notice of limited denial of participation. If you

opt to have a hearing before a Departmental Hearing Officer, you must submit your request to the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW, B–133 Portals 200, Washington DC 20410–0500. The hearing before the Departmental Hearing Officer is more formal than the conference before the sanctioning official described above. The hearing before the Departmental Hearing Officer will be conducted in accordance with 24 CFR part 26, subpart A. The Departmental Hearing Officer will issue findings of fact and make a recommended decision. The sanctioning official will then make a final decision as promptly as possible after the Departmental Hearing Officer recommended decision is issued. The sanctioning official may reject the recommended decision or any findings of fact, only after specifically determining the decision or any of the facts to be arbitrary or capricious or clearly erroneous.

§ 24.1135 Do federal agencies coordinate limited denial of participation actions?

Federal agencies do not coordinate limited denial of participation actions. As stated in § 24.1100, a limited denial of participation is a HUD-specific action and applies only to HUD activities.

§ 24.1140 What is the scope of a limited denial of participation?

The scope of a limited denial of participation is as follows:

(a) A limited denial of participation generally extends only to participation in the program under which the cause arose. A limited denial of participation may, at the discretion of the authorized official, extend to other programs, initiatives, or functions within the jurisdiction of an Assistant Secretary. The authorized official, however, may determine that the sanction shall apply to all programs throughout HUD where the sanction is based on an indictment or conviction.

(b) For purposes of this subpart, participation includes receipt of any benefit or financial assistance through grants or contractual arrangements; benefits or assistance in the form of loan guarantees or insurance; and awards of procurement contracts.

(c) The sanction may be imposed for a period not to exceed 12 months, and shall be effective within the geographic jurisdiction of the office imposing it, unless the sanction is imposed by an Assistant Secretary or Deputy Assistant Secretary in which case the sanction may be imposed on either a nationwide or a more restricted basis.

§ 24.1145 May HUD impute the conduct of one person to another in a limited denial of participation?

For purposes of determining a limited denial of participation, HUD may impute conduct as follows:

(a) *Conduct imputed from an individual to an organization.* HUD may impute the fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with an organization, to that organization when the improper conduct occurred in connection with the individual's performance of duties for or on behalf of that organization, or with the organization's knowledge, approval, or acquiescence. The organization's acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.

(b) *Conduct imputed from an organization to an individual or between individuals.* HUD may impute the fraudulent, criminal, or other improper conduct of any organization to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed either participated in, had knowledge of, or reason to know of the improper conduct.

(c) *Conduct imputed from one organization to another organization.* HUD may impute the fraudulent, criminal, or other improper conduct of one organization to another organization when the improper conduct occurred in connection with a partnership, joint venture, joint application, association, or similar arrangement, or when the organization to whom the improper conduct is imputed has the power to direct, manage, control, or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.

§ 24.1150 What is the effect of a suspension or debarment on a limited denial of participation?

If you have submitted a request for a hearing pursuant to § 24.1130 of this section, and you also receive, pursuant to subpart G or H of this part, a notice of proposed debarment or suspension that is based on the same transaction(s) or conduct as the limited denial of participation, as determined by the debarring or suspending official, the following rules shall apply:

(a) During the 30-day period after you receive a proposed debarment or suspension, during which you may elect to contest the debarment under § 24.815, or the suspension pursuant to § 24.720, all proceedings in the limited denial of participation, including discovery, are automatically stayed.

(b) If you do not contest the proposed debarment pursuant to § 24.815, or the suspension pursuant to § 24.720, the final imposition of the debarment or suspension shall also constitute a final decision with respect to the limited denial of participation to the extent that the debarment or suspension is based on the same transaction(s) or conduct as the limited denial of participation.

(c) If you contest the proposed debarment pursuant to § 24.815, or the suspension pursuant to § 24.720, then:

(1) Those parts of the limited denial of participation and the debarment or suspension based on the same transaction(s) or conduct, as determined by the debarring or suspending official, shall be immediately consolidated before the debarring or suspending official;

(2) Proceedings under the consolidated portions of the limited denial of participation shall be stayed before the hearing officer until the suspending or debarring official makes a determination as to whether the consolidated matters should be referred to a hearing officer. Such a determination must be made within 90 days of the date of the issuance of the suspension or proposed debarment, unless the suspending/debarring official extends the period for good cause.

(i) If the suspending or debarring official determines that there is a genuine dispute as to material facts regarding the consolidated matter, the entire consolidated matter will be referred to the hearing officer hearing the limited denial of participation, for additional proceedings pursuant to 24 CFR 24.750 or § 24.845.

(ii) If the suspending or debarring official determines that there is no dispute as to material facts regarding the consolidated matter, jurisdiction of the hearing officer under 24 CFR part 24, subpart J, to hear those parts of the limited denial of participation based on the same transaction[s] or conduct as the debarment or suspension, as determined by the debarring or suspending official, will be transferred to the debarring or suspending official, and the hearing officer responsible for hearing the limited denial of participation shall transfer the administrative record to the debarring or suspending official.

(3) The suspending or debarring official shall hear the entire consolidated case under the procedures governing suspensions and debarments, and shall issue a final decision as to

both the limited denial of participation and the suspension or debarment.

§ 24.1155 What is the effect of a limited denial of participation on a suspension or a debarment?

The imposition of a limited denial of participation does not affect the right of the Department to suspend or debar any person under this part.

§ 24.1160 May a limited denial of participation be terminated before the term of the limited denial of participation expires?

If the cause for the limited denial of participation is resolved before the expiration of the 12-month period, the official who imposed the sanction may terminate it.

§ 24.1165 How is a limited denial of participation reported?

When a limited denial of participation has been made final, or the period for requesting a conference pursuant to § 24.1130 has expired without receipt of such a request, the official imposing the limited denial of participation shall notify the Director of the Compliance Division in the Departmental Enforcement Center of the scope of the limited denial of participation.

DEPARTMENT OF JUSTICE

28 CFR Parts 67 and 83

[OJP(OJP)–1306]

RIN 1121—AA57

ADDRESSES: Please address all comments regarding this interim final rule to Linda Fallowfield, Attorney Advisor, Office of the General Counsel, Office of Justice Programs, Department of Justice, 810 7th Street NW., Washington, DC 20531, (202) 305–2534, *e-mail:fallowfi@ojp.usdoj.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Fallowfield, Attorney Advisor, Office of the General Counsel, Office of Justice Programs, Department of Justice, 810 7th Street NW., Washington, DC 20531, (202) 305–2534, *e-mail:fallowfi@ojp.usdoj.gov.*

SUPPLEMENTARY INFORMATION:

The Department of Justice (the Department) is publishing this interim final rule in order to join the publication of the government-wide common rule on debarment and suspension. The Department is adopting this common rule in order to promote consistency within the federal government. The common rule provides uniform requirements for debarment and suspension by Executive branch agencies to protect assistance, loans, benefits and other non-procurement activities from waste, fraud, abuse and poor performance, similar to the system used for Federal procurement activities under Subpart 9.4 of the Federal Acquisition Regulations (FAR).

Finally, the Department's proposed rule on drug-free workplace requirements would be separated from the proposed rule on debarment and suspension. The drug-free workplace requirements are currently located in subpart F of the Debarment and Suspension Non-procurement Common Rule. Moving those requirements to a separate part would allow them to appear in a more appropriate location nearer other requirements used predominantly by award officials. The requirements for maintaining a drug-free workplace thus would be relocated from 28 CFR part 67 to 28 CFR part 83, and are restated in plain language format.

List of Subjects

28 CFR Part 67

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Technical assistance, Drug abuse.

28 CFR Part 83

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: October 16, 2003.

John Ashcroft,

Attorney General.

■ For the reasons set forth in the preamble, 28 CFR chapter I is amended as follows:

■ 1. Part 67 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 67—GOVERNMENT–WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

67.25 How is this part organized?
67.50 How is this part written?
67.75 Do terms in this part have special meanings?

Subpart A—General

67.100 What does this part do?
67.105 Does this part apply to me?
67.110 What is the purpose of the non-procurement debarment and suspension system?
67.115 How does an exclusion restrict a person's involvement in covered transactions?
67.120 May we grant an exception to let an excluded person participate in a covered transaction?
67.125 Does an exclusion under the non-procurement system affect a person's eligibility for Federal procurement contracts?
67.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in non-procurement transactions?
67.135 May the Department of Justice exclude a person who is not currently participating in a non-procurement transaction?
67.140 How do I know if a person is excluded?
67.145 Does this part address persons who are disqualified, as well as those who are excluded from non-procurement transactions?

Subpart B—Covered Transactions

67.200 What is a covered transaction?
67.205 Why is it important to know if a particular transaction is a covered transaction?
67.210 Which non-procurement transactions are covered transactions?
67.215 Which non-procurement transactions are not covered transactions?
67.220 Are any procurement contracts included as covered transactions?
67.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

67.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
67.305 May I enter into a covered transaction with an excluded or disqualified person?
67.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
67.315 May I use the services of an excluded person as a principal under a covered transaction?
67.320 Must I verify that principals of my covered transactions are eligible to participate?
67.325 What happens if I do business with an excluded person in a covered transaction?
67.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

67.335 What information must I provide before entering into a covered transaction with the Department of Justice?
67.340 If I disclose unfavorable information required under § 67.335, will I be prevented from participating in the transaction?
67.345 What happens if I fail to disclose the information required under § 67.335?
67.350 What must I do if I learn of the information required under § 67.335 after entering into a covered transaction with the Department of Justice?

Disclosing Information—Lower Tier Participants

67.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
67.360 What happens if I fail to disclose the information required under § 67.355?
67.365 What must I do if I learn of information required under § 67.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Department of Justice Officials Regarding Transactions

67.400 May I enter into a transaction with an excluded or disqualified person?
67.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
67.410 May I approve a participant's use of the services of an excluded person?
67.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
67.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
67.425 When do I check to see if a person is excluded or disqualified?
67.430 How do I check to see if a person is excluded or disqualified?
67.435 What must I require of a primary tier participant?
67.440 What method do I use to communicate those requirements to participants?
67.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
67.450 What action may I take if a primary tier participant fails to disclose the information required under § 67.335?
67.455 What may I do if a lower tier participant fails to disclose the information required under § 67.355 to the next higher tier?

Subpart E—Excluded Parties List System

67.500 What is the purpose of the Excluded Parties List System (EPLS)?
67.505 Who uses the EPLS?
67.510 Who maintains the EPLS?
67.515 What specific information is on the EPLS?
67.520 Who places the information into the EPLS?
67.525 Whom do I ask if I have questions about a person in the EPLS?
67.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

67.600 How do suspension and debarment actions start?
67.605 How does suspension differ from debarment?
67.610 What procedures does the Department of Justice use in suspension and debarment actions?
67.615 How does the Department of Justice notify a person of a suspension and debarment action?
67.620 Do Federal agencies coordinate suspension and debarment actions?
67.625 What is the scope of a suspension or debarment action?
67.630 May the Department of Justice impute the conduct of one person to another?
67.635 May the Department of Justice settle a debarment or suspension action?
67.640 May a settlement include a voluntary exclusion?
67.645 Do other Federal agencies know if the Department of Justice agrees to a voluntary exclusion?

Subpart G—Suspension

67.700 When may the suspending official issue a suspension?
67.705 What does the suspending official consider in issuing a suspension?
67.710 When does a suspension take effect?
67.715 What notice does the suspending official give me if I am suspended?
67.720 How may I contest a suspension?
67.725 How much time do I have to contest a suspension?
67.730 What information must I provide to the suspending official if I contest a suspension?
67.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
67.740 Are suspension proceedings formal?
67.745 How is fact-finding conducted?
67.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
67.755 When will I know whether the suspension is continued or terminated?
67.760 How long may my suspension last?

Subpart H—Debarment

67.800 What are the causes for debarment?
67.805 What notice does the debarring official give me if I am proposed for debarment?
67.810 When does a debarment take effect?
67.815 How may I contest a proposed debarment?
67.820 How much time do I have to contest a proposed debarment?
67.825 What information must I provide to the debarring official if I contest a proposed debarment?
67.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?
67.835 Are debarment proceedings formal?
67.840 How is fact-finding conducted?
67.845 What does the debarring official consider in deciding whether to debar me?
67.850 What is the standard of proof in a debarment action?
67.855 Who has the burden of proof in a debarment action?
67.860 What factors may influence the debarring official's decision?
67.865 How long may my debarment last?
67.870 When do I know if the debarring official debars me?
67.875 May I ask the debarring official to reconsider a decision to debar me?
67.880 What factors may influence the debarring official during reconsideration?
67.885 May the debarring official extend a debarment?

Subpart I—Definitions

67.900 Adequate evidence.
67.905 Affiliate.
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67.985 Person.
67.990 Preponderance of the evidence.
67.995 Principal.
67.1000 Respondent.
67.1005 State.
67.1010 Suspending official.
67.1015 Suspension.
67.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Authority: E.O. 12549; Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711, *et seq.*, Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.*, Victims of Crime Act of 1984, 42 U.S.C. 10601, *et seq.*; 18 U.S.C. 4042; 18 U.S.C. 4351–4353; E.O. 12549 (3 CFR, 1986 Comp. P.189).

■ 2. Part 67 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''the Department of Justice'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''Department of Justice'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Department of Justice debarring official or designee'' is added wherever it occurs.

■ 3. Section 67.440 is added to read as follows:

§ 67.440 What method do I use to communicate those requirements to participants?

To communicate the requirements, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

■ 4. Part 83 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 83—GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Subpart A—Purpose and Coverage

Sec.

83.100 What does this part do?
83.105 Does this part apply to me?
83.110 Are any of my Federal assistance awards exempt from this part?
83.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

83.200 What must I do to comply with this part?
83.205 What must I include in my drug-free workplace statement?
83.210 To whom must I distribute my drug-free workplace statement?
83.215 What must I include in my drug-free awareness program?
83.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
83.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
83.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

83.300 What must I do to comply with this part if I am an individual recipient?
83.301 [Reserved]

Subpart D—Responsibilities of Department of Justice Awarding Officials

83.400 What are my responsibilities as a Department of Justice awarding official?

Subpart E—Violations of This Part and Consequences

83.500 How are violations of this part determined for recipients other than individuals?
83.505 How are violations of this part determined for recipients who are individuals?
83.510 What actions will the Federal Government take against a recipient determined to have violated this part?
83.515 Are there any exceptions to those actions?

Subpart F—Definitions

83.605 Award.
83.610 Controlled substance.
83.615 Conviction.
83.620 Cooperative agreement.
83.625 Criminal drug statute.
83.630 Debarment.
83.635 Drug-free workplace.
83.640 Employee.
83.645 Federal agency or agency.
83.650 Grant.
83.655 Individual.
83.660 Recipient.
83.665 State.
83.670 Suspension.

Authority: Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*).

■ 5. Part 83 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''the Department of Justice'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''Department of Justice'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Attorney General or designee'' is added wherever it occurs.

■ d. ''[Agency head]'' is removed and ''Attorney General'' is added wherever it occurs.

■ 6. Section 83.510(c) is further amended by removing ''[CFR citation for the Federal agency's regulations implementing Executive Order 12549 and Executive Order 12689]'' and adding ''28 CFR Part 67'' in its place.

■ 7. Section 83.605(a)(2) is further amended by removing ''[Agency-specific CFR citation]'' and adding ''28 CFR Part 70'' in its place.

DEPARTMENT OF LABOR

29 CFR Part 94 and 98

RIN 1291–AA33

FOR FURTHER INFORMATION CONTACT: Jeffrey Saylor, Director Division of Acquisition Management Services, N–5425, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–7285, email *saylor-jeffrey@dol.gov*.

List of Subjects

29 CFR Part 94

Administrative practices and procedures, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

29 CFR Part 98

Administrative practices and procedures, Grant programs, Loan programs, Reporting and recordkeeping requirements.

Dated: August 14, 2003.

Elaine L. Chao,

Secretary of Labor.

■ For the reasons stated in the common preamble, the Department of Labor amends 29 CFR subtitle A, as follows:

■ 1. Part 94 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 94—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
94.100 What does this part do?
94.105 Does this part apply to me?
94.110 Are any of my Federal assistance awards exempt from this part?
94.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

94.200 What must I do to comply with this part?
94.205 What must I include in my drug-free workplace statement?
94.210 To whom must I distribute my drug-free workplace statement?
94.215 What must I include in my drug-free awareness program?
94.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
94.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
94.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

94.300 What must I do to comply with this part if I am an individual recipient?
94.301 [Reserved.]

Subpart D—Responsibilities of Department of Labor Awarding Officials

94.400 What are my responsibilities as a Department of Labor awarding official?

Subpart E—Violations of This Part and Consequences

94.500 How are violations of this part determined for recipients other than individuals?
94.505 How are violations of this part determined for recipients who are individuals?
94.510 What actions will the Federal Government take against a recipient determined to have violated this part?
94.515 Is there any provision for exceptions to those actions?

Subpart F—Definitions

94.605 Award.
94.610 Controlled substance.
94.615 Conviction.
94.620 Cooperative agreement.
94.625 Criminal drug statute.
94.630 Debarment.
94.635 Drug-free workplace.
94.640 Employee.
94.645 Federal agency or agency.
94.650 Grant.
94.655 Individual.
94.660 Recipient.
94.665 State.
94.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*

■ 2. Part 94 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''Department of Labor'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''Department of Labor'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Secretary of Labor or designee'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''Secretary of Labor or designee'' is added in its place wherever it occurs.

■ 3. Section 94.510(c) is further amended by removing ''[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]'' and adding ''29 CFR Part 98'' in its place.

■ 4. Section 94.605(a)(2) is further amended by removing ''[Agency-specific CFR citation]'' and adding ''29 CFR Part 97'' in its place.

■ 5. Part 98 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 98—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
98.25 How is this part organized?
98.50 How is this part written?
98.75 Do terms in this part have special meanings?

Subpart A—General

98.100 What does this part do?
98.105 Does this part apply to me?
98.110 What is the purpose of the nonprocurement debarment and suspension system?
98.115 How does an exclusion restrict a person's involvement in covered transactions?
98.120 May we grant an exception to let an excluded person participate in a covered transaction?
98.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
98.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
98.135 May the U.S. Department of Labor exclude a person who is not currently participating in a nonprocurement transaction?
98.140 How do I know if a person is excluded?
98.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

98.200 What is a covered transaction?
98.205 Why is it important to know if a particular transaction is a covered transaction?
98.210 Which nonprocurement transactions are covered transactions?
98.215 Which nonprocurement transactions are not covered transactions?
98.220 Are any procurement contracts included as covered transactions?
98.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

98.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
94.305 May I enter into a covered transaction with an excluded or disqualified person?
98.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
98.315 May I use the services of an excluded person as a principal under a covered transaction?
98.320 Must I verify that principals of my covered transactions are eligible to participate?
98.325 What happens if I do business with an excluded person in a covered transaction?
98.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

98.335 What information must I provide before entering into a covered transaction with the Department of Labor?
98.340 If I disclose unfavorable information required under § 98.335, will I be prevented from participating in the transaction?
98.345 What happens if I fail to disclose the information required under § 98.335?
98.350 What must I do if I learn of the information required under § 98.335 after entering into a covered transaction with the U.S. Department of Labor?

Disclosing information—Lower Tier Participants

98.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
98.360 What happens if I fail to disclose the information required under § 98.355?
98.365 What must I do if I learn of information required under § 98.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of the Department of Labor Officials Regarding Transactions

98.400 May I enter into a transaction with an excluded or disqualified person?
98.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
98.410 May I approve a participant's use of the services of an excluded person?
98.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
98.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
98.425 When do I check to see if a person is excluded or disqualified?
98.430 How do I check to see if a person is excluded or disqualified?
98.435 What must I require of a primary tier participant?
98.440 [Reserved]
98.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
98.450 What action may I take if a primary tier participant fails to disclose the information required under § 98.335?
98.455 What may I do if a lower tier participant fails to disclose the information required under § 98.355 to the next higher tier?

Subpart E—Excluded Parties List System

98.500 What is the purpose of the Excluded Parties List System (EPLS)?
98.505 Who uses the EPLS?
98.510 Who maintains the EPLS?
98.515 What specific information is in the EPLS?
98.520 Who places the information into the EPLS?
98.525 Whom do I ask if I have questions about a person in the EPLS?
98.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

98.600 How do suspension and debarment actions start?
98.605 How does suspension differ from debarment?
98.610 What procedures does the U.S. Department of Labor use in suspension and debarment actions?
98.615 How does the U.S. Department of Labor notify a person of a suspension and debarment action?
98.620 Do Federal agencies coordinate suspension and debarment actions?
98.625 What is the scope of a suspension or debarment action?
98.630 May the U.S. Department of Labor impute the conduct of one person to another?
98.635 May the U.S. Department of Labor settle a debarment or suspension action?
98.640 May a settlement include a voluntary exclusion?
98.645 Do other Federal agencies know if the U.S. Department of Labor agrees to a voluntary exclusion?

Subpart G—Suspension

98.700 When may the suspending official issue a suspension?
98.705 What does the suspending official consider in issuing a suspension?
98.710 When does a suspension take effect?
98.715 What notice does the suspending official give me if I am suspended?
98.720 How may I contest a suspension?
98.725 How much time do I have to contest a suspension?
98.730 What information must I provide to the suspending official if I contest a suspension?
98.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
98.740 Are suspension proceedings formal?
98.745 How is fact-finding conducted?
98.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?

98.755 When will I know whether the suspension is continued or terminated?
98.760 How long may my suspension last?

Subpart H—Debarment

98.800 What are the causes for debarment?
98.805 What notice does the debarring official give me if I am proposed for debarment?
98.810 When does a debarment take effect?
98.815 How may I contest a proposed debarment?
98.820 How much time do I have to contest a proposed debarment?
98.825 What information must I provide to the debarring official if I contest a proposed debarment?
98.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
98.835 Are debarment proceedings formal?
98.840 How is fact-finding conducted?
98.845 What does the debarring official consider in deciding whether to debar me?
98.850 What is the standard of proof in a debarment action?
98.855 Who has the burden of proof in a debarment action?
98.860 What factors may influence the debarring official's decision?
98.865 How long may my debarment last?
98.870 When do I know if the debarring official debars me?
98.875 May I ask the debarring official to reconsider a decision to debar me?
98.880 What factors may influence the debarring official during reconsideration?
98.885 May the debarring official extend a debarment?

Subpart I—Definitions

98.900 Adequate evidence.
98.905 Affiliate.
98.910 Agency.
98.915 Agent or representative.
98.920 Civil judgment.
98.925 Conviction.
98.930 Debarment.
98.935 Debarring official.
98.940 Disqualified.
98.945 Excluded or exclusion.
98.950 Excluded Parties List System.
98.955 Indictment.
98.960 Ineligible or ineligibility.
98.965 Legal proceedings.
98.970 Nonprocurement transaction.
98.975 Notice.
98.980 Participant.
98.985 Person.
98.990 Preponderance of the evidence.
98.995 Principal.
98.1000 Respondent.
98.1005 State.
98.1010 Suspending official.
98.1015 Suspension.
98.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 98—Covered Transactions

Authority: 5 U.S.C. 301, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 NOTE); E.O. 11738, 3 CFR, 1973 Comp., p. 799; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

■ 6. Part 98 is further amended as follows:
■ a. ''[Agency noun]'' is removed and ''Department of Labor'' is added in its place wherever it occurs.
■ b. ''[Agency adjective]'' is removed and ''Department of Labor'' is added in its place wherever it occurs.
■ c. ''[Agency head or designee]'' is removed and ''Secretary of Labor or designee'' is added in its place wherever it occurs.

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Parts 1471 and 1472

RIN 3076–AA08

FOR FURTHER INFORMATION CONTACT: Jane Lorber, Director, Labor-Management Cooperation Program, 2100 K St., NW., Washington, DC 20427, (202) 606–5444, e-mail: *jlorber@fmcs.gov.*

List of Subjects

29 CFR Part 1471

Administrative practice and procedure, Debarment and suspension, Grant programs, Loan programs, Reporting and recordkeeping requirements.

29 CFR Part 1472

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: September 5, 2003.

John J. Toner,

Chief of Staff.

■ For the reason stated in the common preamble, the Federal Mediation and Conciliation Service amends 29 CFR chapter XII, as follows:
■ 1. Part 1471 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1471—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
1471.25 How is this part organized?
1471.50 How is this part written?
1471.75 Do terms in this part have special meanings?

Subpart A—General

1471.100 What does this part do?
1471.105 Does this part apply to me?
1471.110 What is the purpose of the nonprocurement debarment and suspension system?
1471.115 How does an exclusion restrict a person's involvement in covered transactions?
1471.120 May we grant an exception to let an excluded person participate in a covered transaction?
1471.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
1471.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
1471.135 May FMCS exclude a person who is not currently participating in a nonprocurement transaction?
1471.140 How do I know if a person is excluded?
1471.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

1471.200 What is a covered transaction?
1471.205 Why is it important to know if a particular transaction is a covered transaction?
1471.210 Which nonprocurement transactions are covered transactions?
1471.215 Which nonprocurement transactions are not covered transactions?
1471.220 Are any procurement contracts included as covered transactions?
1471.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

1471.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
1471.305 May I enter into a covered transaction with an excluded or disqualified person?
1471.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
1471.315 May I use the services of an excluded person as a principal under a covered transaction?
1471.320 Must I verify that principals of my covered transactions are eligible to participate?
1471.325 What happens if I do business with an excluded person in a covered transaction?
1471.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

1471.335 What information must I provide before entering into a covered transaction with FMCS?
1471.340 If I disclose unfavorable information required under § 1471.335, will I be prevented from participating in the transaction?
1471.345 What happens if I fail to disclose the information required under § 1471.335?
1471.350 What must I do if I learn of the information required under § 1471.335

after entering into a covered transaction with FMCS?

Disclosing Information—Lower Tier Participants

1471.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
1471.360 What happens if I fail to disclose the information required under § 1471.355?
1471.365 What must I do if I learn of information required under § 1471.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of FMCS Officials Regarding Transactions

1471.400 May I enter into a transaction with an excluded or disqualified person?
1471.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
1471.410 May I approve a participant's use of the services of an excluded person?
1471.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
1471.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
1471.425 When do I check to see if a person is excluded or disqualified?
1471.430 How do I check to see if a person is excluded or disqualified?
1471.435 What must I require of a primary tier participant?
1471.440 What method do I use to communicate those requirements to participants?
1471.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
1471.450 What action may I take if a primary tier participant fails to disclose the information required under § 1471.335?
1471.455 What may I do if a lower tier participant fails to disclose the information required under § 1471.355 to the next higher tier?

Subpart E—Excluded Parties List System

1471.500 What is the purpose of the Excluded Parties List System (EPLS)?
1471.505 Who uses the EPLS?
1471.510 Who maintains the EPLS?
1471.515 What specific information is in the EPLS?
1471.520 Who places the information into the EPLS?
1471.525 Whom do I ask if I have questions about a person in the EPLS?
1471.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

1471.600 How do suspension and debarment actions start?
1471.605 How does suspension differ from debarment?
1471.610 What procedures does FMCS use in suspension and debarment actions?
1471.615 How does FMCS notify a person of a suspension and debarment action?
1471.620 Do Federal agencies coordinate suspension and debarment actions?
1471.625 What is the scope of a suspension or debarment action?
1471.630 May FMCS impute the conduct of one person to another?
1471.635 May FMCS settle a debarment or suspension action?
1471.640 May a settlement include a voluntary exclusion?
1471.645 Do other Federal agencies know if FMCS agrees to a voluntary exclusion?

Subpart G—Suspension

1471.700 When may the suspending official issue a suspension?
1471.705 What does the suspending official consider in issuing a suspension?
1471.710 When does a suspension take effect?
1471.715 What notice does the suspending official give me if I am suspended?
1471.720 How may I contest a suspension?
1471.725 How much time do I have to contest a suspension?
1471.730 What information must I provide to the suspending official if I contest a suspension?
1471.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
1471.740 Are suspension proceedings formal?
1471.745 How is fact-finding conducted?
1471.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
1471.755 When will I know whether the suspension is continued or terminated?
1471.760 How long may my suspension last?

Subpart H—Debarment

1471.800 What are the causes for debarment?
1471.805 What notice does the debarring official give me if I am proposed for debarment?
1471.810 When does a debarment take effect?
1471.815 How may I contest a proposed debarment?
1471.820 How much time do I have to contest a proposed debarment?
1471.825 What information must I provide to the debarring official if I contest a proposed debarment?
1471.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
1471.835 Are debarment proceedings formal?
1471.840 How is fact-finding conducted?
1471.845 What does the debarring official consider in deciding whether to debar me?
1471.850 What is the standard of proof in a debarment action?
1471.855 Who has the burden of proof in a debarment action?
1471.860 What factors may influence the debarring official's decision?
1471.865 How long may my debarment last?
1471.870 When do I know if the debarring official debars me?
1471.875 May I ask the debarring official to reconsider a decision to debar me?
1471.880 What factors may influence the debarring official during reconsideration?
1471.885 May the debarring official extend a debarment?

Subpart I—Definitions

1471.900 Adequate evidence.
1471.905 Affiliate.
1471.910 Agency.
1471.915 Agent or representative.
1471.920 Civil judgment.
1471.925 Conviction.
1471.930 Debarment.
1471.935 Debarring official.
1471.940 Disqualified.
1471.945 Excluded or exclusion.
1471.950 Excluded Parties List System.
1471.955 Indictment.
1471.960 Ineligible or ineligibility.
1471.965 Legal proceedings.
1471.970 Nonprocurement transaction.
1471.975 Notice.
1471.980 Participant.
1471.985 Person.
1471.990 Preponderance of the evidence.
1471.995 Principal.
1471.1000 Respondent.
1471.1005 State.
1471.1010 Suspending official.
1471.1015 Suspension.
1471.1020 Voluntary exclusion or voluntarily excluded

Subpart J—[Reserved]

Appendix to Part 1471—Covered Transactions

Authority: E.O. 12549 ,3 CFR 1986 Comp., p. 189; E.O. 12698, 3 CFR 1989 Comp., p. 235; sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 29 U.S.C. 175a.

■ 2. Part 1471 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''Federal Mediation and Conciliation Service'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''FMCS'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Agency Director'' is added in its place wherever it occurs.

■ 3. Section 1471.440 is added to read as follows:

§ 1471.440 What method do I use to communicate those requirements to participants?

To communicate the requirement you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

■ 4. Part 1472 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1472—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
1472.100 What does this part do?
1472.105 Does this part apply to me?
1472.110 Are any of my Federal assistance awards exempt from this part?
1472.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

1472.200 What must I do to comply with this part?
1472.205 What must I include in my drug-free workplace statement?
1472.210 To whom must I distribute my drug-free workplace statement?
1472.215 What must I include in my drug-free awareness program?
1472.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
1472.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
1472.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

1472.300 What must I do to comply with this part if I am an individual recipient?
1472.301 [Reserved]

Subpart D—Responsibilities of FMCS Awarding Officials

1472.400 What are my responsibilities as an FMCS awarding official?

Subpart E—Violations of This Part and Consequences

1472.500 How are violations of this part determined for recipients other than individuals?
1472.505 How are violations of this part determined for recipients who are individuals?
1472.510 What actions will the Federal Government take against a recipient determined to have violated this part?
1472.515 Are there any exceptions to those actions?

Subpart F—Definitions

1472.605 Award.
1472.610 Controlled substance.
1472.615 Conviction.
1472.620 Cooperative agreement.
1472.625 Criminal drug statute.
1472.630 Debarment.
1472.635 Drug-free workplace.
1472.640 Employee.
1472.645 Federal agency or agency.
1472.650 Grant.
1472.655 Individual.
1472.660 Recipient.
1472.665 State.
1472.670 Suspension.

Authority: 41 U.S.C. 701, *et seq.*

■ 5. Part 1472 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''Federal Mediation and Conciliation Service'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''FMCS'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Agency Director'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''Agency Director'' is added in its place wherever it occurs.

■ 6. Section 1472.510 (c) is further amended by removing ''[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689] and adding ''29 CFR Part 1471'' in its place.

■ 7. Section 1472.605(a)(2) is further amended by removing ''[Agency-specific CFR citation]'' and adding ''29 CFR Part 1470'' in its place.

DEPARTMENT OF THE TREASURY

31 CFR Parts 19 and 20

RIN 1505–AA86

FOR FURTHER INFORMATION CONTACT: Brian Lee, Office of the Deputy Chief Financial Officer, 1500 Pennsylvania Avenue, NW., Attention: Room 6212, Metropolitan Square, Washington, DC 20220, (202) 622–0808, *Brian.Lee@do.treas.gov.*

ADDRESSES: Written comments should be sent to Brian Lee, Office of the Deputy Chief Financial Officer, Department of the Treasury, 1500 Pennsylvania Ave., NW., Attn: Metropolitan Square Room 6212, Washington, DC 20220. Comments may also be sent by electronic mail to *Brian Lee@do.treas.gov.*

Comments should discuss the extent to which it may be appropriate to amend the interim final rule to reflect programs and matters that may be unique to the Department of the Treasury. Comments on matters that have been raised in connection with the prior common notice of proposed rulemaking and that are discussed elsewhere in the common preamble to this rule will not be considered.

List of Subjects

31 CFR Part 19

Administrative practice and procedure, Debarment and suspension, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

31 CFR Part 20

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: July 31, 2003.

Barry K. Hudson,

Deputy Chief Financial Officer.

■ For the reasons stated in the preamble, the Department of the Treasury amends 31 CFR chapter I as follows:

■ 1. Part 19 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 19—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
19.25 How is this part organized?
19.50 How is this part written?
19.75 Do terms in this part have special meanings?

Subpart A—General

19.100 What does this part do?
19.105 Does this part apply to me?
19.110 What is the purpose of the nonprocurement debarment and suspension system?
19.115 How does an exclusion restrict a person's involvement in covered transactions?
19.120 May we grant an exception to let an excluded person participate in a covered transaction?
19.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
19.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
19.135 May the Department of the Treasury exclude a person who is not currently participating in a nonprocurement transaction?
19.140 How do I know if a person is excluded?
19.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

19.200 What is a covered transaction?
19.205 Why is it important to know if a particular transaction is a covered transaction?
19.210 Which nonprocurement transactions are covered transactions?
19.215 Which nonprocurement transactions are not covered transactions?
19.220 Are any procurement contracts included as covered transactions?
19.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

19.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
19.305 May I enter into a covered transaction with an excluded or disqualified person?
19.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
19.315 May I use the services of an excluded person as a principal under a covered transaction?
19.320 Must I verify that principals of my covered transactions are eligible to participate?
19.325 What happens if I do business with an excluded person in a covered transaction?
19.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

19.335 What information must I provide before entering into a covered transaction with the Department of the Treasury?
19.340 If I disclose unfavorable information required under § 19.335, will I be prevented from participating in the transaction?
19.345 What happens if I fail to disclose the information required under § 19.335?
19.350 What must I do if I learn of the information required under § 19.335 after entering into a covered transaction with the Department of the Treasury?

Disclosing Information—Lower Tier Participants

19.355 What Information must I provide to a higher tier participant before entering into a covered transaction with that participant?
19.360 What happens if I fail to disclose the information required under § 19.355?
19.365 What must I do if I learn of information required under § 19.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Department of the Treasury Officials Regarding Transactions

19.400 May I enter into a transaction with an excluded or disqualified person?
19.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
19.410 May I approve a participant's use of the services of an excluded person?
19.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
19.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
19.425 When do I check to see if a person is excluded or disqualified?
19.430 How do I check to see if a person is excluded or disqualified?
19.435 What must I require of a primary tier participant?
19.440 What method do I use to communicate those requirements to participants?
19.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
19.450 What action may I take if a primary tier participant fails to disclose the information required under § 19.335?
19.455 What may I do if a lower tier participant fails to disclose the information required under § 19.355 to the next higher tier?

Subpart E—Excluded Parties List System

19.500 What is the purpose of the Excluded Parties List System (EPLS)?
19.505 Who uses the EPLS?
19.510 Who maintains the EPLS?
19.515 What specific information is in the EPLS?
19.520 Who places the information into the EPLS?
19.525 Whom do I ask if I have questions about a person in the EPLS?
19.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

19.600 How do suspension and debarment actions start?
19.605 How does suspension differ from debarment?
19.610 What procedures does the Department of the Treasury use in suspension and debarment actions?
19.615 How does the Department of the Treasury notify a person of a suspension and debarment action?
19.620 Do Federal agencies coordinate suspension and debarment actions?
19.625 What is the scope of a suspension or debarment action?
19.630 May the Department of the Treasury impute the conduct of one person to another?
19.635 May the Department of the Treasury settle a debarment or suspension action?
19.640 May a settlement include a voluntary exclusion?
19.645 Do other Federal agencies know if the Department of the Treasury agrees to a voluntary exclusion?

Subpart G—Suspension

19.700 When may the suspending official issue a suspension?
19.705 What does the suspending official consider in issuing a suspension?
19.710 When does a suspension take effect?
19.715 What notice does the suspending official give me if I am suspended?
19.720 How may I contest a suspension?
19.725 How much time do I have to contest a suspension?
19.730 What information must I provide to the suspending official if I contest a suspension?
19.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
19.740 Are suspension proceedings formal?
19.745 How is fact-finding conducted?
19.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
19.755 When will I know whether the suspension is continued or terminated?
19.760 How long may my suspension last?

Subpart H—Debarment

19.800 What are the causes for debarment?
19.805 What notice does the debarring official give me if I am proposed for debarment?
19.810 When does a debarment take effect?
19.815 How may I contest a proposed debarment?
19.820 How much time do I have to contest a proposed debarment?
19.825 What information must I provide to the debarring official if I contest a proposed debarment?
19.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
19.835 Are debarment proceedings formal?
19.840 How is fact-finding conducted?
19.845 What does the debarring official consider in deciding whether to debar me?
19.850 What is the standard of proof in a debarment action?
19.855 Who has the burden of proof in a debarment action?
19.860 What factors may influence the debarring official's decision?
19.865 How long may my debarment last?
19.870 When do I know if the debarring official debars me?
19.875 May I ask the debarring official to reconsider a decision to debar me?
19.880 What factors may influence the debarring official during reconsideration?
19.885 May the debarring official extend a debarment?

Subpart I—Definitions

19.900 Adequate evidence.
19.905 Affiliate.
19.910 Agency.
19.915 Agent or representative.
19.920 Civil judgment.
19.925 Conviction.
19.930 Debarment.
19.935 Debarring official.
19.940 Disqualified.
19.945 Excluded or exclusion.
19.950 Excluded Parties List System.
19.955 Indictment.
19.960 Ineligible or ineligibility.
19.965 Legal proceedings.
19.970 Nonprocurement transaction.
19.975 Notice.
19.980 Participant.
19.985 Person.
19.990 Preponderance of the evidence.
19.995 Principal.
19.1000 Respondent.
19.1005 State.
19.1010 Suspending official.
19.1015 Suspension.
19.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 19—Covered Transactions

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).??

■ 2. Part 19 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''Department of the Treasury'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''Department of the Treasury'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Secretary of the Treasury'' is added in its place wherever it occurs.

■ 3. Section 19.440 is added to read as follows:

§ 19.440 What method do I use to communicate those requirements to participants?

To communicate the requirements, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

■ 4. Part 20 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 20—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
20.100 What does this part do?
20.105 Does this part apply to me?
20.110 Are any of my Federal assistance awards exempt from this part?
20.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

20.200 What must I do to comply with this part?
20.205 What must I include in my drug-free workplace statement?
20.210 To whom must I distribute my drug-free workplace statement?
20.215 What must I include in my drug-free awareness program?
20.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
20.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
20.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

20.300 What must I do to comply with this part if I am an individual recipient?
20.301 [Reserved]

Subpart D—Responsibilities of Department of the Treasury Awarding Officials

20.400 What are my responsibilities as an Department of the Treasury awarding official?

Subpart E—Violations of This Part and Consequences

20.500 How are violations of this part determined for recipients other than individuals?
20.505 How are violations of this part determined for recipients who are individuals?
20.510 What actions will the Federal Government take against a recipient determined to have violated this part?
20.515 Are there any exceptions to those actions?

Subpart F—Definitions

20.605 Award.
20.610 Controlled substance.
20.615 Conviction.
20.620 Cooperative agreement.
20.625 Criminal drug statute.
20.630 Debarment.
20.635 Drug-free workplace.
20.640 Employee.
20.645 Federal agency or agency.
20.650 Grant.
20.655 Individual.
20.660 Recipient.
20.665 State.
20.670 Suspension.

Authority: 41 U.S.C. 701, *et seq.*

■ 5. Part 20 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''Department of the Treasury'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''Department of the Treasury'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Secretary of the Treasury'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''Secretary of the Treasury'' is added in its place wherever it occurs.

■ 6. Section 20.510(c) is further amended by removing ''[CFR citation for the Federal agency's regulations implementing Executive Order 12549 and Executive Order 12689]'' and adding ''22 CFR Part 19'' in its place.

■ 7. Section 20.605 is further amended by removing and reserving paragraph (a)(2).

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 25 and 26

RIN 0790–AG86

FOR FURTHER INFORMATION CONTACT: Mark Herbst, Office of the Deputy Under Secretary of Defense (Science and Technology), 3080 Defense Pentagon, Washington, DC 20301–3080., telephone: (703) 696–0372.

List of Subjects

32 CFR Part 25

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements

32 CFR Part 26

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements

Approved: July 31, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

■ Accordingly, as set forth in the common preamble, 32 CFR chapter I, subchapter C is amended as follows:

■ 1. Part 25 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 25—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
25.25 How is this part organized?
25.50 How is this part written?
25.75 Do terms in this part have special meanings?

Subpart A—General 25.100 What does this part do?

25.105 Does this part apply to me?
25.110 What is the purpose of the nonprocurement debarment and suspension system?
25.115 How does an exclusion restrict a person's involvement in covered transactions?
25.120 May we grant an exception to let an excluded person participate in a covered transaction?
25.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
25.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
25.135 May the DOD Component exclude a person who is not currently participating in a nonprocurement transaction?
25.140 How do I know if a person is excluded?

25.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

25.200 What is a covered transaction?
25.205 Why is it important to know if a particular transaction is a covered transaction?
25.210 Which nonprocurement transactions are covered transactions?
25.215 Which nonprocurement transactions are not covered transactions?
25.220 Are any procurement contracts included as covered transactions?
25.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

25.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
25.305 May I enter into a covered transaction with an excluded or disqualified person?
25.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
25.315 May I use the services of an excluded person as a principal under a covered transaction?
25.320 Must I verify that principals of my covered transactions are eligible to participate?
25.325 What happens if I do business with an excluded person in a covered transaction?
25.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

25.335 What information must I provide before entering into a covered transaction with the DOD Component?
25.340 If I disclose unfavorable information required under § 25.335, will I be prevented from participating in the transaction?
25.345 What happens if I fail to disclose the information required under § 25.335?
25.350 What must I do if I learn of the information required under § 25.335 after entering into a covered transaction with the DOD Component?

Disclosing Information—Lower Tier Participants

25.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
25.360 What happens if I fail to disclose the information required under § 25.355?
25.365 What must I do if I learn of information required under § 25.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of DOD Component Officials Regarding Transactions

25.400 May I enter into a transaction with an excluded or disqualified person?
25.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
25.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
25.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
25.425 When do I check to see if a person is excluded or disqualified?
25.430 How do I check to see if a person is excluded or disqualified?
25.435 What must I require of a primary tier participant?
25.440 What method do I use to communicate those requirements to participants?
25.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
25.450 What action may I take if a primary tier participant fails to disclose the information required under § 25.335?
25.455 What may I do if a lower tier participant fails to disclose the information required under § 25.355 to the next higher tier?

Subpart E—Excluded Parties List System

25.500 What is the purpose of the Excluded Parties List System (EPLS)?
25.505 Who uses the EPLS?
25.510 Who maintains the EPLS?
25.515 What specific information is in the EPLS?
25.520 Who places the information into the EPLS?
25.525 Whom do I ask if I have questions about a person in the EPLS?
25.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

25.600 How do suspension and debarment actions start?
25.605 How does suspension differ from debarment?
25.610 What procedures does the DOD Component use in suspension and debarment actions?
25.615 How does the DOD Component notify a person of a suspension and debarment action?
25.620 Do Federal agencies coordinate suspension and debarment actions?
25.625 What is the scope of a suspension or debarment action?
25.630 May the DOD Component impute the conduct of one person to another?
25.635 May the DOD Component settle a debarment or suspension action?
25.640 May a settlement include a voluntary exclusion?
25.645 Do other Federal agencies know if the DOD Component agrees to a voluntary exclusion?

Subpart G—Suspension

25.700 When may the suspending official issue a suspension?
25.705 What does the suspending official consider in issuing a suspension?
25.710 When does a suspension take effect?
25.715 What notice does the suspending official give me if I am suspended?
25.720 How may I contest a suspension?
25.725 How much time do I have to contest a suspension?
25.730 What information must I provide to the suspending official if I contest a suspension?
25.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
25.740 Are suspension proceedings formal?
25.745 How is fact-finding conducted?
25.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
25.755 When will I know whether the suspension is continued or terminated?
25.760 How long may my suspension last?

Subpart H—Debarment

25.800 What are the causes for debarment?
25.805 What notice does the debarring official give me if I am proposed for debarment?
25.810 When does a debarment take effect?
25.815 How may I contest a proposed debarment?
25.820 How much time do I have to contest a proposed debarment?
25.825 What information must I provide to the debarring official if I contest a proposed debarment?
25.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?
25.835 Are debarment proceedings formal?
25.840 How is fact-finding conducted?
25.845 What does the debarring official consider in deciding whether to debar me?
25.850 What is the standard of proof in a debarment action?
25.855 Who has the burden of proof in a debarment action?
25.860 What factors may influence the debarring official's decision?
25.865 How long may my debarment last?
25.870 When do I know if the debarring official debars me?
25.875 May I ask the debarring official to reconsider a decision to debar me?
25.880 What factors may influence the debarring official during reconsideration?
25.885 May the debarring official extend a debarment?

Subpart I—Definitions

25.900 Adequate evidence.
25.905 Affiliate.
25.910 Agency.
25.915 Agent or representative.
25.920 Civil judgment.
25.925 Conviction.
25.930 Debarment.
25.935 Debarring official.
25.940 Disqualified.
25.942 DOD Component.
25.945 Excluded or exclusion.
25.950 Excluded Parties List System.
25.955 Indictment.

25.960 Ineligible or ineligibility.
25.965 Legal proceedings.
25.970 Nonprocurement transaction.
25.975 Notice.
25.980 Participant.
25.985 Person.
25.990 Preponderance of the evidence.
25.995 Principal.
25.1000 Respondent.
25.1005 State.
25.1010 Suspending official.
25.1015 Suspension.
25.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 25—Covered Transactions

Authority: E.O. 12549, 3 CFR 1986 Comp., p.189; E.O. 12689 , 3 CFR 1989 Comp., p.235; sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note).

■ 2. Part 25 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''DOD Component'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''DOD Component'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Head of the DOD Component or his or her designee'' is added in its place wherever it occurs.

■ 3. Section 25.440 is added to read as follows:

§ 25.440 What method do I use to communicate those requirements to participants?

To communicate the requirement, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

■ 4. Section 25.935 is further amended by adding paragraph (b) to read as follows:

§ 25.935 Debarring official.

* * * * *

(b) DOD Components' debarring officials for nonprocurement transactions are the same officials identified in 48 CFR part 209, subpart 209.4 as debarring officials for procurement contracts.

■ 5. Section 25.942 is added to read as follows:

§ 25.942 DOD Component.

DOD Component means the Office of the Secretary of Defense, a Military Department, a Defense Agency, or the Office of Economic Adjustment.

■ 6. Section 25.1010 is further amended by adding a paragraph (b) to read as follows:

§ 25.1010 Suspending official.

* * * * *

(b) DOD Components' suspending officials for nonprocurement transactions are the same officials identified in 48 CFR part, subpart 209.4 as suspending officials for procurement contracts.

■ 7. Part 26 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 26—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
26.100 What does this part do?
26.105 Does this part apply to me?
26.110 Are any of my Federal assistance awards exempt from this part?
26.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

26.200 What must I do to comply with this part?
26.205 What must I include in my drug-free workplace statement?
26.210 To whom must I distribute my drug-free workplace statement?
26.215 What must I include in my drug-free awareness program?
26.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
26.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
26.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

26.300 What must I do to comply with this part if I am an individual recipient?
26.301 [Reserved]

Subpart D—Responsibilities of DOD Component Awarding Officials

26.400 What are my responsibilities as a DOD Component awarding official?

Subpart E—Violations of This Part and Consequences

26.500 How are violations of this part determined for recipients other than individuals?
26.505 How are violations of this part determined for recipients who are individuals?
26.510 What actions will the Federal Government take against a recipient determined to have violated this part?
26.515 Are there any exceptions to those actions?

Subpart F—Definitions

26.605 Award
26.610 Controlled substance.
26.615 Conviction.
26.620 Cooperative agreement.
26.625 Criminal drug statute.
26.630 Debarment.
26.632 DOD Component.
26.635 Drug-free workplace.
26.640 Employee.
26.645 Federal agency or agency.
26.650 Grant.
26.655 Individual.
26.660 Recipient.
26.665 State.
26.670 Suspension.

Authority: 41U.S.C.701, *et seq.*

■ 8. Part 26 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''DOD Component'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''DOD Component'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Head of the DOD Component or his or her designee'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''Secretary of Defense or Secretary of a Military Department'' is added in its place wherever it occurs.

■ 9. Section 26.510(c) is further amended by removing ''[CFR citation for the Federal agency's regulations implementing Executive Order 12549 and Executive Order 12689]'' and adding ''32 CFR Part 25'' in its place.

■ 10. Section 26.605(a)(2) is further amended by removing ''[Agency-specific CFR citation]'' and adding ''32 CFR part 33'' in its place.

■ 11. Section 26.632 is added to read as follows:

§ 26.632 DOD Component.

DOD Component means the Office of the Secretary of Defense, a Military Department, a Defense Agency, or the Office of Economic Adjustment.

DEPARTMENT OF EDUCATION

34 CFR Parts 84, 85, 668, and 682

RIN 1890–AA07

FOR FURTHER INFORMATION CONTACT: Peter Wathen-Dunn, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 6E211, Washington, DC 20202–2243. Telephone: 202–401–6700 or via e-mail: *Peter.Wathen-Dunn@ed.gov.* If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed above.

SUPPLEMENTARY INFORMATION: The Department of Education (ED) did not receive any comments on its adoption of the common rule. We adopt as the final suspension and debarment regulation of ED the common rule as proposed by ED in its notice of proposed rulemaking (NPRM) (January 23, 2002 (67 FR 3326–333)).

Generally, in the NPRM ED made changes and additions to the common rule to ensure that ED's programs under Title IV of the Higher Education Act of 1965, as amended (HEA), were protected as they have been in the past under ED's adoption of the original common rule. *See* the NPRM at 67 FR 3326 for a complete description of the ED changes to the Common Rule. The Secretary also chose to adopt the common rule so that procurement transactions below a nonprocurement transaction are covered under ED programs at any tier if the transaction equals or exceeds $25,000 or requires consent of the Department. The Secretary has also clarified some of the common rule definitions in the context of the HEA.

Because this final rule reorganizes part 85 of title 34 of the Code of Federal Regulations (CFR), some of the cross references to this part in parts 668 and 682 of the CFR are obsolete. Therefore, the Secretary makes conforming amendments to parts 668 and 682 of the CFR so they refer to the proper provisions in part 85.

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List of Subjects

4 CFR Part 84

Debarment and suspension, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

34 CFR Part 85

Administrative practice and procedure, Debarment and suspension, Drug abuse, Grant programs, Loan programs, Reporting and recordkeeping requirements.

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: September 8, 2003.

Rod Paige,

Secretary of Education.

■ For the reasons stated in the common preamble and in the specific preamble of the Department of Education (ED), the Secretary amends title 34 of the Code of Federal Regulations by adding part 84, revising part 85, and amending parts 668 and 682 to read as follows:

■ 1. Part 84 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 84—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.

84.100 What does this part do?
84.105 Does this part apply to me?
84.110 Are any of my Federal assistance awards exempt from this part?
84.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

84.200 What must I do to comply with this part?
84.205 What must I include in my drug-free workplace statement?
84.210 To whom must I distribute my drug-free workplace statement?
84.215 What must I include in my drug-free awareness program?
84.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
84.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
84.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

84.300 What must I do to comply with this part if I am an individual recipient?
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Subpart D—Responsibilities of ED Awarding Officials

84.400 What are my responsibilities as an ED awarding official?

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84.510 What actions will the Federal Government take against a recipient determined to have violated this part?
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84.610 Controlled substance.
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84.635 Drug-free workplace.
84.640 Employee.
84.645 Federal agency or agency.
84.650 Grant.
84.655 Individual.
84.660 Recipient.
84.665 State.
84.670 Suspension.

Authority: E.O.s 12549 and 12689; 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103–355, 108 Stat. 3243 at 3327, unless otherwise noted.

■ 2. Part 84 is further amended as follows:

■ a. ''[Agency noun]'' is removed and ''Department of Education'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''ED'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''ED Deciding Official'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''ED Deciding Official'' is added in its place wherever it occurs.

■ 3. Section 84.510(c) is further amended by removing ''[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]'' and adding ''34 CFR part 85'' in its place.

■ 4. Section 84.605(a)(2) is further amended by removing ''[Agency-specific CFR citation]'' and adding ''34 CFR part 85'' in its place.

■ 5. Each section in part 84 is further amended by adding to the end of each section the following authority citation to read:

Authority: E.O.s 12549 and 12689; 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455, Pub. L. 103–355, 108 Stat. 3243 at 3327.

■ 6. Part 85 is revised to read as provided in instruction 1 at the end of the common preamble:

PART 85—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
85.25 How is this part organized?
85.50 How is this part written?
85.75 Do terms in this part have special meanings?

Subpart A—General

85.100 What does this part do?
85.105 Does this part apply to me?
85.110 What is the purpose of the nonprocurement debarment and suspension system?
85.115 How does an exclusion restrict a person's involvement in covered transactions?
85.120 May we grant an exception to let an excluded person participate in a covered transaction?
85.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
85.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
85.135 May the Department of Education exclude a person who is not currently participating in a nonprocurement transaction?
85.140 How do I know if a person is excluded?
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85.205 Why is it important to know if a particular transaction is a covered transaction?
85.210 Which nonprocurement transactions are covered transactions?
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85.225 How do I know if a transaction in which I may participate is a covered transaction?

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Doing Business With Other Persons

85.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
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85.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
85.315 May I use the services of an excluded person as a principal under a covered transaction?
85.320 Must I verify that principals of my covered transactions are eligible to participate?
85.325 What happens if I do business with an excluded person in a covered transaction?
85.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

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85.335 What information must I provide before entering into a covered transaction with the Department of Education?
85.340 If I disclose unfavorable information required under § 85.335, will I be prevented from participating in the transaction?
85.345 What happens if I fail to disclose the information required under § 85.335?
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85.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
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85.365 What must I do if I learn of information required under § 85.355 after entering into a covered transaction with a higher tier participant?

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85.400 May I enter into a transaction with an excluded or disqualified person?
85.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
85.410 May I approve a participant's use of the services of an excluded person?
85.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
85.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
85.425 When do I check to see if a person is excluded or disqualified?
85.430 How do I check to see if a person is excluded or disqualified?
85.435 What must I require of a primary tier participant?
85.440 What method do I use to communicate those requirements to participants?
85.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
85.450 What action may I take if a primary tier participant fails to disclose the information required under § 85.335?
85.455 What may I do if a lower tier participant fails to disclose the information required under § 85.355 to the next higher tier?

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85.500 What is the purpose of the Excluded Parties List System (EPLS)?
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85.510 Who maintains the EPLS?
85.515 What specific information is in the EPLS?
85.520 Who places the information into the EPLS?
85.525 Whom do I ask if I have questions about a person in the EPLS?
85.530 Where can I find the EPLS?

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85.605 How does suspension differ from debarment?
85.610 What procedures does the Department of Education use in suspension and debarment actions?
85.611 What procedures do we use for a suspension or debarment action involving title IV, HEA transaction?
85.612 When does an exclusion by another agency affect the ability of the excluded person to participate in title IV, HEA transaction?
85.615 How does the Department of Education notify a person of a suspension and debarment action?
85.620 Do Federal agencies coordinate suspension and debarment actions?
85.625 What is the scope of a suspension or debarment action?
85.630 May the Department of Education impute the conduct of one person to another?
85.635 May the Department of Education settle a debarment or suspension action?
85.640 May a settlement include a voluntary exclusion?
85.645 Do other Federal agencies know if the Department of Education agrees to a voluntary exclusion?

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85.700 When may the suspending official issue a suspension?
85.705 What does the suspending official consider in issuing a suspension?
85.710 When does a suspension take effect?
85.711 When does a suspension affect title IV, HEA transactions?
85.715 What notice does the suspending official give me if I am suspended?
85.720 How may I contest a suspension?
85.725 How much time do I have to contest a suspension?
85.730 What information must I provide to the suspending official if I contest a suspension?
85.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
85.740 Are suspension proceedings formal?
85.745 How is fact-finding conducted?
85.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
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85.760 How long may my suspension last?

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85.800 What are the causes for debarment?
85.805 What notice does the debarring official give me if I am proposed for debarment?
85.810 When does a debarment take effect?
85.811 When does a debarment affect title IV, HEA transactions?
85.815 How may I contest a proposed debarment?
85.820 How much time do I have to contest a proposed debarment?
85.825 What information must I provide to the debarring official if I contest a proposed debarment?
85.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
85.835 Are debarment proceedings formal?
85.840 How is fact-finding conducted?
85.845 What does the debarring official consider in deciding whether to debar me?
85.850 What is the standard of proof in a debarment action?
85.855 Who has the burden of proof in a debarment action?
85.860 What factors may influence the debarring official's decision?
85.865 How long may my debarment last?
85.870 When do I know if the debarring official debars me?
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85.880 What factors may influence the debarring official during reconsideration?
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Subpart I—Definitions

85.900 Adequate evidence.
85.905 Affiliate.
85.910 Agency.
85.915 Agent or representative.
85.920 Civil judgment.
85.925 Conviction.
85.930 Debarment.
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85.942 ED Deciding Official.
85.945 Excluded or exclusion.
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85.952 HEA.
85.955 Indictment.
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85.970 Nonprocurement transaction.
85.975 Notice.
85.980 Participant.
85.985 Person.
85.990 Preponderance of the evidence.
85.995 Principal.
85.1000 Respondent.
85.1005 State.
85.1010 Suspending official.
85.1015 Suspension.
85.1016 Title IV, HEA participant.
85.1017 Title IV, HEA program.
85.1018 Title IV, HEA transaction.
85.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 85—Covered Transactions

Authority: E.O. 12549 (3 CFR 1986 Comp., p.189); E.O. 12698 (3 CFR 1989 Comp., p.235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474, unless otherwise noted.

■ 7. Part 85 is further amended as follows:

■ a. ''[Agency noun]'' is removed and ''Department of Education'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''ED'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''ED Deciding Official'' is added in its place wherever it occurs.

■ d. Each section in part 85 is further amended by adding to the end of each section the following authority citation to read:

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103–355, 108 Stat. 3243 at 3327.

■ 8. Section 85.220 is further amended by adding new paragraphs (c) and (d) to read as follows.

§ 85.220 Are any procurement contracts included as covered transactions?

* * * * *

(c) The contract is awarded by any contractor, subcontractor, supplier, consultant or its agent or representative in any transaction, regardless of tier, that is funded or authorized under ED programs and is expected to equal or exceed $25,000.

(d) The contract is to perform services as a third party servicer in connection with a title IV, HEA program.

■ 9. Section 85.310 is further amended by adding paragraph (c) to read as follows:

§ 85.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

* * * * *

(c) If you are a title IV, HEA participant, you may not continue a title IV, HEA transaction with an excluded person after the effective date of the exclusion unless permitted by 34 CFR 668.26, 682.702, or 668.94, as applicable.

■ 10. Section 85.315 is further amended by adding paragraph (c) to read as follows:

§ 85.315 May I use the services of an excluded person under a covered transaction?

* * * * *

(c) *Title IV, HEA transactions.* If you are a title IV, HEA participant—

(1) You may not renew or extend the term of any contract or agreement for the services of an excluded person as a principal with respect to a title IV, HEA transaction; and

(2) You may not continue to use the services of that excluded person as a principal under this kind of an agreement or arrangement more than 90 days after you learn of the exclusion or after the close of the Federal fiscal year in which the exclusion takes effect, whichever is later.

■ 11. Section 85.415 is further amended by adding a new paragraph (c) to read as follows.

§ 85.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

* * * * *

(c) *Title IV, HEA transactions.* If you are a title IV, HEA participant—

(1) You may not renew or extend the term of any contract or agreement for the services of an excluded person as a principal with respect to a title IV, HEA transaction; and

(2) You may not continue to use the services of that excluded person as a principal under this kind of an agreement or arrangement more than 90 days after you learn of the exclusion or after the close of the Federal fiscal year in which the exclusion takes effect, whichever is later.

■ 12. Subpart D of part 85 is further amended by adding § 85.440 to read as follows:

§ 85.440 What method do I use to communicate those requirements to participants?

(a) To communicate those requirements, you must include a term or condition in the transaction requiring each participant's compliance with subpart C of this part and requiring the participant to include a similar term or condition in lower-tier covered transactions.

(b) The failure of a participant to include a requirement to comply with Subpart C of this part in the agreement with a lower tier participant does not affect the lower tier participant's responsibilities under this part.

Authority: E.O. 12549 (3 CFR, 1985 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327.

■ 13. Subpart F of part 85 is further amended by adding a new § 85.611 to read as follows:

§ 85.611 What procedures do we use for a suspension or debarment action involving a title IV, HEA transaction?

(a) If we suspend a title IV, HEA participant under Executive Order 12549, we use the following procedures to ensure that the suspension prevents participation in title IV, HEA transactions:

(1) The notification procedures in § 85.715.

(2) Instead of the procedures in § 85.720 through § 85.760, the procedures in 34 CFR part 668, subpart G or 34 CFR part 682, subpart D or G as applicable.

(3) In addition to the findings and conclusions required by 34 CFR part 668, subpart G or 34 CFR part 682, subpart D or G, the suspending official, and, on appeal, the Secretary determines whether there is sufficient cause for suspension as explained in § 85.700.

(b) If we debar a title IV, HEA participant under E.O. 12549, we use the following procedures to ensure that the debarment also precludes participation in title IV, HEA transactions:

(1) The notification procedures in § 85.805 and § 85.870.

(2) Instead of the procedures in § 85.810 through § 85.885, the procedures in 34 CFR part 668, subpart G or 34 CFR part 682, subpart D or G, as applicable.

(3) On appeal from a decision debarring a title IV, HEA participant, we issue a final decision after we receive any written materials from the parties.

(4) In addition to the findings and conclusions required by 34 CFR part 668, subpart G or 34 CFR part 682, subpart D or G, the debarring official, and, on appeal, the Secretary determines whether there is sufficient cause for debarment as explained in § 85.800.

Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327.

■ 14. Subpart F of Part 85 is further amended by adding § 85.612 to read as follows:

§ 85.612 When does an exclusion by another agency affect the ability of the excluded person to participate in a title IV, HEA transaction?

(a) If a title IV, HEA participant is debarred by another agency under E.O. 12549, using procedures described in paragraph (d) of this section, that party is not eligible to enter into title IV, HEA transactions for the duration of the debarment.

(b)(1) If a title IV, HEA participant is suspended by another agency under E.O. 12549 or under a proposed debarment under the Federal Acquisition Regulation (FAR) (48 CFR part 9, subpart 9.4), using procedures described in paragraph (d) of this section, that party is not eligible to enter into title IV, HEA transactions for the duration of the suspension.

(2)(i) The suspension of title IV, HEA eligibility as a result of suspension by another agency lasts for at least 60 days.

(ii) If the excluded party does not object to the suspension, the 60-day period begins on the 35th day after that agency issues the notice of suspension.

(iii) If the excluded party objects to the suspension, the 60-day period begins on the date of the decision of the suspending official.

(3) The suspension of title IV, HEA eligibility does not end on the 60th day if—

(i) The excluded party agrees to an extension; or

(ii) Before the 60th day we begin a limitation or termination proceeding against the excluded party under 34 CFR part 668, subpart G or part 682, subpart D or G.

(c)(1) If a title IV, HEA participant is debarred or suspended by another Federal agency—

(i) We notify the participant whether the debarment or suspension prohibits participation in title IV, HEA transactions; and

(ii) If participation is prohibited, we state the effective date and duration of the prohibition.

(2) If a debarment or suspension by another agency prohibits participation in title IV, HEA transactions, that prohibition takes effect 20 days after we mail notice of our action.

(3) If ED or another Federal agency suspends a title IV, HEA participant, we determine whether grounds exist for an emergency action against the participant under 34 CFR part 668, subpart G or part 682, subpart D or G, as applicable.

(4) We use the procedures in § 85.611 to exclude a title IV, HEA participant excluded by another Federal agency using procedures that did not meet the standards in paragraph (d) of this section.

(d) If a title IV, HEA participant is excluded by another agency, we debar, terminate, or suspend the participant—as provided under this part, 34 CFR part 668, or 34 CFR part 682, as applicable—if that agency followed procedures that gave the excluded party—

(1) Notice of the proposed action;

(2) An opportunity to submit and have considered evidence and argument to oppose the proposed action;

(3) An opportunity to present its objection at a hearing—

(i) At which the agency has the burden of persuasion by a preponderance of the evidence that there is cause for the exclusion; and

(ii) Conducted by an impartial person who does not also exercise prosecutorial or investigative responsibilities with respect to the exclusion action;

(4) An opportunity to present witness testimony, unless the hearing official finds that there is no genuine dispute about a material fact;

(5) An opportunity to have agency witnesses with personal knowledge of material facts in genuine dispute testify about those facts, if the hearing official determines their testimony to be needed, in light of other available evidence and witnesses; and

(6) A written decision stating findings of fact and conclusions of law on which the decision is rendered.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189), E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327.

■ 15. Subpart G is amended by adding a new § 85.711, to read as follows:

§ 85.711 When does a suspension affect title IV, HEA transactions?

(a) A suspension under § 85.611(a) takes effect immediately if the Secretary takes an emergency action under 34 CFR part 668, subpart G or 34 CFR part 682, subpart D or G at the same time the Secretary issues the suspension.

(b)(1) Except as provided under paragraph (a) of this section, a suspension under § 85.611(a) takes effect 20 days after those procedures are complete.

(2) If the respondent appeals the suspension to the Secretary before the expiration of the 20 days under paragraph (b)(1) of this section, the suspension takes effect when the respondent receives the Secretary's decision.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189), E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327.

■ 16. Subpart H is amended by adding a new § 85.811 to read as follows:

§ 85.811 When does a debarment affect title IV, HEA transactions?

(a) A debarment under § 85.611(b) takes effect 30 days after those procedures are complete.

(b) If the respondent appeals the debarment to the Secretary before the expiration of the 30 days under paragraph (a) of this section, the

debarment takes effect when the respondent receives the Secretary's decision.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189) E.O. 12689 (3 CFR, Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327.

■ 17. Subpart I of part 85 is further amended by adding § 85.942 to read as follows:

§ 85.942 ED Deciding Official.

The ED Deciding Official is an ED officer who has delegated authority under the procedures of the Department of Education to decide whether to affirm a suspension or enter a debarment.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189), E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327.

■ 18. Subpart I of part 85 is further amended by adding § 85.952 to read as follows:

§ 85.952 HEA.

HEA means the Higher Education Act of 1965, as amended.

■ 19. Section 85.995 is further amended by adding paragraph (c) to read as follows:

§ 85.995 Principal.

* * * * *

(c) For the purposes of Department of Education title IV, HEA transactions—

(1) A third-party servicer, as defined in 34 CFR 668.2 or 682.200; or

(2) Any person who provides services described in 34 CFR 668.2 or 682.200 to a title IV, HEA participant, whether or not that person is retained or paid directly by the title IV, HEA participant.

* * * * *

■ 20. Subpart I of part 85 is further amended by adding § 85.1016 to read as follows:

§ 85.1016 Title IV, HEA participant.

A *title IV, HEA participant* is—

(a) An institution described in 34 CFR 600.4, 600.5, or 600.6 that provides postsecondary education; or

(b) A lender, third-party servicer, or guaranty agency, as those terms are defined in 34 CFR 668.2 or 682.200.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327.

■ 21. Subpart I of part 85 is further amended by adding § 85.1017 to read as follows:

§ 85.1017 Title IV, HEA program.

A *title IV, HEA program* includes any program listed in 34 CFR 668.1(c).

Authority: E.O. 12549 (3 CFR, 1986 Comp., p.1890: E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327.

■ 22. Subpart I of part 85 is further amended by adding § 85.1018 to read as follows:

§ 85.1018 Title IV, HEA transaction.

A *title IV, HEA transaction* includes:

(a) A disbursement or delivery of funds provided under a title IV, HEA program to a student or borrower;

(b) A certification by an educational institution of eligibility for a loan under a title IV, HEA program;

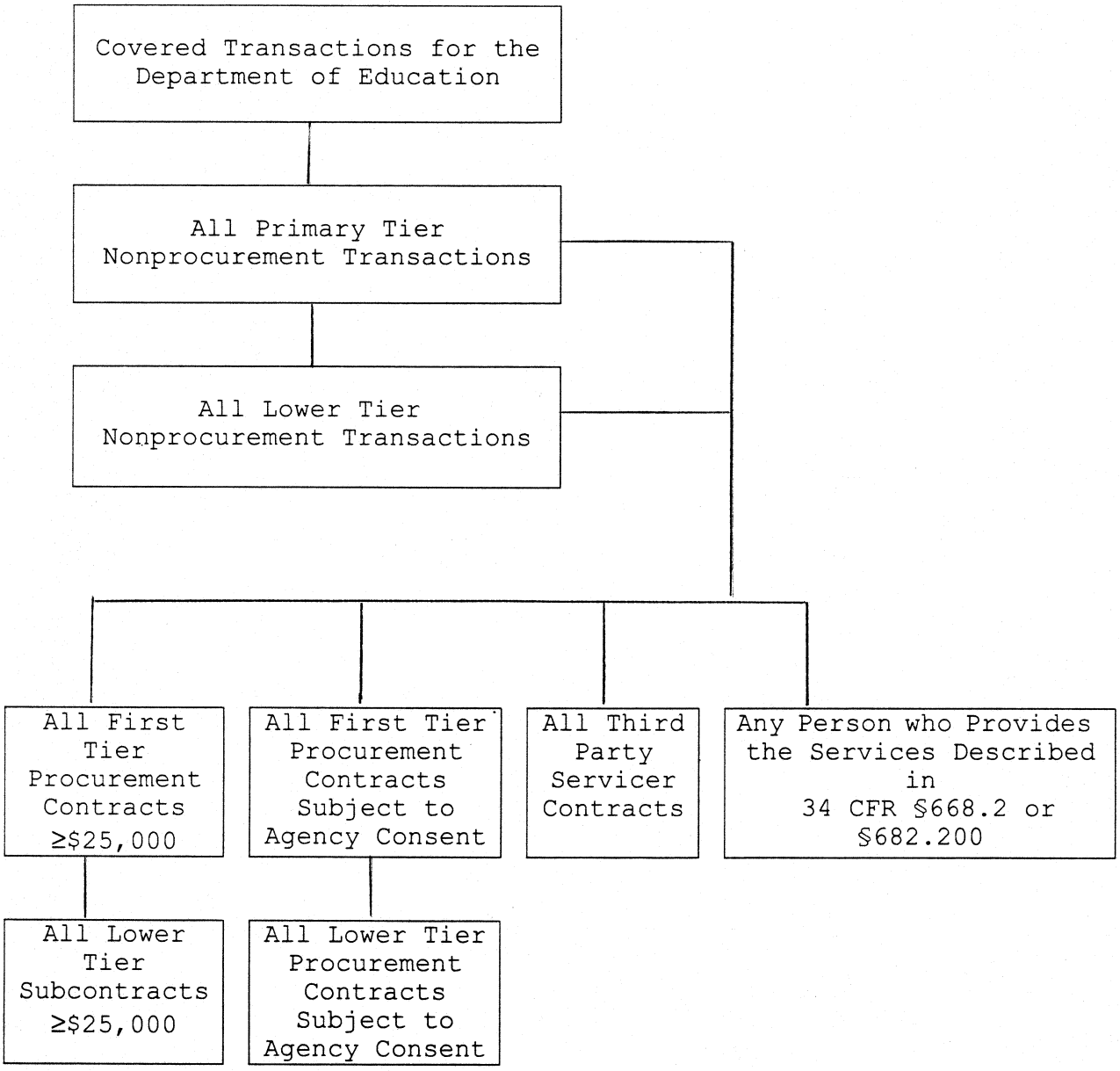
(c) Guaranteeing a loan made under a title IV, HEA program; and

(d) The acquisition or exercise of any servicing responsibility for a grant, loan, or work study assistance under a title IV, HEA program.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189) E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e–3 and 3474; and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327.

■ 23. The appendix to part 85 is amended by removing and reserving the Covered Transaction Chart and by adding a Covered Transactions for ED Chart to read as follows.

Appendix to Part 85—Covered Transactions for ED Covered Transactions—[Reserved]



PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 24. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

§ 668.82 [Amended]

■ 25. Amend § 668.82 as follows:

■ a. In paragraph (e)(1)(i)(B), by removing the words ''Cause exists under 34 CFR 85.305 or 85.405'' and adding, in their place, the words ''Cause exists under 34 CFR 85.700 or 85.800''.

■ b. In paragraphs (f)(1) and (f)(2)(i), by removing the citation ''34 CFR 85.201(c)'' and adding, in its place, the citation ''34 CFR 85.612(d)''.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

■ 26. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§ 682.416 [Amended]

■ 27. Amend § 682.416(d)(1)(ii)(B) by removing the words ''cause under 34 CFR 85.305 or 85.405'' and adding, in their place, the words ''cause under 34 CFR 85.700 or 85.800.''

§ 682.705 [Amended]

■ 28. Amend § 682.705 by removing paragraph (a)(3).

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1209 and 1212

RIN 3095–AB04

FOR FURTHER INFORMATION CONTACT: Nancy Allard at Policy and Communications Staff (NPOL), Room 4100, 8601 Adelphi Road, College Park, Maryland 20740–6001, 301–837–1477, or *comments@nara.gov.*

List of Subjects

36 CFR Part 1209

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

36 CFR Part 1212

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: July 24, 2003.

John W. Carlin,

Archivist of the United States.

■ For the reasons stated in the common preamble, the National Archives and Records Administration amends 36 CFR chapter XII, as follows:

■ 1. Part 1209 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1209—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
1209.25 How is this part organized?
1209.50 How is this part written?
1209.75 Do terms in this part have special meanings?

Subpart A—General

1209.100 What does this part do?
1209.105 Does this part apply to me?
1209.110 What is the purpose of the nonprocurement debarment and suspension system?
1209.115 How does an exclusion restrict a person's involvement in covered transactions?
1209.120 May we grant an exception to let an excluded person participate in a covered transaction?
1209.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
1209.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
1209.135 May NARA exclude a person who is not currently participating in a nonprocurement transaction?
1209.140 How do I know if a person is excluded?
1209.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

1209.200 What is a covered transaction?
1209.205 Why is it important to know if a particular transaction is a covered transaction?
1209.210 Which nonprocurement transactions are covered transactions?
1209.215 Which nonprocurement transactions are not covered transactions?
1209.220 Are any procurement contracts included as covered transactions?
1209.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

1209.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
1209.305 May I enter into a covered transaction with an excluded or disqualified person?
1209.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
1209.315 May I use the services of an excluded person as a principal under a covered transaction?
1209.320 Must I verify that principals of my covered transactions are eligible to participate?
1209.325 What happens if I do business with an excluded person in a covered transaction?
1209.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

1209.335 What information must I provide before entering into a covered transaction with NARA?
1209.340 If I disclose unfavorable information required under § 1209.335, will I be prevented from participating in the transaction?
1209.345 What happens if I fail to disclose the information required under § 1209.335?
1209.350 What must I do if I learn of the information required under § 1209.335 after entering into a covered transaction with NARA?

Disclosing Information—Lower Tier Participants

1209.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
1209.360 What happens if I fail to disclose the information required under § 1209.355?
1209.365 What must I do if I learn of information required under § 1209.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of NARA Officials Regarding Transactions

1209.400 May I enter into a transaction with an excluded or disqualified person?
1209.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
1209.410 May I approve a participant's use of the services of an excluded person?
1209.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
1209.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
1209.425 When do I check to see if a person is excluded or disqualified?
1209.430 How do I check to see if a person is excluded or disqualified?
1209.435 What must I require of a primary tier participant?
1209.440 What method do I use to communicate those requirements to participants?
1209.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
1209.450 What action may I take if a primary tier participant fails to disclose the information required under § 1209.335?
1209.455 What may I do if a lower tier participant fails to disclose the information required under § 1209.35 to the next higher tier?

Subpart E—Excluded Parties List System

1209.500 What is the purpose of the Excluded Parties List System (EPLS)?
1209.505 Who uses the EPLS?
1209.510 Who maintains the EPLS?
1209.515 What specific information is in the EPLS?
1209.520 Who places the information into the EPLS?
1209.525 Whom do I ask if I have questions about a person in the EPLS?
1209.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

1209.600 How do suspension and debarment actions start?
1209.605 How does suspension differ from debarment?
1209.610 What procedures does NARA use in suspension and debarment actions?
1209.615 How does NARA notify a person of a suspension and debarment action?
1209.620 Do Federal agencies coordinate suspension and debarment actions?
1209.625 What is the scope of a suspension or debarment action?
1209.630 May NARA impute the conduct of one person to another?
1209.635 May NARA settle a debarment or suspension action?
1209.640 May a settlement include a voluntary exclusion?
1209.645 Do other Federal agencies know if NARA agrees to a voluntary exclusion?

Subpart G—Suspension

1209.700 When may the suspending official issue a suspension?
1209.705 What does the suspending official consider in issuing a suspension?
1209.710 When does a suspension take effect?
1209.715 What notice does the suspending official give me if I am suspended?
1209.720 How may I contest a suspension?
1209.725 How much time do I have to contest a suspension?
1209.730 What information must I provide to the suspending official if I contest a suspension?
1209.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
1209.740 Are suspension proceedings formal?
1209.745 How is fact-finding conducted?

1209.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
1209.755 When will I know whether the suspension is continued or terminated?
1209.760 How long may my suspension last?

Subpart H—Debarment

1209.800 What are the causes for debarment?
1209.805 What notice does the debarring official give me if I am proposed for debarment?
1209.810 When does a debarment take effect?
1209.815 How may I contest a proposed debarment?
1209.820 How much time do I have to contest a proposed debarment?
1209.825 What information must I provide to the debarring official if I contest a proposed debarment?
1209.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
1209.835 Are debarment proceedings formal?
1209.840 How is fact-finding conducted?
1209.845 What does the debarring official consider in deciding whether to debar me?
1209.850 What is the standard of proof in a debarment action?
1209.855 Who has the burden of proof in a debarment action?
1209.860 What factors may influence the debarring official's decision?
1209.865 How long may my debarment last?
1209.870 When do I know if the debarring official debars me?
1209.875 May I ask the debarring official to reconsider a decision to debar me?
1209.880 What factors may influence the debarring official during reconsideration?
1209.885 May the debarring official extend a debarment?

Subpart I—Definitions

1209.900 Adequate evidence.
1209.905 Affiliate.
1209.910 Agency.
1209.915 Agent or representative.
1209.920 Civil judgment.
1209.925 Conviction.
1209.930 Debarment.
1209.935 Debarring official.
1209.940 Disqualified.
1209.945 Excluded or exclusion.
1209.950 Excluded Parties List System.
1209.955 Indictment.
1209.960 Ineligible or ineligibility.
1209.965 Legal proceedings.
1209.970 Nonprocurement transaction.
1209.975 Notice.
1209.980 Participant.
1209.985 Person.
1209.990 Preponderance of the evidence.
1209.995 Principal.
1209.1000 Respondent.
1209.1005 State.
1209.1010 Suspending official.
1209.1015 Suspension.
1209.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 1209—Covered Transactions

Authority: 44 U.S.C. 2104(a); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235);.

■ 2. Part 1209 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''NARA'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''NARA'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Archivist of the United States or designee'' is added in its place wherever it occurs.

■ 3. Section 1209.440 is added to read as follows:

§ 1209.440 What method do I use to communicate those requirements to participants?

To communicate the requirement, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

■ 4. Part 1212 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1212—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
1212.100 What does this part do?
1212.105 Does this part apply to me?
1212.110 Are any of my Federal assistance awards exempt from this part?
1212.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

1212.200 What must I do to comply with this part?
1212.205 What must I include in my drug-free workplace statement?
1212.210 To whom must I distribute my drug-free workplace statement?
1212.215 What must I include in my drug-free awareness program?
1212.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
1212.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
1212.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

1212.300 What must I do to comply with this part if I am an individual recipient?
1212.301 [Reserved]

Subpart D—Responsibilities of NARA Awarding Officials

1212.400 What are my responsibilities as a NARA awarding official?

Subpart E—Violations of This Part and Consequences

1212.500 How are violations of this part determined for recipients other than individuals?
1212.505 How are violations of this part determined for recipients who are individuals?
1212.510 What actions will the Federal Government take against a recipient determined to have violated this part?
1212.515 Are there any exceptions to those actions?

Subpart F—Definitions

1212.605 Award.
1212.610 Controlled substance.
1212.615 Conviction.
1212.620 Cooperative agreement.
1212.625 Criminal drug statute
1212.630 Debarment.
1212.635 Drug-free workplace.
1212.640 Employee.
1212.645 Federal agency or agency.
1212.650 Grant.
1212.655 Individual.
1212.660 Recipient.
1212.665 State.
1212.670 Suspension.

Authority: 41 U.S.C. 701, *et seq.*; 44 U.S.C. 2104(a).

■ 5. Part 1212 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''NARA'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''NARA'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Archivist of the United States or designee'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''Archivist of the United States or designee'' is added in its place wherever it occurs.

■ 6. Section 1212.510(c) is further amended by removing ''[CFR citation for the Federal agency's regulations implementing Executive Order 12549 and Executive Order 12689]'' and adding ''36 CFR part 1209'' in its place.

■ 7. Section 1212.605(a)(2) is further amended by removing ''[Agency-specific CFR citation]'' and adding ''36 CFR part 1207'' in its place.

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 44 and 48

RIN 2900–AK16

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Finneran, Assistant Director for Loan Policy and Valuation (262), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273–7369, e-mail: *lgyrfinn@vba.va.gov.*

List of Subjects

38 CFR Part 44

Administrative practice and procedure, Condominiums, Debarment and suspension, Grant programs, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Reporting and recordkeeping requirements, Veterans.

38 CFR Part 48

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Approved: August 4, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons stated in the common preamble, the Department of Veterans Affairs amends 38 CFR Chapter I, as follows:

■ 1. Part 44 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 44—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

44.25 How is this part organized?
44.50 How is this part written?
44.75 Do terms in this part have special meanings?

Subpart A—General

44.100 What does this part do?
44.105 Does this part apply to me?
44.110 What is the purpose of the nonprocurement debarment and suspension system?
44.115 How does an exclusion restrict a person's involvement in covered transactions?
44.120 May we grant an exception to let an excluded person participate in a covered transaction?
44.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
44.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
44.135 May the Department of Veterans Affairs exclude a person who is not currently participating in a nonprocurement transaction?
44.140 How do I know if a person is excluded?
44.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

44.200 What is a covered transaction?
44.205 Why is it important to know if a particular transaction is a covered transaction?
44.210 Which nonprocurement transactions are covered transactions?
44.215 Which nonprocurement transactions are not covered transactions?
44.220 Are any procurement contracts included as covered transactions?
44.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

44.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
44.305 May I enter into a covered transaction with an excluded or disqualified person?
44.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
44.315 May I use the services of an excluded person as a principal under a covered transaction?
44.320 Must I verify that principals of my covered transactions are eligible to participate?
44.325 What happens if I do business with an excluded person in a covered transaction?
44.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

44.335 What information must I provide before entering into a covered transaction with the Department of Veterans Affairs?
44.340 If I disclose unfavorable information required under § 44.335, will I be prevented from participating in the transaction?
44.345 What happens if I fail to disclose the information required under § 44.335?
44.350 What must I do if I learn of the information required under § 44.335 after entering into a covered transaction with the Department of Veterans Affairs?

Disclosing Information—Lower Tier Participants

44.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
44.360 What happens if I fail to disclose the information required under § 44.355?
44.365 What must I do if I learn of information required under § 44.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Department of Veterans Affairs Officials Regarding Transactions

44.400 May I enter into a transaction with an excluded or disqualified person?
44.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
44.410 May I approve a participant's use of the services of an excluded person?
44.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
44.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
44.425 When do I check to see if a person is excluded or disqualified?
44.430 How do I check to see if a person is excluded or disqualified?
44.435 What must I require of a primary tier participant?
44.440 What method do I use to communicate those requirements to participants?
44.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
44.450 What action may I take if a primary tier participant fails to disclose the information required under § 44.335?
44.455 What may I do if a lower tier participant fails to disclose the information required under § 44.355 to the next higher tier?

Subpart E—Excluded Parties List System

44.500 What is the purpose of the Excluded Parties List System (EPLS)?
44.505 Who uses the EPLS?
44.510 Who maintains the EPLS?
44.515 What specific information is in the EPLS?
44.520 Who places the information into the EPLS?
44.525 Whom do I ask if I have questions about a person in the EPLS?
44.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

44.600 How do suspension and debarment actions start?
44.605 How does suspension differ from debarment?
44.610 What procedures does the Department of Veterans Affairs use in suspension and debarment actions?
44.615 How does the Department of Veterans Affairs notify a person of a suspension and debarment action?
44.620 Do Federal agencies coordinate suspension and debarment actions?
44.625 What is the scope of a suspension or debarment action?
44.630 May the Department of Veterans Affairs impute the conduct of one person to another?
44.635 May the Department of Veterans Affairs settle a debarment or suspension action?

44.640 May a settlement include a voluntary exclusion?
44.645 Do other Federal agencies know if the Department of Veterans Affairs agrees to a voluntary exclusion?

Subpart G—Suspension 44.700 When may the suspending official issue a suspension?

44.705 What does the suspending official consider in issuing a suspension?
44.710 When does a suspension take effect?
44.715 What notice does the suspending official give me if I am suspended?
44.720 How may I contest a suspension?
44.725 How much time do I have to contest a suspension?
44.730 What information must I provide to the suspending official if I contest a suspension?
44.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
44.740 Are suspension proceedings formal?
44.745 How is fact-finding conducted?
44.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
44.755 When will I know whether the suspension is continued or terminated 44.760 How long may my suspension last?

Subpart H—Debarment 44.800 What are the causes for debarment?

44.805 What notice does the debarring official give me if I am proposed for debarment?
44.810 When does a debarment take effect?
44.815 How may I contest a proposed debarment?
44.820 How much time do I have to contest a proposed debarment?
44.825 What information must I provide to the debarring official if I contest a proposed debarment?
44.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
44.835 Are debarment proceedings formal?
44.840 How is fact-finding conducted?
44.845 What does the debarring official consider in deciding whether to debar me?
44.850 What is the standard of proof in a debarment action?
44.855 Who has the burden of proof in a debarment action?
44.860 What factors may influence the debarring official's decision?
44.865 How long may my debarment last?
44.870 When do I know if the debarring official debars me?
44.875 May I ask the debarring official to reconsider a decision to debar me?
44.880 What factors may influence the debarring official during reconsideration?
44.885 May the debarring official extend a debarment?

Subpart I—Definitions

44.900 Adequate evidence.
44.905 Affiliate.
44.910 Agency.
44.915 Agent or representative.
44.920 Civil judgment.
44.925 Conviction.
44.930 Debarment.
44.935 Debarring official.
44.940 Disqualified.
44.945 Excluded or exclusion.
44.950 Excluded Parties List System.
44.955 Indictment.
44.960 Ineligible or ineligibility.
44.965 Legal proceedings.
44.970 Nonprocurement transaction.
44.975 Notice.
44.980 Participant.
44.985 Person.
44.990 Preponderance of the evidence.
44.995 Principal.
44.1000 Respondent.
44.1005 State.
44.1010 Suspending official.
44.1015 Suspension.
44.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 44—Covered Transactions

Authority: 38 U.S.C. 501 and 38 U.S.C. 3703(c); Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p.799); E.O. 12549 (3 CFR 1986 comp., p.189) E.O. 12689 (3 CFR 1989 Comp., p. 235.)

■ 2. Part 44 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''Department of Veterans Affairs'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''Department of Veterans Affairs'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Secretary'' is added in its place wherever it occurs.

■ 3. Section 44.440 is added to read as follows:

§ 44.440 What method do I use to communicate those requirements to participants?

To communicate the requirement, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

■ 4. Section 44.935 is further amended by adding paragraph (b) to read as follows:

§ 44.935 Debarring official.

* * * * *

(b) For the Department of Veterans Affairs the debarring official is:

(1) For the Veterans Health Administration, the Under Secretary for Health;

(2) For the Veterans Benefits Administration, the Under Secretary for Benefits; and

(3) For the National Cemetery Administration, the Deputy Under Secretary for Operations.

■ 5. Section 44.995 is further amended by adding a paragraph (c) to read as follows:

§ 44.995 Principal.

* * * * *

(c) In the Department of Veterans Affairs loan guaranty program, principals include, but are not limited to the following:

(1) Loan officers.
(2) Loan solicitors,
(3) Loan processors.
(4) Loan servicers.
(5) Loan supervisors.
(6) Mortgage brokers.
(7) Office managers.
(8) Staff appraisers and inspectors.
(9) Fee appraisers and inspectors.
(10) Underwriters.
(11) Bonding companies.
(12) Real estate agents and brokers.
(13) Management and marketing agents.
(14) Accountants, consultants, investments bankers, architects, engineers, attorneys, and others in a business relationship with participants in connection with a covered transaction under the Department of Veterans Affairs loan guaranty program.
(15) Contractors involved in the construction, improvement or repair of properties financed with Department of Veterans Affairs guaranteed loans.
(16) Closing Agents.

■ 6. Section 44.1010 is further amended by adding paragraph (b) to read as follows:

§ 44.1010 Suspending official.

* * * * *

(b) For the Department of Veterans Affairs the suspending official is:

(1) For the Veterans Health Administration, the Under Secretary for Health;

(2) For the Veterans Benefits Administration, the Under Secretary for Benefits; and

(3) For the National Cemetery Administration, the Deputy Under Secretary for Operations.

■ 7. Part 48 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 48—GOVERNMENTWIDE REQUIREMENTS FOR DRUG–FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
48.100 What does this part do?
48.105 Does this part apply to me?
48.110 Are any of my Federal assistance awards exempt from this part?
48.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

48.200 What must I do to comply with this part?
48.205 What must I include in my drug-free workplace statement?
48.210 To whom must I distribute my drug-free workplace statement?
48.215 What must I include in my drug-free awareness program?
48.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
48.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
48.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

48.300 What must I do to comply with this part if I am an individual recipient?
48.301 [Reserved]

Subpart D—Responsibilities of the Department of Veterans Affairs Awarding Officials

48.400 What are my responsibilities as a Department of Veterans Affairs awarding official?

Subpart E—Violations of This Part and Consequences

48.500 How are violations of this part determined for recipients other than individuals?
48.505 How are violations of this part determined for recipients who are individuals?
48.510 What actions will the Federal Government take against a recipient determined to have violated this part?
48.515 Are there any exceptions to those actions?

Subpart F—Definitions

48.605 Award.
48.610 Controlled substance.
48.615 Conviction.
48.620 Cooperative agreement.
48.625 Criminal drug statute.
48.630 Debarment.
48.635 Drug-free workplace.
48.640 Employee.
48.645 Federal agency or agency.
48.650 Grant.
48.655 Individual.
48.660 Recipient.
48.665 State.
48.670 Suspension.

Authority: 41 U.S.C. 701, *et seq.*; 38 U.S.C 501

■ 8. Part 48 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''Department of Veterans Affairs'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''Department of Veterans Affairs'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Secretary'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''Secretary'' is added in its place wherever it occurs.

■ 9. Section 48.510(c) is further amended by removing ''[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689] and adding ''38 CFR part 44'' in its place.

■ 10. Section 48.605(a)(2) is further amended by removing ''[Agency specific CFR citation]'' and adding ''38 CFR part 43'' in its place.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 32 and 36

RIN 2030–AA48

FOR FURTHER INFORMATION CONTACT: Robert F. Meunier, EPA Debarring Official, Office of Grants and Debarment (3901R), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, (202) 564–5399, e-mail: *meunier.robert@epa.gov*.

List of Subjects

40 CFR Part 32

Environmental protection, Administrative practice and procedure, Air pollution control, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Technical assistance, Water pollution control.

40 CFR Part 36

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: July 17, 2003.

Morris X. Winn,

Assistant Administrator, Office of Administration and Resources Management.

■ For the reason stated in the common preamble, the Environmental Protection Agency amends 40 CFR chapter I, as follows:

■ 1. Part 32 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 32—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT); AND STATUTORY DISQUALIFICATION UNDER THE CLEAN AIR ACT AND CLEAN WATER ACT

Sec.
32.25 How is this part organized?
32.50 How is this part written?
32.75 Do terms in this part have special meanings?

Subpart A—General

32.100 What does this part do?
32.105 Does this part apply to me?
32.110 What is the purpose of the nonprocurement debarment and suspension system?
32.115 How does an exclusion restrict a person's involvement in covered transactions?
32.120 May we grant an exception to let an excluded person participate in a covered transaction?
32.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
32.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
32.135 May the EPA exclude a person who is not currently participating in a nonprocurement transaction?
32.140 How do I know if a person is excluded?
32.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

32.200 What is a covered transaction?
32.205 Why is it important to know if a particular transaction is a covered transaction?
32.210 Which nonprocurement transactions are covered transactions?
32.215 Which nonprocurement transactions are not covered transactions?
32.220 Are any procurement contracts included as covered transactions?
32.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

32.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
32.305 May I enter into a covered transaction with an excluded or disqualified person?
32.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
32.315 May I use the services of an excluded person as a principal under a covered transaction?
32.320 Must I verify that principals of my covered transactions are eligible to participate?
32.325 What happens if I do business with an excluded person in a covered transaction?
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32.1125 How do award officials and others know if I am disqualified?
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Appendix to Part 32—Covered Transactions

Authority: 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 7401 *et seq.*; Sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

PART 32—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT); AND STATUTORY DISQUALIFICATION UNDER THE CLEAN AIR ACT AND CLEAN WATER ACT

■ 2. The heading for Part 32 is revised as set forth above.

■ 3. Part 32 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''EPA'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''EPA'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''EPA Debarring Official'' is added in its place wherever it occurs.

■ 4. Section 32.220 is further amended by adding a paragraph (c) to read as follows:

§ 32.220 Are any procurement contracts included as covered transactions?

* * * * *

(c) The contract is awarded by any contractor, subcontractor, supplier, consultant or its agent or representative in any transaction, regardless of tier, to be funded or provided by the EPA under a nonprocurement transaction that is expected to equal or exceed $25,000. (See optional lower tier coverage shown in the diagram in the appendix to this part.)

■ 5. Section 32.440 is added to read as follows:

§ 32.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part, and requiring them to include a similar term or condition in lower tier covered transactions.

■ 6. Section 32.765 is added to Subpart G to read as follows:

§ 32.765 How may I appeal my suspension?

(a) If the EPA suspending official issues a decision under § 32.755 to continue your suspension after you present information in opposition to that suspension under § 32.720, you can ask for review of the suspending official's decision in two ways:

(1) You may ask the suspending official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the suspending official's decision to continue your suspension within 30 days of your receipt of the suspending official's decision under § 32.755 or paragraph (a)(1) of this section. However, the OGD Director can reverse the suspending official's decision only where the OGD Director finds that the decision is based on a clear error of material fact or law, or where the OGD Director finds that the suspending official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) A review under paragraph (a)(2) of this section is solely within the discretion of the OGD Director who may also stay the suspension pending review of the suspending official's decision.

(d) The EPA suspending official and the OGD Director must notify you of their decisions under this section, in writing, using the notice procedures at § 32.615 and § 32.975.

■ 7. Section 32.890 is added to Subpart H to read as follows:

§ 32.890 How may I appeal my debarment?

(a) If the EPA debarring official issues a decision under § 32.870 to debar you after you present information in opposition to a proposed debarment under § 32.815, you can ask for review of the debarring official's decision in two ways:

(1) You may ask the debarring official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the debarring official's decision to debar you within 30 days of your receipt of the debarring official's decision under § 32.870 or paragraph (a)(1) of this section. However, the OGD Director can reverse the debarring official's decision only where the OGD Director finds that the decision is based on a clear error of material fact or law, or where the OGD Director finds that the debarring official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) A review under paragraph (a)(2) of this section is solely within the discretion of the OGD Director who may also stay the debarment pending review of the debarring official's decision.

(d) The EPA debarring official and the OGD Director must notify you of their decisions under this section, in writing, using the notice procedures at § 32.615 and § 32.975.

■ 8. Section 32.995 is further amended by adding a paragraph (c) to read as follows:

§ 32.995 Principal.

* * * * *

(c) Other examples of individuals who are principals in EPA covered transactions include:

(1) Principal investigators;

(2) Technical or management consultants;

(3) Individuals performing chemical or scientific analysis or oversight;

(4) Professional service providers such as doctors, lawyers, accountants, engineers, etc.;

(5) Individuals responsible for the inspection, sale, removal, transportation, storage or disposal of solid or hazardous waste or materials;

(6) Individuals whose duties require special licenses;

(7) Individuals that certify, authenticate or authorize billings; and

(8) Individuals that serve in positions of public trust.

■ 9. Subpart J is added to read as follows:

Subpart J—Statutory Disqualification and Reinstatement Under the Clean Air Act and Clean Water Act

§ 32.1100 What does this subpart do?

This subpart explains how the EPA administers section 306 of the Clean Air Act (CAA) (42 U.S.C. 7606), and section 508 of the Clean Water Act (CWA) (33 U.S.C. 1368), which disqualify persons convicted for certain offenses under those statutes (see § 32.1105), from eligibility to receive certain contracts, subcontracts, assistance, loans and other benefits (see coverage under the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4, and subparts A through I of this part). It also explains: the procedures for seeking reinstatement of a person's eligibility under the CAA or CWA; the criteria and standards that apply to EPA's decision-making process; and requirements of award officials and others involved in Federal procurement and nonprocurement activities in carrying out their responsibilities under the CAA and CWA.

§ 32.1105 Does this subpart apply to me?

(a) Portions of this subpart apply to you if you are convicted, or likely be convicted, of any offense under section 7413(c) of the CAA or section 1319(c) of the CWA.

(b) Portions of this subpart apply to you if you are the EPA debarring official, a Federal procurement or nonprocurement award official, a participant in a Federal procurement or nonprocurement program that is precluded from entering into a covered transaction with a person disqualified under the CAA or CWA, or if you are a Federal department or agency anticipating issuing an exception to a person otherwise disqualified under the CAA or CWA.

§ 32.1110 How will a CAA or CWA conviction affect my eligibility to participate in Federal contracts, subcontracts, assistance, loans and other benefits?

If you are convicted of any offense described in § 32.1105, you are automatically disqualified from eligibility to receive any contract, subcontract, assistance, sub-assistance, loan or other nonprocurement benefit or transaction that is prohibited by a Federal department or agency under the Governmentwide debarment and suspension system (*i.e.*, covered transactions under subparts A through I of this part, or prohibited awards under 48 CFR part 9, subpart 9.4), if you:

(a) Will perform any part of the transaction or award at the facility giving rise to your conviction (called the violating facility); and

(b) You own, lease or supervise the violating facility.

§ 32.1115 Can the EPA extend a CAA or CWA disqualification to other facilities?

The CAA specifically authorizes the EPA to extend a CAA disqualification to other facilities that are owned or operated by the convicted person. The EPA also has authority under subparts A through I of this part, or under 48 CFR part 9, subpart 9.4, to take discretionary suspension and debarment actions on the basis of misconduct leading to a CAA or CWA conviction, or for activities that the EPA debarring official believes were designed to improperly circumvent a CAA or CWA disqualification.

§ 32.1120 What is the purpose of CAA or CWA disqualification?

As provided for in Executive Order 11738 (3 CFR, 1973 Comp., p.799), the purpose of CAA and CWA disqualification is to enforce the Federal Government's policy of undertaking Federal procurement and nonprocurement activities in a manner that improves and enhances environmental quality by promoting effective enforcement of the CAA or CWA.

§ 32.1125 How do award officials and others know if I am disqualified?

If you are convicted under these statutes, the EPA enters your name and address and that of the violating facility into the *Excluded Parties List System (EPLS)* as soon as possible after the EPA learns of your conviction. In addition, the EPA enters other information describing the nature of your disqualification. Federal award officials and others who administer Federal programs consult the *EPLS* before entering into or approving procurement and nonprocurement transactions. As of the date of this regulation, award officials and others, including the public, may obtain a yearly subscription to a printed version of the *EPLS* from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 783–3238. Anyone may access the *EPLS* through the internet, currently at *http://epls.arnet.gov.*

§ 32.1130 How does disqualification under the CAA or CWA differ from a Federal discretionary suspension or debarment action?

(a) CAA and CWA disqualifications are exclusions mandated by statute. In contrast, suspensions and debarments imposed under subparts A through I of this part or under 48 CFR part 9, subpart 9.4, are exclusions imposed at the discretion of Federal suspending or debarring officials. This means that if you are convicted of violating the CAA or CWA provisions described under § 32.1105, ordinarily your name and that of the violating facility is placed into the *EPLS* before you receive a confirmation notice of the listing, or have an opportunity to discuss the disqualification with, or seek reinstatement from, the EPA.

(b) CAA or CWA disqualification applies to both the person convicted of the offense, and to the violating facility during performance of an award or covered transaction under the Federal procurement and nonprocurement suspension and debarment system. It is the EPA's policy to carry out CAA and CWA disqualifications in a manner which integrates the disqualifications into the Governmentwide suspension and debarment system. Whenever the EPA determines that the risk presented to Federal procurement or nonprocurement activities on the basis of the misconduct which gives rise to a person's CAA or CWA conviction exceeds the coverage afforded by mandatory disqualification, the EPA may use its discretionary authority to suspend or debar a person under subparts A through I of this part, or under 48 CFR part 9, subpart 9.4.

§ 32.1135 Does CAA or CWA disqualification mean that I must remain ineligible?

You must remain ineligible until the EPA debarring official certifies that the condition giving rise to your conviction has been corrected. If you desire to have your disqualification terminated, you must submit a written request for reinstatement to the EPA debarring official and support your request with persuasive documentation. For information about the process for reinstatement see § 32.1205 and § 32.1300.

§ 32.1140 Can an exception be made to allow me to receive an award even though I may be disqualified?

(a) After consulting with the EPA debarring official, the head of any Federal department or agency (or designee) may exempt any particular award or a class of awards with that department or agency from the prohibitions otherwise resulting from CAA or CWA disqualification. In the event an exemption is granted, the exemption must:

(1) Be in writing; and

(2) State why the exemption is in the paramount interests of the United States.

(b) In the event an exemption is granted, the exempting department or agency must send a copy of the exemption decision to the EPA debarring official for inclusion in the official record.

§ 32.1200 How will I know if I am disqualified under the CAA or CWA?

There may be several ways that you learn about your disqualification. You are legally on notice by the statutes that a criminal conviction under the CAA or CWA automatically disqualifies you. As a practical matter, you may learn about your disqualification from your defense counsel, a Federal contract or award official, or from someone else who sees your name in the *EPLS*. As a courtesy, the EPA will attempt to notify you and the owner, lessor or supervisor of the violating facility that your names have been entered into the *EPLS*. The EPA will inform you of the procedures for seeking reinstatement and give you the name of a person you can contact to discuss your reinstatement request.

§ 32.1205 What procedures must I follow to have my procurement and nonprocurement eligibility reinstated under the CAA or CWA?

(a) You must submit a written request for reinstatement to the EPA debarring official stating what you believe the conditions were that led to your conviction, and how those conditions have been corrected, relieved or addressed. Your request must include documentation sufficient to support all material assertions you make. The debarring official must determine that all the technical and non-technical causes, conditions and consequences of your actions have been sufficiently addressed so that the Government can confidently conduct future business activities with you, and that your future operations will be conducted in compliance with the CAA and CWA.

(b) You may begin the reinstatement process by having informal discussions with the EPA representative named in your notification of listing. Having informal dialogue with that person will make you aware of the EPA concerns that must be addressed. The EPA representative is not required to negotiate conditions for your reinstatement. However, beginning the reinstatement process with informal dialogue increases the chance of achieving a favorable outcome, and avoids unnecessary delay that may result from an incomplete or inadequate reinstatement request. It may also allow you to resolve your disqualification by reaching an agreement with the EPA debarring official under informal procedures. Using your informal option first does not prevent you from submitting a formal reinstatement request with the debarring official at any time.

§ 32.1210 Will anyone else provide information to the EPA debarring official concerning my reinstatement request?

If you request reinstatement under § 32.1205, the EPA debarring official may obtain review and comment on your request by anyone who may have information about, or an official interest in, the matter. For example, the debarring official may consult with the EPA Regional offices, the Department of Justice or other Federal agencies, or state, tribal or local governments. The EPA debarring official will make sure that you have an opportunity to address important allegations or information contained in the administrative record before making a final decision on your request for reinstatement.

§ 32.1215 What happens if I disagree with the information provided by others to the EPA debarring official on my reinstatement request?

(a) If your reinstatement request is based on factual information (as opposed to a legal matter or discretionary conclusion) that is different from the information provided by others or otherwise contained in the administrative record, the debarring official will decide whether those facts are genuinely in dispute, and material to making a decision. If so, a fact-finding proceeding will be conducted in accordance with § 32.830 through § 32.840, and the debarring official will consider the findings when making a decision on your reinstatement request.

(b) If the basis for your disagreement with the information contained in the administrative record relates to a legal issue or discretionary conclusion, or is not a genuine dispute over a material fact, you will not have a fact-finding proceeding. However, the debarring official will allow you ample opportunity to support your position for the record and present matters in opposition to your continued disqualification. A summary of any information you provide orally, if not already recorded, should also be submitted to the debarring official in writing to assure that it is preserved for the debarring official's consideration and the administrative record.

§ 32.1220 What will the EPA debarring official consider in making a decision on my reinstatement request?

(a) The EPA debarring official will consider all information and arguments contained in the administrative record in support of, or in opposition to, your request for reinstatement, including any findings of material fact.

(b) The debarring official will also consider any mitigating or aggravating factors that may relate to your conviction or the circumstances surrounding it, including any of those factors that appear in § 32.860 that may apply to your situation.

(c) Finally, if disqualification applies to a business entity, the debarring official will consider any corporate or business attitude, policies, practices and procedures that contributed to the events leading to conviction, or that may have been implemented since the date of the misconduct or conviction. You can obtain any current policy directives issued by the EPA that apply to CAA or CWA disqualification or reinstatement by contacting the Office of the EPA Debarring Official, U. S. Environmental Protection Agency, Office of Grants and Debarment (3901–R), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

§ 32.1225 When will the EPA debarring official make a decision on my reinstatement request?

(a) The EPA debarring official will make a decision regarding your reinstatement request under § 32.1205(a), when the administrative record is complete, and he or she can determine whether the condition giving rise to the CAA or CWA conviction has been corrected-usually within 45 days of closing the administrative record.

(b) A reinstatement request is not officially before the debarring official while you are having informal discussions under § 32.1205(b).

§ 32.1230 How will the EPA debarring official notify me of the reinstatement decision?

The EPA debarring official will notify you of the reinstatement decision in writing, using the same methods for communicating debarment or suspension action notices under § 32.615.

§ 32.1300 Can I resolve my eligibility status under terms of an administrative agreement without having to submit a formal reinstatement request?

(a) The EPA debarring official may, at any time, resolve your CAA or CWA eligibility status under the terms of an administrative agreement. Ordinarily, the debarring official will not make an offer to you for reinstatement until after the administrative record for decision is complete, or contains enough information to enable him or her to make an informed decision in the matter.

(b) Any resolution of your eligibility status under the CAA or CWA resulting from an administrative agreement must include a certification that the condition giving rise to the conviction has been corrected.

(c) The EPA debarring official may enter into an administrative agreement to resolve CAA or CWA disqualification issues as part of a comprehensive criminal plea, civil or administrative agreement when it is in the best interest of the United States to do so.

§ 32.1305 What are the consequences if I mislead the EPA in seeking reinstatement or fail to comply with my administrative agreement?

(a) Any certification of correction issued by the EPA debarring official, whether the certification results from a reinstatement decision under § 32.1205(a) and § 32.1230, or from an administrative agreement under § 32.1205(b) and § 32.1300, is conditioned upon the accuracy of the information, representations or assurances made during development of the administrative record.

(b) If the EPA debarring official finds that he or she has certified correction of the condition giving rise to a CAA or CWA conviction or violation on the basis of a false, misleading, incomplete or inaccurate information; or if a person fails to comply with material condition of an administrative agreement, the EPA debarring official may revoke the certification of correction and immediately reinstate the CAA or CWA disqualification. In addition, the EPA debarring official may take suspension or debarment action against the person(s) responsible for the misinformation or noncompliance with the agreement as appropriate. If anyone provides false, inaccurate, incomplete or misleading information to EPA in an attempt to obtain reinstatement, the EPA debarring official will refer the matter to the EPA Office of the Inspector General for potential criminal or civil action.

§ 32.1400 How may I appeal a decision denying my request for reinstatement?

(a) If the EPA debarring official denies your request for reinstatement under the CAA or CWA, you can ask for review of the EPA debarring official's decision in two ways:

(1) You may ask the debarring official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the debarring official's denial within 30 days of your receipt of the debarring official's decision under § 32.1230 or paragraph (a)(1) of this section. However, the OGD Director can reverse the debarring official's decision denying reinstatement only where the OGD Director finds that there is a clear error of material fact or law, or where the OGD Director finds that the debarring official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing and state the specific findings you believe to be in error and the reason for your position.

(c) A review by the OGD Director under this section is solely within the discretion of the OGD Director.

(d) The OGD Director must notify you of his or her decision under this section, in writing, using the notice procedures identified at § 32.615 and § 32.975.

§ 32.1500 If I am reinstated, when will my name be removed from the EPLS?

If your eligibility for procurement and nonprocurement participation is restored under the CAA or CWA, whether by decision, appeal, or by administrative agreement, the EPA will remove your name and that of the violating facility from the *EPLS,* generally within 5 working days of your reinstatement.

§ 32.1600 What definitions apply specifically to actions under this subpart?

In addition to definitions under subpart I of this part that apply to this part as a whole, the following two definitions apply specifically to CAA and CWA disqualifications under this subpart:

(a) *Person* means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body.

(b) *Violating facility* means any building, plant, installation, structure, mine, vessel, floating craft, location or site of operations that gives rise to a CAA or CWA conviction, and is a location at which or from which a Federal contract, subcontract, loan, assistance award or other covered transaction may be performed. If a site of operations giving rise to a CAA or CWA conviction contains or includes more than one building, plant, installation, structure, mine, vessel, floating craft, or other operational element, the entire location or site of operation is regarded as the violating facility unless otherwise limited by the EPA.

■ 10. Part 36 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 36—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
36.100 What does this part do?
36.105 Does this part apply to me?
36.110 Are any of my Federal assistance awards exempt from this part?
36.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

36.200 What must I do to comply with this part?
36.205 What must I include in my drug-free workplace statement?
36.210 To whom must I distribute my drug-free workplace statement?
36.215 What must I include in my drug-free awareness program?
36.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
36.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
36.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

36.300 What must I do to comply with this part if I am an individual recipient?
36.301 [Reserved]

Subpart D—Responsibilities of EPA Awarding Officials

36.400 What are my responsibilities as an EPA awarding official?

Subpart E—Violations of This Part and Consequences

36.500 How are violations of this part determined for recipients other than individuals?
36.505 How are violations of this part determined for recipients who are individuals?
36.510 What actions will the Federal Government take against a recipient determined to have violated this part?
36.515 Are there any exceptions to those actions?

Subpart F—Definitions

36.605 Award.
36.610 Controlled substance.
36.615 Conviction.
36.620 Cooperative agreement.
36.625 Criminal drug statute.
36.630 Debarment.
36.635 Drug-free workplace.
36.640 Employee.
36.645 Federal agency or agency.
36.650 Grant.
36.655 Individual.
36.660 Recipient.
36.665 State.
36.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*

■ 11. Part 36 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''EPA'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''EPA'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''EPA Administrator or designee'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''EPA Administrator'' is added in its place wherever it occurs.

■ 12. Section 36.510(c) is further amended by removing ''[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]'' and adding ''40 CFR Part 32'' in its place.

■ 13. Section 36.605(a)(2) is further amended by removing ''[Agency-specific CFR citation]'' and adding ''40 CFR Part 31'' in its place.

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 105–68 and 105–74

RIN 3090–AH35

FOR FURTHER INFORMATION CONTACT: Donald J. Suda, Special Assistant for Contractor Integrity, General Services Administration, 1800 F Street NW., Washington, DC 20405–0002, (202) 501–4770, e-mail: *donald.suda.@gsa.gov.*

List of Subjects

41 CFR Part 105–68

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

41 CFR Part 105–74

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: September 23, 2003.

Stephen A. Perry,

Administrator of General Services.

■ For the reasons stated in the common preamble, the General Services Administration amends 41 CFR chapter 105, as follows:

CHAPTER 105—[AMENDED]

■ 1. Part 105–68 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 105–68—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

105–68.25 How is this part organized?
105–68.50 How is this part written?
105–68.75 Do terms in this part have special meanings?

Subpart A—General

105–68.100 What does this part do?
105–68.105 Does this part apply to me?
105–68.110 What is the purpose of the nonprocurement debarment and suspension system?
105–68.115 How does an exclusion restrict a person's involvement in covered transactions?
105–68.120 May we grant an exception to let an excluded person participate in a covered transaction?
105–68.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
105–68.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
105–68.135 May the General Services Administration exclude a person who is not currently participating in a nonprocurement transaction?
105–68.140 How do I know if a person is excluded?
105–68.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

105–68.200 What is a covered transaction?
105–68.205 Why is it important to know if a particular transaction is a covered transaction?
105–68.210 Which nonprocurement transactions are covered transactions?
105–68.215 Which nonprocurement transactions are not covered transactions?
105–68.220 Are any procurement contracts included as covered transactions?
105–68.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

105–68.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
105–68.305 May I enter into a covered transaction with an excluded or disqualified person?
105–68.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
105–68.315 May I use the services of an excluded person as a principal under a covered transaction?
105–68.320 Must I verify that principals of my covered transactions are eligible to participate?
105–68.325 What happens if I do business with an excluded person in a covered transaction?
105–68.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

105–68.335 What information must I provide before entering into a covered transaction with the General Services Administration?
105–68.340 If I disclose unfavorable information required under § 105–68.335, will I be prevented from participating in the transaction?
105–68.345 What happens if I fail to disclose the information required under § 105–68.335?
105–68.350 What must I do if I learn of the information required under § 105–68.335 after entering into a covered transaction with the General Services Administration?

Disclosing Information—Lower Tier Participants

105–68.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
105–68.360 What happens if I fail to disclose the information required under § 105–68.355?
105–68.365 What must I do if I learn of information required under § 105–68.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of GSA Officials Regarding Transactions

105–68.400 May I enter into a transaction with an excluded or disqualified person?
105–68.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
105–68.410 May I approve a participant's use of the services of an excluded person?
105–68.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
105–68.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
105–68.425 When do I check to see if a person is excluded or disqualified?
105–68.430 How do I check to see if a person is excluded or disqualified?
105–68.435 What must I require of a primary tier participant?
105–68.440 What method do I use to communicate those requirements to participants?
105–68.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
105–68.450 What action may I take if a primary tier participant fails to disclose the information required under § 105–68.335?
105–68.455 What may I do if a lower tier participant fails to disclose the

information required under § 105–68.355 to the next higher tier?

Subpart E—Excluded Parties List System

105–68.500 What is the purpose of the Excluded Parties List System (EPLS)?
105–68.505 Who uses the EPLS?
105–68.510 Who maintains the EPLS?
105–68.515 What specific information is in the EPLS?
105–68.520 Who places the information into the EPLS?
105–68.525 Whom do I ask if I have questions about a person in the EPLS?
105–68.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

105–68.600 How do suspension and debarment actions start?
105–68.605 How does suspension differ from debarment?
105–68.610 What procedures does the General Services Administration use in suspension and debarment actions?
105–68.615 How does the General Services Administration notify a person of a suspension and debarment action?
105–68.620 Do Federal agencies coordinate suspension and debarment actions?
105–68.625 What is the scope of a suspension or debarment action?
105–68.630 May the General Services Administration impute the conduct of one person to another?
105–68.635 May the General Services Administration settle a debarment or suspension action?
105–68.640 May a settlement include a voluntary exclusion?
105–68.645 Do other Federal agencies know if the General Services Administration agrees to a voluntary exclusion?

Subpart G—Suspension

105–68.700 When may the suspending official issue a suspension?
105–68.705 What does the suspending official consider in issuing a suspension?
105–68.710 When does a suspension take effect?
105–68.715 What notice does the suspending official give me if I am suspended?
105–68.720 How may I contest a suspension?
105–68.725 How much time do I have to contest a suspension?
105–68.730 What information must I provide to the suspending official if I contest a suspension?
105–68.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
105–68.740 Are suspension proceedings formal?
105–68.745 How is fact-finding conducted?
105–68.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
105–68.755 When will I know whether the suspension is continued or terminated?
105–68.760 How long may my suspension last?

Subpart H—Debarment

105–68.800 What are the causes for debarment?
105–68.805 What notice does the debarring official give me if I am proposed for debarment?
105–68.810 When does a debarment take effect?
105–68.815 How may I contest a proposed debarment?
105–68.820 How much time do I have to contest a proposed debarment?
105–68.825 What information must I provide to the debarring official if I contest a proposed debarment?
105–68.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
105–68.835 Are debarment proceedings formal?
105–68.840 How is fact-finding conducted?
105–68.845 What does the debarring official consider in deciding whether to debar me?
105–68.850 What is the standard of proof in a debarment action?
105–68.855 Who has the burden of proof in a debarment action?
105–68.860 What factors may influence the debarring official's decision?
105–68.865 How long may my debarment last?
105–68.870 When do I know if the debarring official debars me?
105–68.875 May I ask the debarring official to reconsider a decision to debar me?
105–68.880 What factors may influence the debarring official during reconsideration?
105–68.885 May the debarring official extend a debarment?

Subpart I—Definitions

105–68.900 Adequate evidence.
105–68.905 Affiliate.
105–68.910 Agency.
105–68.915 Agent or representative.
105–68.920 Civil judgment.
105–68.925 Conviction.
105–68.930 Debarment.
105–68.935 Debarring official.
105–68.940 Disqualified.
105–68.945 Excluded or exclusion.
105–68.950 Excluded Parties List System.
105–68.955 Indictment.
105–68.960 Ineligible or ineligibility.
105–68.965 Legal proceedings.
105–68.970 Nonprocurement transaction.
105–68.975 Notice.
105–68.980 Participant.
105–68.985 Person.
105–68.990 Preponderance of the evidence.
105–68.995 Principal.
105–68.1000 Respondent.
105–68.1005 State.
105–68.1010 Suspending official.
105–68.1015 Suspension.
105–68.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 105–68-Covered Transactions

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

■ 2. Part 105–68 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''General Services Administration'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''GSA'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Administrator of General Services ''is added in its place wherever it occurs.

■ 3. Section 105–68.440 is added to read as follows:

§ 105–68.440 What method do I use to communicate those requirements to participants?

To communicate the requirement, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

■ 4. Part 105–74 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 105–74—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
105–74.100 What does this part do?
105–74.105 Does this part apply to me?
105–74.110 Are any of my Federal assistance awards exempt from this part?
105–74.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

105–74.200 What must I do to comply with this part?
105–74.205 What must I include in my drug-free workplace statement?
105–74.210 To whom must I distribute my drug-free workplace statement?
105–74.215 What must I include in my drug-free awareness program?
105–74.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
105–74.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
105–74.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

105–74.300 What must I do to comply with this part if I am an individual recipient?
105–74.301 [Reserved]

Subpart D—Responsibilities of GSA Awarding Officials

105–74.400 What are my responsibilities as a GSA awarding official?

Subpart E—Violations of This Part and Consequences

105–74.500 How are violations of this part determined for recipients other than individuals?
105–74.505 How are violations of this part determined for recipients who are individuals?
105–74.510 What actions will the Federal Government take against a recipient determined to have violated this part?
105–74.515 Are there any exceptions to those actions?

Subpart F—Definitions

105–74.605 Award.
105–74.610 Controlled substance.
105–74.615 Conviction.
105–74.620 Cooperative agreement.
105–74.625 Criminal drug statute.
105–74.630 Debarment.
105–74.635 Drug-free workplace.
105–74.640 Employee.
105–74.645 Federal agency or agency.
105–74.650 Grant.
105–74.655 Individual.
105–74.660 Recipient.
105–74.665 State.
105–74.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*

■ 5. Part 105–74 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''General Services Administration'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''GSA'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Administrator of General Services'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''Administrator of General Services'' is added in its place wherever it occurs.

■ 6. Section 105–74.510(c) is further amended by removing ''[CFR citation for the Federal agency's regulations implementing Executive Order 12549 and Executive Order 12689]'' and adding ''41 FR part 105–68'' in its place.

■ 7. Section 105–74.605(a)(2) is further amended by removing ''[Agency-specific CFR citation]'' and adding ''41 CFR part 105–71'' in its place.

DEPARTMENT OF THE INTERIOR

43 CFR Parts 12, 42 and 43

RIN 1090–AA79

FOR FURTHER INFORMATION CONTACT: Debra E. Sonderman, Director, Office of Acquisition and Property Management, (202) 208–6431.

List of Subjects

43 CFR Part 12

Administrative practice and procedure, Contract programs, Cooperative agreements, Debarment and suspension, Grant programs, Grant administration.

43 CFR Part 42

Administrative practice and procedure, Contract programs, Cooperative agreements, Debarment and suspension, Grant programs, Grants administration, Reporting and recordkeeping requirements.

43 CFR Part 43

Administrative practice and procedure, Contract programs, Cooperative agreements, Drug abuse, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Dated: July 25, 2003.

P. Lynn Scarlett,

Assistant Secretary—Policy, Management and Budget.

■ Accordingly, for the reasons stated in the common preamble, the Department of Interior amends 43 CFR subtitle A, as follows:

PART 12—ADMINISTRATIVE AND AUDIT REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

■ 1. The authority citation for part 12 is revised to read as follows:

Authority: E.O 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 5 U.S.C. 301; U.S.C 6101 note.

■ 2. Part 12, Subpart D is removed and reserved.

■ 3. Part 42 is added to read as set forth in instruction 1 at the end of the common preamble.

PART 42—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
42.25 How is this part organized?
42.50 How is this part written?
42.75 Do terms in this part have special meanings?

Subpart A—General

42.100 What does this part do?
42.105 Does this part apply to me?
42.110 What is the purpose of the nonprocurement debarment and suspension system?
42.115 How does an exclusion restrict a person's involvement in covered transactions?
42.120 May we grant an exception to let an excluded person participate in a covered transaction?
42.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
42.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
42.135 May the Department of the Interior exclude a person who is not currently participating in a nonprocurement transaction?
42.140 How do I know if a person is excluded?
42.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

42.200 What is a covered transaction?
42.205 Why is it important to know if a particular transaction is a covered transaction?
42.210 Which nonprocurement transactions are covered transactions?
42.215 Which nonprocurement transactions are not covered transactions?
42.220 Are any procurement contracts included as covered transactions?
42.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

42.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
42.305 May I enter into a covered transaction with an excluded or disqualified person?
42.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
42.315 May I use the services of an excluded person as a principal under a covered transaction?
42.320 Must I verify that principals of my covered transactions are eligible to participate?
42.325 What happens if I do business with an excluded person in a covered transaction?
42.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

42.335 What information must I provide before entering into a covered transaction with the Department of the Interior?
42.340 If I disclose unfavorable information required under § 42.335, will I be prevented from participating in the transaction?
42.345 What happens if I fail to disclose the information required under § 42.335?
42.350 What must I do if I learn of the information required under § 42.335 after

entering into a covered transaction with the Department of the Interior?

Disclosing Information—Lower Tier Participants

42.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
42.360 What happens if I fail to disclose the information required under § 42.355?
42.365 What must I do if I learn of information required under § 42.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Department of the Interior Officials Regarding Transactions

42.400 May I enter into a transaction with an excluded or disqualified person?
42.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
42.410 May I approve a participant's use of the services of an excluded person?
42.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
42.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
42.425 When do I check to see if a person is excluded or disqualified?
42.430 How do I check to see if a person is excluded or disqualified?
42.435 What must I require of a primary tier participant?
42.440 What method do I use to communicate those requirements to participants?
42.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
42.450 What action may I take if a primary tier participant fails to disclose the information required under § 42.335?
42.455 What may I do if a lower tier participant fails to disclose the information required under § 42.355 to the next higher tier?

Subpart E—Excluded Parties List System

42.500 What is the purpose of the Excluded Parties List System (EPLS)?
42.505 Who uses the EPLS?
42.510 Who maintains the EPLS?
42.515 What specific information is in the EPLS?
42.520 Who places the information into the EPLS?
42.525 Whom do I ask if I have questions about a person in the EPLS?
42.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

42.600 How do suspension and debarment actions start?
42.605 How does suspension differ from debarment?
42.610 What procedures does the Department of the Interior use in suspension and debarment actions?
42.615 How does the Department of the Interior notify a person of a suspension and debarment action?
42.620 Do Federal agencies coordinate suspension and debarment actions?
42.625 What is the scope of a suspension or debarment action?
42.630 May the Department of the Interior impute the conduct of one person to another?
42.635 May the Department of the Interior settle a debarment or suspension action?
42.640 May a settlement include a voluntary exclusion?
42.645 Do other Federal agencies know if the Department of the Interior agrees to a voluntary exclusion?

Subpart G—Suspension

42.700 When may the suspending official issue a suspension?
42.705 What does the suspending official consider in issuing a suspension?
42.710 When does a suspension take effect?
42.715 What notice does the suspending official give me if I am suspended?
42.720 How may I contest a suspension?
42.725 How much time do I have to contest a suspension?
42.730 What information must I provide to the suspending official if I contest a suspension?
42.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
42.740 Are suspension proceedings formal?
42.745 How is fact-finding conducted?
42.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
42.755 When will I know whether the suspension is continued or terminated?
42.760 How long may my suspension last?

Subpart H—Debarment

42.800 What are the causes for debarment?
42.805 What notice does the debarring official give me if I am proposed for debarment?
42.810 When does a debarment take effect?
42.815 How may I contest a proposed debarment?
42.820 How much time do I have to contest a proposed debarment?
42.825 What information must I provide to the debarring official if I contest a proposed debarment?
42.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
42.835 Are debarment proceedings formal?
42.840 How is fact-finding conducted?
42.845 What does the debarring official consider in deciding whether to debar me?
42.850 What is the standard of proof in a debarment action?
42.855 Who has the burden of proof in a debarment action?
42.860 What factors may influence the debarring official's decision?
42.865 How long may my debarment last?
42.870 When do I know if the debarring official debars me?
42.875 May I ask the debarring official to reconsider a decision to debar me?
42.880 What factors may influence the debarring official during reconsideration?
42.885 May the debarring official extend a debarment?

Subpart I—Definitions

42.900 Adequate evidence.
42.905 Affiliate.
42.910 Agency.
42.915 Agent or representative.
42.920 Civil judgment.
42.925 Conviction.
42.930 Debarment.
42.935 Debarring official.
42.940 Disqualified.
42.945 Excluded or exclusion.
42.950 Excluded Parties List System.
42.955 Indictment.
42.960 Ineligible or ineligibility.
42.965 Legal proceedings.
42.970 Nonprocurement transaction.
42.975 Notice.
42.980 Participant.
42.985 Person.
42.990 Preponderance of the evidence.
42.995 Principal.
42.1000 Respondent.
42.1005 State.
42.1010 Suspending official.
42.1015 Suspension.
42.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 42—Covered Transactions

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 5 U.S.C. 301; 31 U.S.C.

■ 4. Part 42 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''Department of the Interior'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''Department of the Interior'' is added in its place where it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Director, Office of Acquisition and Property Management'' is added in its place wherever it occurs.

■ 5. Section 42.215 is further amended by adding paragraphs (h) through (k) to read as follows:

§ 42.215 Which nonprocurement transactions are not covered transactions?

* * * * *

(h) Transactions entered into pursuant to Public Law 93–638, 88 Stat. 2203.

(i) Under natural resource management programs, permits, licenses, exchanges and other acquisitions of real property, rights-of-way, and easements.

(j) Transactions concerning mineral patent claims entered into pursuant to 30 U.S.C. 22 *et seq.*

(k) Water service contracts and repayments entered into pursuant to 43 U.S.C. 485.

■ 6. Section 42.440 is added to read as follows:

§ 42.440 What method do I use to communicate those requirements to participants?

To communicate the requirement to participants, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

■ 7. Section 42.935 is further amended by adding paragraph (b) to read as follows:

§ 42.935 Debarring official.

* * * * *

(b) The debarring official for the Department of the Interior is the Director, Office of Acquisition and Property Management.

■ 8. Section 42.970 is further amended by adding paragraphs (a)(12) through (a)(15) to read as follows:

§ 42.970 Nonprocurement transaction.

* * * * *

(a) * * *

(12) Federal acquisition of a leasehold interest or any other interest in real property.

(13) Concession contracts.

(14) Disposition of Federal real and personal property and natural resources.

(15) Any other nonprocurement transactions between the Department and a person.

* * * * *

■ 9. Section 42.1010 is further amended by adding paragraph (b) to read as follows:

§ 42.1010 Suspending official.

* * * * *

(b) The suspending official for the Department of the Interior is the Director, Office of Acquisition and Property Management.

■ 10. Part 43 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 43—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
43.100 What does this part do?
43.105 Does this part apply to me?
43.110 Are any of my Federal assistance awards exempt from this part?
43.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

43.200 What must I do to comply with this part?
43.205 What must I include in my drug-free workplace statement?
43.210 To whom must I distribute my drug-free workplace statement?
43.215 What must I include in my drug-free awareness program?
43.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
43.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
43.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

43.300 What must I do to comply with this part if I am an individual recipient?
43.301 Is there a central point to which I may report information required by § 43.300?

Subpart D—Responsibilities of Department of the Interior Awarding Officials

43.400 What are my responsibilities as a Department of the Interior awarding official?

Subpart E—Violations of This Part and Consequences

43.500 How are violations of this part determined for recipients other than individuals?
43.505 How are violations of this part determined for recipients who are individuals?
43.510 What actions will the Federal Government take against a recipient determined to have violated this part?
43.515 Are there any exceptions to those actions?

Subpart F—Definitions

43.605 Award.
43.610 Controlled substance.
43.615 Conviction.
43.620 Cooperative agreement.
43.625 Criminal drug statute.
43.630 Debarment.
43.635 Drug-free workplace.
43.640 Employee.
43.645 Federal agency or agency.
43.650 Grant.
43.655 Individual.
43.660 Recipient.
43.665 State.
43.670 Suspension.

Authority: 5 U.S.C. 301; 31 U.S.C. 6101 note, 7501; 41 U.S.C. Sections 252a and 701 *et seq.*

■ 11. Part 43 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''Department of the Interior'' is added in its place where it occurs.

■ b. ''[Agency adjective]'' is removed and ''Department of the Interior'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Director, Office of Acquisition and Property Management'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''Secretary of the Interior'' is added in its place wherever it occurs.

■ 12. Section 43.301 is added to read as follows:

§ 43.301 Is there a central point to which I may report information required by § 43.300?

No. The Department of the Interior is not designating a central location for the receipt of these reports. Therefore you shall provide this report to every grant officer, or other designee within a Bureau/Office of the Department on whose grant activity the convicted employee was working.

■ 13. Section 43.510(c) is further amended by removing ''[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]'' and adding ''43 CFR Part 42''in its place.

■ 14. Section 43.605(a)(2) is further amended by removing ''[Agency-specific CFR citation]'' and adding ''43 CFR Part 12'' in its place.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 76 and 82

RIN 0991–AB12

FOR FURTHER INFORMATION CONTACT: Marc R. Weisman, 336 E. Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, 202–690–8554.

List of Subjects

45 CFR Part 76

Administrative practice and procedure, Grant programs, Reporting and recordkeeping requirements.

45 CFR Part 82

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: July 30, 2003.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

■ For the reasons stated in the common preamble, the Department of Health and Human Services amends 45 CFR Subtitle A, as follows:

■ 1. Part 76 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 76—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

76.25 How is this part organized?
76.50 How is this part written?
76.75 Do terms in this part have special meanings?

Subpart A—General

76.100 What does this part do?
76.105 Does this part apply to me?
76.110 What is the purpose of the nonprocurement debarment and suspension system?
76.115 How does an exclusion restrict a person's involvement in covered transactions?
76.120 May we grant an exception to let an excluded person participate in a covered transaction?
76.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
76.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
76.135 May HHS exclude a person who is not currently participating in a nonprocurement transaction?
76.140 How do I know if a person is excluded?
76.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

76.200 What is a covered transaction?
76.205 Why is it important to know if a particular transaction is a covered transaction?
76.210 Which nonprocurement transactions are covered transactions?
76.215 Which nonprocurement transactions are not covered transactions?
76.220 Are any procurement contracts included as covered transactions?
76.225 How do I know if a transaction in which I may participate is a covered transaction?
76.230 What is the relationship between covered transactions and exclusions from participation in Federal health care programs under Title XI of the Social Security Act?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

76.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
76.305 May I enter into a covered transaction with an excluded or disqualified person?
76.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
76.315 May I use the services of an excluded person as a principal under a covered transaction?
76.320 Must I verify that principals of my covered transactions are eligible to participate?
76.325 What happens if I do business with an excluded person in a covered transaction?
76.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

76.335 What information must I provide before entering into a covered transaction with HHS?
76.340 If I disclose unfavorable information required under § 76.335, will I be prevented from participating in the transaction?
76.345 What happens if I fail to disclose the information required under § 76.335?
76.350 What must I do if I learn of the information required under § 76.335 after entering into a covered transaction with HHS?

Disclosing Information—Lower Tier Participants

76.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
76.360 What happens if I fail to disclose the information required under § 76.355?
76.365 What must I do if I learn of information required under § 76.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of HHS Officials Regarding Transactions

76.400 May I enter into a transaction with an excluded or disqualified person?
76.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
76.410 May I approve a participant's use of the services of an excluded person?
76.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
76.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
76.425 When do I check to see if a person is excluded or disqualified?
76.430 How do I check to see if a person is excluded or disqualified?
76.435 What must I require of a primary tier participant?
76.440 What method do I use to communicate those requirements to participants?
76.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
76.450 What action may I take if a primary tier participant fails to disclose the information required under § 76.335?
76.455 What may I do if a lower tier participant fails to disclose the information required under § 76.355 to the next higher tier?
76.460 What are the obligations of Medicare carriers and intermediaries?

Subpart E—Excluded Parties List System

76.500 What is the purpose of the Excluded Parties List System (EPLS)?
76.505 Who uses the EPLS?
76.510 Who maintains the EPLS?
76.515 What specific information is in the EPLS?
76.520 Who places the information into the EPLS?
76.525 Whom do I ask if I have questions about a person in the EPLS?
76.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

76.600 How do suspension and debarment actions start?
76.605 How does suspension differ from debarment?
76.610 What procedures does HHS use in suspension and debarment actions?
76.615 How does HHS notify a person of a suspension and debarment action?
76.620 Do Federal agencies coordinate suspension and debarment actions?
76.625 What is the scope of a suspension or debarment action?
76.630 May HHS impute the conduct of one person to another?
76.635 May HHS settle a debarment or suspension action?
76.640 May a settlement include a voluntary exclusion?
76.645 Do other Federal agencies know if HHS agrees to a voluntary exclusion?

Subpart G—Suspension

76.700 When may the suspending official issue a suspension?
76.705 What does the suspending official consider in issuing a suspension?
76.710 When does a suspension take effect?
76.715 What notice does the suspending official give me if I am suspended?
76.720 How may I contest a suspension?
76.725 How much time do I have to contest a suspension?
76.730 What information must I provide to the suspending official if I contest a suspension?
76.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
76.740 Are suspension proceedings formal?
76.745 How is fact-finding conducted?
76.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
76.755 When will I know whether the suspension is continued or terminated?
76.760 How long may my suspension last?

Subpart H—Debarment

76.800 What are the causes for debarment?
76.805 What notice does the debarring official give me if I am proposed for debarment?
76.810 When does a debarment take effect?
76.815 How may I contest a proposed debarment?
76.820 How much time do I have to contest a proposed debarment?
76.825 What information must I provide to the debarring official if I contest a proposed debarment?
76.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
76.835 Are debarment proceedings formal?
76.840 How is fact-finding conducted?
76.845 What does the debarring official consider in deciding whether to debar me?

76.850 What is the standard of proof in a debarment action?
76.855 Who has the burden of proof in a debarment action?
76.860 What factors may influence the debarring official's decision?
76.865 How long may my debarment last?
76.870 When do I know if the debarring official debars me?
76.875 May I ask the debarring official to reconsider a decision to debar me?
76.880 What factors may influence the debarring official during reconsideration?
76.885 May the debarring official extend a debarment?

Subpart I—Definitions

76.900 Adequate evidence.
76.905 Affiliate.
76.910 Agency.
76.915 Agent or representative.
76.920 Civil judgment.
76.925 Conviction.
76.930 Debarment.
76.935 Debarring official.
76.940 Disqualified.
76.945 Excluded or exclusion.
76.950 Excluded Parties List System.
76.955 Indictment.
76.960 Ineligible or ineligibility.
76.965 Legal proceedings.
76.970 Nonprocurement transaction.
76.975 Notice.
76.980 Participant.
76.985 Person.
76.990 Preponderance of the evidence.
76.995 Principal.
76.1000 Respondent.
76.1005 State.
76.1010 Suspending official.
76.1015 Suspension.
76.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—Reserved

Appendix to Part 76—Covered Transactions

Authority: 5 U.S.C. 301; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

■ 2. Part 76 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''HHS'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''HHS'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''HHS Debarring/Suspension Official'' is added in its place wherever it occurs.

■ 3. Section 76.220 is further amended by adding a paragraph (c) to read as follows:

§ 76.220 Are any procurement contracts included as covered transactions?

* * * * *

(c) The contract is a subcontract at any tier below a procurement transaction that is covered under paragraph (a) of this section, and the value of the contract exceeds or is expected to exceed the ''simplified acquisition threshold'' defined at 42 U.S.C. 403(11). This extends the coverage of paragraph (a) of this section to all lower tiers of contracts that exceed the simplified acquisition threshold (see optional lower tier coverage shown in the diagram in the appendix to this part).

■ 4. Section 76.230 is added to read as follows:

§ 76.230 What is the relationship between covered transactions and exclusions from participation in Federal health care programs under Title XI of the Social Security Act?

Any individual or entity excluded from participation in Medicare, Medicaid and other Federal health care programs under Title XI of the Social Security Act, 42 U.S.C. 1320a–7, will be subject to the prohibitions against participating in covered transactions, as set forth in this part. In addition, these excluded parties are also prohibited from participating in all Executive Branch procurement programs and activities. (Public Law 103–355, section 2455) For example, if an individual or entity is excluded by the HHS Office of Inspector General from participation in Medicare, Medicaid and all other Federal health care programs, in accordance with 42 U.S.C. 1320a–7, then that individual or entity is prohibited from participating in all Federal Government procurement and nonprocurement programs (42 CFR part 1001).

■ 5. Section 76.440 is added to read as follows:

§ 76.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

■ 6. Section 76.460 is added to read as follows:

§ 76.460 What are the obligations of Medicare carriers and intermediaries?

Because Medicare carriers, intermediaries and other Medicare contractors undertake responsibilities on behalf of the Medicare program (Title XVIII of the Social Security Act), these entities assume the same obligations and responsibilities as Medicare agency officials with respect to actions under 45 CFR part 76. This would include these entities checking the EPLS and taking necessary steps to effectuate this part.

■ 7. Section 76.940 is further amended by adding a paragraph (d) to read as follows:

§ 76.940 Disqualified.

* * * * *

(d) The program exclusion authorities under Title XI of the Social Security Act (42 U.S.C. 1320a–7) and enforced by the HHS Office of Inspector General.

■ 8. Section 76.995 is further amended by adding a paragraph (c) to read as follows:

§ 76.995 Principal.

* * * * *

(c) Other examples of individuals who are principals in HHS covered transactions include:

(1) Principal investigators;

(2) Providers of Federally-required audit services; and

(3) Researchers.

■ 9. Part 82 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 82—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
82.100 What does this part do?
82.105 Does this part apply to me?
82.110 Are any of my Federal assistance awards exempt from this part?
82.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

82.200 What must I do to comply with this part?
82.205 What must I include in my drug-free workplace statement?
82.210 To whom must I distribute my drug-free workplace statement?
82.215 What must I include in my drug-free awareness program?
82.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
82.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
82.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

82.300 What must I do to comply with this part if I am an individual recipient?
82.301 [Reserved]

Subpart D—Responsibilities of HHS Awarding Officials

82.400 What are my responsibilities as an HHS awarding official?

Subpart E—Violations of This Part and Consequences

82.500 How are violations of this part determined for recipients other than individuals?
82.505 How are violations of this part determined for recipients who are individuals?
82.510 What actions will the Federal Government take against a recipient determined to have violated this part?
82.515 Are there any exceptions to those actions?

Subpart F—Definitions

82.605 Award.
82.610 Controlled substance.
82.615 Conviction.
82.620 Cooperative agreement.
82.625 Criminal drug statute.
82.630 Debarment.
82.635 Drug-free workplace.
82.640 Employee.
82.645 Federal agency or agency.
82.650 Grant.
82.655 Individual.
82.660 Recipient.
82.665 State.
82.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*

■ 10. Part 82 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''HHS'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''HHS'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''HHS Official or designee'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''the Secretary of HHS'' is added in its place wherever it occurs.

■ 11. Section 82.510(c) is further amended by removing ''[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]'' and adding ''45 CFR Part 76'' in its place.

■ 12. Section 82.605(a)(2) is further amended by removing ''[Agency-specific CFR citation]''and adding ''45 CFR Part 92'' in its place.

NATIONAL SCIENCE FOUNDATION

45 CFR Parts 620 and 630

RIN 3145–AA41

FOR FURTHER INFORMATION CONTACT: Anita Eisenstadt, Assistant General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia, 22230, (703) 292–8060; e:mail: *aeisenst@nsf.gov.*

List of Subjects

45 CFR Part 620

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

45 CFR Part 630

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: June 10, 2003.

Lawrence Rudolph,

General Counsel, National Science Foundation.

■ Accordingly, as set forth in the common preamble, the National Science Foundation amends 45 CFR Chapter VI, as follows:

■ 1. Part 620 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 620—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
620.25 How is this part organized?
620.50 How is this part written?
620.75 Do terms in this part have special meanings?

Subpart A—General

620.100 What does this part do?
620.105 Does this part apply to me?
620.110 What is the purpose of the nonprocurement debarment and suspension system?
620.115 How does an exclusion restrict a person's involvement in covered transactions?
620.120 May we grant an exception to let an excluded person participate in a covered transaction?
620.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
620.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
620.135 May the National Science Foundation exclude a person who is not currently participating in a nonprocurement transaction?
620.140 How do I know if a person is excluded?
620.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

620.200 What is a covered transaction?
620.205 Why is it important to know if a particular transaction is a covered transaction?
620.210 Which nonprocurement transactions are covered transactions?
620.215 Which nonprocurement transactions are not covered transactions?
620.215 Are any procurement contracts included as covered transactions?
620.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

620.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
620.305 May I enter into a covered transaction with an excluded or disqualified person?
620.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
620.315 May I use the services of an excluded person as a principal under a covered transaction?
620.320 Must I verify that principals of my covered transactions are eligible to participate?
620.325 What happens if I do business with an excluded person in a covered transaction?
620.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

620.335 What information must I provide before entering into a covered transaction with the National Science Foundation?
620.340 If I disclose unfavorable information required under § 620.335, will I be prevented from participating in the transaction?
620.345 What happens if I fail to disclose the information required under § 620.335?
620.350 What must I do if I learn of the information required under § 620.335 after entering into a covered transaction with the National Science Foundation?

Disclosing Information—Lower Tier Participants

620.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
620.360 What happens if I fail to disclose the information required under § 620.355?
620.365 What must I do if I learn of information required under § 620.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of National Science Foundation Officials Regarding Transactions

620.400 May I enter into a transaction with an excluded or disqualified person?
620.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
620.410 May I approve a participant's use of the services of an excluded person?

620.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
620.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
620.425 When do I check to see if a person is excluded or disqualified?
620.430 How do I check to see if a person is excluded or disqualified?
620.435 What must I require of a primary tier participant?
620.440 What method do I use to communicate those requirements to participants?
620.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
620.450 What action may I take if a primary tier participant fails to disclose the information required under § 620.335?
620.455 What may I do if a lower tier participant fails to disclose the information required under § 620.355 to the next higher tier?

Subpart E—Excluded Parties List System

620.500 What is the purpose of the Excluded Parties List System (EPLS)?
620.505 Who uses the EPLS?
620.510 Who maintains the EPLS?
620.515 What specific information is in the EPLS?
620.520 Who places the information into the EPLS?
620.525 Whom do I ask if I have questions about a person in the EPLS?
620.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

620.600 How do suspension and debarment actions start?
620.605 How does suspension differ from debarment?
620.610 What procedures does the National Science Foundation use in suspension and debarment actions?
620.615 How does the National Science Foundation notify a person of a suspension and debarment action?
620.620 Do Federal agencies coordinate suspension and debarment actions?
620.625 What is the scope of a suspension or debarment action?
620.630 May the National Science Foundation impute the conduct of one person to another?
620.635 May the National Science Foundation settle a debarment or suspension action?
620.640 May a settlement include a voluntary exclusion?
620.645 Do other Federal agencies know if the National Science Foundation agrees to a voluntary exclusion?

Subpart G—Suspension

620.700 When may the suspending official issue a suspension?
620.705 What does the suspending official consider in issuing a suspension?
620.710 When does a suspension take effect?
620.715 What notice does the suspending official give me if I am suspended?
620.720 How may I contest a suspension?
620.725 How much time do I have to contest a suspension?
620.730 What information must I provide to the suspending official if I contest a suspension?
620.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
620.740 Are suspension proceedings formal?
620.745 How is fact-finding conducted?
620.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
620.755 When will I know whether the suspension is continued or terminated?
620.760 How long may my suspension last?

Subpart H—Debarment

620.800 What are the causes for debarment?
620.805 What notice does the debarring official give me if I am proposed for debarment?
620.810 When does a debarment take effect?
620.815 How may I contest a proposed debarment?
620.820 How much time do I have to contest a proposed debarment?
620.825 What information must I provide to the debarring official if I contest a proposed debarment?
620.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
620.835 Are debarment proceedings formal?
620.840 How is fact-finding conducted?
620.845 What does the debarring official consider in deciding whether to debar me?
620.850 What is the standard of proof in a debarment action?
620.855 Who has the burden of proof in a debarment action?
620.860 What factors may influence the debarring official's decision?
620.865 How long may my debarment last?
620.870 When do I know if the debarring official debars me?
620.875 May I ask the debarring official to reconsider a decision to debar me?
620.880 What factors may influence the debarring official during reconsideration?
620.885 May the debarring official extend a debarment?

Subpart I—Definitions

620.900 Adequate evidence.
620.905 Affiliate.
620.910 Agency.
620.915 Agent or representative.
620.920 Civil judgment.
620.925 Conviction.
620.930 Debarment.
620.935 Debarring official.
620.940 Disqualified.
620.945 Excluded or exclusion.
620.950 Excluded Parties List System.
620.955 Indictment.
620.960 Ineligible or ineligibility.
620.965 Legal proceedings.
620.970 Nonprocurement transaction.
620.975 Notice.
620.980 Participant.
620.985 Person.
620.990 Preponderance of the evidence.
620.995 Principal.
620.1000 Respondent.
620.1005 State.
620.1010 Suspending official.
620.1015 Suspension.
620.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 620—Covered Transactions

Authority: 42 U.S.C. 1870(a); Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

■ 2. Part 620 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''National Science Foundation'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''National Science Foundation'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Director or designee'' is added in its place wherever it occurs.

■ 3. Section 620.440 is added to read as follows:

§ 620.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

■ 4. Part 630 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 630—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
630.100 What does this part do?
620.105 Does this part apply to me?
630.110 Are any of my Federal assistance awards exempt from this part?
630.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

630.200 What must I do to comply with this part?
630.205 What must I include in my drug-free workplace statement?
630.210 To whom must I distribute my drug-free workplace statement?
630.215 What must I include in my drug-free awareness program?

630.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
630.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
630.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

630.300 What must I do to comply with this part if I am an individual recipient?
630.301 [Reserved]

Subpart D—Responsibilities of National Science Foundation Awarding Officials

630.400 What are my responsibilities as a National Science Foundation awarding official?

Subpart E—Violations of This Part and Consequences

630.500 How are violations of this part determined for recipients other than individuals?
630.505 How are violations of this part determined for recipients who are individuals?
630.510 What actions will the Federal Government take against a recipient determined to have violated this part?
630.515 Are there any exceptions to those actions?

Subpart F—Definitions

630.605 Award.
630.610 Controlled substance.
630.615 Conviction.
630.620 Cooperative agreement.
630.625 Criminal drug statute.
630.630 Debarment.
630.635 Drug-free workplace.
630.640 Employee.
630.645 Federal agency or agency.
630.650 Grant.
630.655 Individual.
630.660 Recipient.
630.665 State.
630.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*

■ 5. Part 630 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''National Science Foundation'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''National Science Foundation'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Director or designee'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''Director, National Science Foundation'' is added in its place wherever it occurs.

■ 6. Section 630.510(c) is further amended by removing ''[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]'' and adding ''45 CFR Part 620'' in its place.

■ 7. Section 630.605(a)(2) is further amended by removing ''[Agency-specific CFR citation]'' and adding ''45 CFR Part 602'' in its place.

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Arts

45 CFR Parts 1154 and 1155

RINs 3135–AA18 and 3135–AA19

FOR FURTHER INFORMATION CONTACT: Karen Elias, Deputy General Counsel, National Endowment for the Arts, Room 518, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 682–5418, or by e-mail: *eliask@arts.gov.*

List of Subjects

45 CFR Part 1154

Administrative practice and procedure, Debarment and suspension, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

45 CFR Part 1155

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: July 15, 2003.

Karen L. Elias,

Deputy General Counsel, National Endowment for the Arts.

■ For the reasons stated in the common preamble, the National Endowment for the Arts amends 45 CFR chapter XI, as follows:

■ 1. Part 1154 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1154—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
1154.25 How is this part organized?
1154.50 How is this part written?
1154.75 Do terms in this part have special meanings?

Subpart A—General

1154.100 What does this part do?
1154.105 Does this part apply to me?
1154.110 What is the purpose of the nonprocurement debarment and suspension system?
1154.115 How does an exclusion restrict a person's involvement in covered transactions?
1154.120 May we grant an exception to let an excluded person participate in a covered transaction?
1154.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
1154.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
1154.135 May the National Endowment for the Arts exclude a person who is not currently participating in a nonprocurement transaction?
1154.140 How do I know if a person is excluded?
1154.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

1154.200 What is a covered transaction?
1154.205 Why is it important to know if a particular transaction is a covered transaction?
1154.210 Which nonprocurement transactions are covered transactions?
1154.215 Which nonprocurement transactions are not covered transactions?
1154.220 Are any procurement contracts included as covered transactions?
1154.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

1154.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
1154.305 May I enter into a covered transaction with an excluded or disqualified person?
1154.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
1154.315 May I use the services of an excluded person as a principal under a covered transaction?
1154.320 Must I verify that principals of my covered transactions are eligible to participate?
1154.325 What happens if I do business with an excluded person in a covered transaction?
1154.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

1154.335 What information must I provide before entering into a covered transaction with the National Endowment for the Arts?
1154.340 If I disclose unfavorable information required under § 1154.335, will I be prevented from participating in the transaction?
1154.345 What happens if I fail to disclose the information required under § 1154.335?
1154.350 What must I do if I learn of the information required under § 1154.335 after entering into a covered transaction with the National Endowment for the Arts?

Disclosing Information—Lower Tier Participants

1154.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
1154.360 What happens if I fail to disclose the information required under § 1154.355?
1154.365 What must I do if I learn of information required under § 1154.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of NEA Officials Regarding Transactions

1154.400 May I enter into a transaction with an excluded or disqualified person?
1154.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
1154.410 May I approve a participant's use of the services of an excluded person?
1154.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
1154.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
1154.425 When do I check to see if a person is excluded or disqualified?
1154.430 How do I check to see if a person is excluded or disqualified?
1154.435 What must I require of a primary tier participant?
1154.440 What method do I use to communicate those requirements to participants?
1154.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
1154.450 What action may I take if a primary tier participant fails to disclose the information required under § 1154.335?
1154.455 What may I do if a lower tier participant fails to disclose the information required under § 1154.355 to the next higher tier?

Subpart E—Excluded Parties List System

1154.500 What is the purpose of the Excluded Parties List System (EPLS)?
1154.505 Who uses the EPLS?
1154.510 Who maintains the EPLS?
1154.515 What specific information is in the EPLS?
1154.520 Who places the information into the EPLS?
1154.525 Whom do I ask if I have questions about a person in the EPLS?
1154.530 Where can I find the EPLS?

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1154.600 How do suspension and debarment actions start?
1154.605 How does suspension differ from debarment?
1154.610 What procedures does the National Endowment for the Arts use in suspension and debarment actions?
1154.615 How does the National Endowment for the Arts notify a person of a suspension and debarment action?
1154.620 Do Federal agencies coordinate suspension and debarment actions?
1154.625 What is the scope of a suspension or debarment action?
1154.630 May the National Endowment for the Arts impute the conduct of one person to another?
1154.635 May the National Endowment for the Arts settle a debarment or suspension action?
1154.640 May a settlement include a voluntary exclusion?
1154.645 Do other Federal agencies know if the National Endowment for the Arts agrees to a voluntary exclusion?

Subpart G—Suspension

1154.700 When may the suspending official issue a suspension?
1154.705 What does the suspending official consider in issuing a suspension?
1154.710 When does a suspension take effect?
1154.715 What notice does the suspending official give me if I am suspended?
1154.720 How may I contest a suspension?
1154.725 How much time do I have to contest a suspension?
1154.730 What information must I provide to the suspending official if I contest a suspension?
1154.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
1154.740 Are suspension proceedings formal?
1154.745 How is fact-finding conducted?
1154.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
1154.755 When will I know whether the suspension is continued or terminated?
1154.760 How long may my suspension last?

Subpart H—Debarment

1154.800 What are the causes for debarment?
1154.805 What notice does the debarring official give me if I am proposed for debarment?
1154.810 When does a debarment take effect?
1154.815 How may I contest a proposed debarment?
1154.820 How much time do I have to contest a proposed debarment?
1154.825 What information must I provide to the debarring official if I contest a proposed debarment?
1154.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
1154.835 Are debarment proceedings formal?
1154.840 How is fact-finding conducted?
1154.845 What does the debarring official consider in deciding whether to debar me?
1154.850 What is the standard of proof in a debarment action?
1154.855 Who has the burden of proof in a debarment action?
1154.860 What factors may influence the debarring official's decision?
1154.865 How long may my debarment last?
1154.870 When do I know if the debarring official debars me?
1154.875 May I ask the debarring official to reconsider a decision to debar me?
1154.880 What factors may influence the debarring official during reconsideration?
1154.885 May the debarring official extend a debarment?

Subpart I—Definitions

1154.900 Adequate evidence.
1154.905 Affiliate.
1154.910 Agency.
1154.915 Agent or representative.
1154.920 Civil judgment.
1154.925 Conviction.
1154.930 Debarment.
1154.935 Debarring official.
1154.940 Disqualified.
1154.945 Excluded or exclusion.
1154.950 Excluded Parties List System.
1154.955 Indictment.
1154.960 Ineligible or ineligibility.
1154.965 Legal proceedings.
1154.970 Nonprocurement transaction.
1154.975 Notice.
1154.980 Participant.
1154.985 Person.
1154.990 Preponderance of the evidence.
1154.995 Principal.
1154.1000 Respondent.
1154.1005 State.
1154.1010 Suspending official.
1154.1015 Suspension.
1154.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 1154—Covered Transactions

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

■ 2. Part 1154 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''National Endowment for the Arts'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''NEA'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''NEA Chairman'' is added in its place wherever it occurs.

■ 3. Section 1154.440 is added to read as follows:

§ 1154.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part, and requiring them to include a similar term or condition in lower tier covered transactions.

■ 4. Part 1155 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1155—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.

1155.100 What does this part do?
1155.105 Does this part apply to me?
1155.110 Are any of my Federal assistance awards exempt from this part?
1155.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

1155.200 What must I do to comply with this part?
1155.205 What must I include in my drug-free workplace statement?
1155.210 To whom must I distribute my drug-free workplace statement?
1155.215 What must I include in my drug-free awareness program?
1155.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
1155.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
1155.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

1155.300 What must I do to comply with this part if I am an individual recipient?
1155.301 [Reserved]

Subpart D—Responsibilities of NEA Awarding Officials

1155.400 What are my responsibilities as an NEA awarding official?

Subpart E—Violations of This Part and Consequences

1155.500 How are violations of this part determined for recipients other than individuals?
1155.505 How are violations of this part determined for recipients who are individuals?
1155.510 What actions will the Federal Government take against a recipient determined to have violated this part?
1155.515 Are there any exceptions to those actions?

Subpart F—Definitions

1155.605 Award.
1155.610 Controlled substance.
1155.615 Conviction.
1155.620 Cooperative agreement.
1155.625 Criminal drug statute.
1155.630 Debarment.
1155.635 Drug-free workplace.
1155.640 Employee.
1155.645 Federal agency or agency.
1155.650 Grant.
1155.655 Individual.
1155.660 Recipient.
1155.665 State.
1155.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*

■ 5. Part 1155 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''National Endowment for the Arts'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''NEA'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''NEA Chairman'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''NEA Chairman'' is added in its place wherever it occurs.

■ 6. Section 1155.510(c) is further amended by removing ''[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]'' and adding ''45 CFR Part 1154'' in its place.

■ 7. Section 1155.605(a)(2) is further amended by removing ''[Agency-specific CFR citation]'' and adding ''45 CFR Part 1157'' in its place.

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Humanities

45 CFR Part 1169 and 1173

RIN 3136–AA25

FOR FURTHER INFORMATION CONTACT: Heather C. Gottry, Assistant General Counsel, National Endowment for the Humanities, (202) 606–8300.

List of Subjects

45 CFR Part 1169

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

45 CFR Part 1173

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: January 30, 2003.

Michael McDonald,

Deputy General Counsel,

National Endowment for the Humanities.

Accordingly, as set forth in the common preamble, 45 CFR chapter XI is amended as follow:

■ 1. Part 1169 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1169—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

1169.25 How is this part organized?
1169.50 How is this part written?
1169.75 Do terms in this part have special meanings?

Subpart A—General

1169.100 What does this part do?
1169.105 Does this part apply to me?
1169.110 What is the purpose of the nonprocurement debarment and suspension system?
1169.115 How does an exclusion restrict a person's involvement in covered transactions?
1169.120 May we grant an exception to let an excluded person participate in a covered transaction?
1169.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
1169.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
1169.135 May the NEH exclude a person who is not currently participating in a nonprocurement transaction?
1169.140 How do I know if a person is excluded?
1169.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

1169.200 What is a covered transaction?
1169.205 Why is it important to know if a particular transaction is a covered transaction?
1169.210 Which nonprocurement transactions are covered transactions?
1169.215 Which nonprocurement transactions are not covered transactions?
1169.220 Are any procurement contracts included as covered transactions?
1169.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

1169.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
1169.305 May I enter into a covered transaction with an excluded or disqualified person?
1169.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
1169.315 May I use the services of an excluded person as a principal under a covered transaction?
1169.320 Must I verify that principals of my covered transactions are eligible to participate?

1169.325 What happens if I do business with an excluded person in a covered transaction?
1169.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

1169.335 What information must I provide before entering into a covered transaction with the NEH?
1169.340 If I disclose unfavorable information required under § 1169.335, will I be prevented from participating in the transaction?
1169.345 What happens if I fail to disclose the information required under § 1169.335?
1169.350 What must I do if I learn of the information required under § 1169.335 after entering into a covered transaction with the NEH?

Disclosing Information—Lower Tier Participants

1169.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
1169.360 What happens if I fail to disclose the information required under § 1169.355?
1169.365 What must I do if I learn of information required under § 1169.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of NEH Officials Regarding Transactions

1169.400 May I enter into a transaction with an excluded or disqualified person?
1169.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
1169.410 May I approve a participant's use of the services of an excluded person?
1169.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
1169.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
1169.425 When do I check to see if a person is excluded or disqualified?
1169.430 How do I check to see if a person is excluded or disqualified?
1169.435 What must I require of a primary tier participant?
1169.440 What method do I use to communicate those requirements to participants?
1169.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
1169.450 What action may I take if a primary tier participant fails to disclose the information required under § 1169.335?
1169.455 What may I do if a lower tier participant fails to disclose the information required under § 1169.355 to the next higher tier?

Subpart E—Excluded Parties List System

1169.500 What is the purpose of the Excluded Parties List System (EPLS)?
1169.505 Who uses the EPLS?
1169.510 Who maintains the EPLS?
1169.515 What specific information is in the EPLS?
1169.520 Who places the information into the EPLS?
1169.525 Whom do I ask if I have questions about a person in the EPLS?
1169.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

1169.600 How do suspension and debarment actions start?
1169.605 How does suspension differ from debarment?
1169.610 What procedures does the NEH use in suspension and debarment actions?
1169.615 How does the NEH notify a person of a suspension and debarment action?
1169.620 Do Federal agencies coordinate suspension and debarment actions?
1169.625 What is the scope of a suspension or debarment action?
1169.630 May the NEH impute the conduct of one person to another?
1169.635 May the NEH settle a debarment or suspension action?
1169.640 May a settlement include a voluntary exclusion?
1169.645 Do other Federal agencies know if the NEH agrees to a voluntary exclusion?

Subpart G—Suspension

1169.700 When may the suspending official issue a suspension?
1169.705 What does the suspending official consider in issuing a suspension?
1169.710 When does a suspension take effect?
1169.715 What notice does the suspending official give me if I am suspended?
1169.720 How may I contest a suspension?
1169.725 How much time do I have to contest a suspension?
1169.730 What information must I provide to the suspending official if I contest a suspension?
1169.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
1169.740 Are suspension proceedings formal?
1169.745 How is fact-finding conducted?
1169.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
1169.755 When will I know whether the suspension is continued or terminated?
1169.760 How long may my suspension last?

Subpart H—Debarment

1169.800 What are the causes for debarment?
1169.805 What notice does the debarring official give me if I am proposed for debarment?
1169.810 When does a debarment take effect?
1169.815 How may I contest a proposed debarment?
1169.820 How much time do I have to contest a proposed debarment?
1169.825 What information must I provide to the debarring official if I contest a proposed debarment?
1169.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
1169.835 Are debarment proceedings formal?
1169.840 How is fact-finding conducted?
1169.845 What does the debarring official consider in deciding whether to debar me?
1169.850 What is the standard of proof in a debarment action?
1169.855 Who has the burden of proof in a debarment action?
1169.860 What factors may influence the debarring official's decision?
1169.865 How long may my debarment last?
1169.870 When do I know if the debarring official debars me?
1169.875 May I ask the debarring official to reconsider a decision to debar me?
1169.880 What factors may influence the debarring official during reconsideration?
1169.885 May the debarring official extend a debarment?

Subpart I—Definitions

1169.900 Adequate evidence.
1169.905 Affiliate.
1169.910 Agency.
1169.915 Agent or representative.
1169.920 Civil judgment.
1169.925 Conviction.
1169.930 Debarment.
1169.935 Debarring official.
1169.940 Disqualified.
1169.945 Excluded or exclusion.
1169.950 Excluded Parties List System.
1169.955 Indictment.
1169.960 Ineligible or ineligibility.
1169.965 Legal proceedings.
1169.970 Nonprocurement transaction.
1169.975 Notice.
1169.980 Participant.
1169.985 Person.
1169.990 Preponderance of the evidence.
1169.995 Principal.
1169.1000 Respondent.
1169.1005 State.
1169.1010 Suspending official.
1169.1015 Suspension.
1169.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 1169—Covered Transactions

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12698 (3 CFR, 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 959(a)(1).

■ 2. Part 1169 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''NEH'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''NEH'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''NEH General Counsel'' is added in its place wherever it occurs.

■ 3. Section 1169.440 is added to read as follows:

§ 1169.440 What method do I use to communicate those requirements to participants?

To communicate the requirements, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

■ 4. Part 1173 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1173—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.

1173.100 What does this part do?
1173.105 Does this part apply to me?
1173.110 Are any of my Federal assistance awards exempt from this part?
1173.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

1173.200 What must I do to comply with this part?
1173.205 What must I include in my drug-free workplace statement?
1173.210 To whom must I distribute my drug-free workplace statement?
1173.215 What must I include in my drug-free awareness program?
1173.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
1173.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
1173.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

1173.300 What must I do to comply with this part if I am an individual recipient?
1173.301 [Reserved]

Subpart D—Responsibilities of NEH Awarding Officials

1173.400 What are my responsibilities as an NEH awarding official?

Subpart E—Violations of This Part and Consequences

1173.500 How are violations of this part determined for recipients other than individuals?
1173.505 How are violations of this part determined for recipients who are individuals?
1173.510 What actions will the Federal Government take against a recipient determined to have violated this part?
1173.515 Are there any exceptions to those actions?

Subpart F—Definitions

1173.605 Award.
1173.610 Controlled substance.
1173.615 Conviction.
1173.620 Cooperative agreement.
1173.625 Criminal drug statute.
1173.630 Debarment.
1173.635 Drug-free workplace.
1173.640 Employee.
1173.645 Federal agency or agency.
1173.650 Grant.
1173.655 Individual.
1173.660 Recipient.
1173.665 State.
1173.670 Suspension.

Authority: 41 U.S.C. 701, *et seq.*; 20 U.S.C. 959(a)(1).

■ 5. Part 1173 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''NEH'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''NEH'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''NEH General Counsel'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''NEH General Counsel'' is added in its place wherever it occurs.

■ 6. Section 1173.510(c) is further amended by removing ''[CFR citation for the Federal agency's regulations implementing Executive Order 12549 and Executive Order 12689]'' and adding ''45 CFR Part 1169'' in its place.

■ 7. Section 1173.605(a)(2) is further amended by removing ''[Agency-specific CFR citation]'' and adding ''45 CFR Part 1174'' in its place.

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Institute of Museum and Library Services

45 CFR Parts 1185 and 1186

RIN 3137–AA14

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Suite 802, Washington, DC 20506; Telephone: (202) 606–5414; E-mail: *nweiss@imls.gov.*

List of Subjects

45 CFR Part 1185

Administrative practice and procedure, Debarment and suspension, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

45 CFR Part 1186

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: June 6, 2003.

Robert S. Martin,

Director, Institute of Museum and Library Services.

■ For the reasons stated in the preamble, the Institute of Museum and Library Services amends 45 CFR chapter XI, as follows:

■ 1. Part 1185 is revised to read as follows:

PART 1185—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

1185.25 How is this part organized?
1185.50 How is this part written?
1185.75 Do terms in this part have special meanings?

Subpart A—General

1185.100 What does this part do?
1185.105 Does this part apply to me?
1185.110 What is the purpose of the nonprocurement debarment and suspension system?
1185.115 How does an exclusion restrict a person's involvement in covered transactions?
1185.120 May we grant an exception to let an excluded person participate in a covered transaction?
1185.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
1185.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
1185.135 May the Institute of Museum and Library Services exclude a person who is not currently participating in a nonprocurement transaction?
1185.140 How do I know if a person is excluded?
1185.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

1185.200 What is a covered transaction?
1185.205 Why is it important to know if a particular transaction is a covered transaction?
1185.210 Which nonprocurement transactions are covered transactions?

1185.215 Which nonprocurement transactions are not covered transactions?
1185.220 Are any procurement contracts included as covered transactions?
1185.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

1185.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
1185.305 May I enter into a covered transaction with an excluded or disqualified person?
1185.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
1185.315 May I use the services of an excluded person as a principal under a covered transaction?
1185.320 Must I verify that principals of my covered transactions are eligible to participate?
1185.325 What happens if I do business with an excluded person in a covered transaction?
1185.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

1185.335 What information must I provide before entering into a covered transaction with the Institute of Museum and Library Services?
1185.340 If I disclose unfavorable information required under § 1185.335, will I be prevented from participating in the transaction?
1185.345 What happens if I fail to disclose the information required under § 1185.335?
1185.350 What must I do if I learn of the information required under § 1185.335 after entering into a covered transaction with the Institute of Museum and Library Services?

Disclosing Information—Lower Tier Participants

1185.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
1185.360 What happens if I fail to disclose the information required under § 1185.355?
1185.365 What must I do if I learn of information required under § 1185.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Institute of Museum and Library Services Officials Regarding Transactions

1185.400 May I enter into a transaction with an excluded or disqualified person?
1185.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
1185.410 May I approve a participant's use of the services of an excluded person?
1185.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
1185.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
1185.425 When do I check to see if a person is excluded or disqualified?
1185.430 How do I check to see if a person is excluded or disqualified?
1185.435 What must I require of a primary tier participant?
1185.440 What method do I use to communicate those requirements to participants?
1185.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
1185.450 What action may I take if a primary tier participant fails to disclose the information required under § 1185.335?
1185.455 What may I do if a lower tier participant fails to disclose the information required under § 1185.355 to the next higher tier?

Subpart E—Excluded Parties List System

1185.500 What is the purpose of the Excluded Parties List System (EPLS)?
1185.505 Who uses the EPLS?
1185.510 Who maintains the EPLS?
1185.515 What specific information is in the EPLS?
1185.520 Who places the information into the EPLS?
1185.525 Whom do I ask if I have questions about a person in the EPLS?
1185.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

1185.600 How do suspension and debarment actions start?
1185.605 How does suspension differ from debarment?
1185.610 What procedures does the Institute of Museum and Library Services use in suspension and debarment actions?
1185.615 How does the Institute of Museum and Library Services notify a person of a suspension and debarment action?
1185.620 Do Federal agencies coordinate suspension and debarment actions?
1185.625 What is the scope of a suspension or debarment action?
1185.630 May the Institute of Museum and Library Services impute the conduct of one person to another?
1185.635 May the Institute of Museum and Library Services settle a debarment or suspension action?
1185.640 May a settlement include a voluntary exclusion?
1185.645 Do other Federal agencies know if the Institute of Museum and Library Services agrees to a voluntary exclusion?

Subpart G—Suspension

1185.700 When may the suspending official issue a suspension?
1185.705 What does the suspending official consider in issuing a suspension?
1185.710 When does a suspension take effect?
1185.715 What notice does the suspending official give me if I am suspended?
1185.720 How may I contest a suspension?
1185.725 How much time do I have to contest a suspension?
1185.730 What information must I provide to the suspending official if I contest a suspension?
1185.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
1185.740 Are suspension proceedings formal?
1185.745 How is fact-finding conducted?
1185.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
1185.755 When will I know whether the suspension is continued or terminated?
1185.760 How long may my suspension last?

Subpart H—Debarment

1185.800 What are the causes for debarment?
1185.805 What notice does the debarring official give me if I am proposed for debarment?
1185.810 When does a debarment take effect?
1185.815 How may I contest a proposed debarment?
1185.820 How much time do I have to contest a proposed debarment?
1185.825 What information must I provide to the debarring official if I contest a proposed debarment?
1185.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
1185.835 Are debarment proceedings formal?
1185.840 How is fact-finding conducted?
1185.845 What does the debarring official consider in deciding whether to debar me?
1185.850 What is the standard of proof in a debarment action?
1185.855 Who has the burden of proof in a debarment action?
1185.860 What factors may influence the debarring official's decision?
1185.865 How long may my debarment last?
1185.870 When do I know if the debarring official debars me?
1185.875 May I ask the debarring official to reconsider a decision to debar me?
1185.880 What factors may influence the debarring official during reconsideration?
1185.885 May the debarring official extend a debarment?

Subpart I—Definitions

1185.900 Adequate evidence.
1185.905 Affiliate.
1185.910 Agency.
1185.915 Agent or representative.
1185.920 Civil judgment.
1185.925 Conviction.

1185.930 Debarment.
1185.935 Debarring official.
1185.940 Disqualified.
1185.945 Excluded or exclusion.
1185.950 Excluded Parties List System.
1185.955 Indictment.
1185.960 Ineligible or ineligibility.
1185.965 Legal proceedings.
1185.970 Nonprocurement transaction.
1185.975 Notice.
1185.980 Participant.
1185.985 Person.
1185.990 Preponderance of the evidence.
1185.995 Principal.
1185.1000 Respondent.
1185.1005 State.
1185.1010 Suspending official.
1185.1015 Suspension.
1185.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 1185—Covered Transactions

Authority: 20 U.S.C. 9101 *et seq.*; Sec. 2455 Pub. L. 103–355, 108 Stat. 311867 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

■ 2. Part 1185 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''Institute of Museum and Library Services'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''IMLS'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Director, Institute of Museum and Library Services'' is added in its place wherever it occurs.

■ 3. Section 1185.440 is added to read as follows:

§ 1185.440 What method do I use to communicate those requirements to participants?

To communicate the requirements, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

■ 4. Part 1186 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1186—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
1186.100 What does this part do?
1186.105 Does this part apply to me?
1186.110 Are any of my Federal assistance awards exempt from this part?
1186.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

1186.200 What must I do to comply with this part?
1186.205 What must I include in my drug-free workplace statement?
1186.210 To whom must I distribute my drug-free workplace statement?
1186.215 What must I include in my drug-free awareness program?
1186.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
1186.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
1186.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

1186.300 What must I do to comply with this part if I am an individual recipient?
1186.301 [Reserved]

Subpart D—Responsibilities of Institute of Museum and Library Services Awarding Officials

1186.400 What are my responsibilities as an Institute of Museum and Library Services awarding official?

Subpart E—Violations of This Part and Consequences

1186.500 How are violations of this part determined for recipients other than individuals?
1186.505 How are violations of this part determined for recipients who are individuals?
1186.510 What actions will the Federal Government take against a recipient determined to have violated this part?
1186.515 Are there any exceptions to those actions?

Subpart F—Definitions

1186.605 Award.
1186.610 Controlled substance.
1186.615 Conviction.
1186.620 Cooperative agreement.
1186.625 Criminal drug statute.
1186.630 Debarment.
1186.635 Drug-free workplace.
1186.640 Employee.
1186.645 Federal agency or agency.
1186.650 Grant.
1186.655 Individual.
1186.660 Recipient.
1186.665 State.
1186.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*

■ 5. Part 1186 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''Institute of Museum and Library Services'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''IMLS'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Director, Institute of Museum and Library Services or designee'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''Director, Institute of Museum and Library Services'' is added in its place wherever it occurs.

■ 6. Section 1186.510(c) is further amended by removing ''[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]'' and adding ''45 CFR Part 1185'' in its place.

■ 7. Section 1186.605(a)(2) is further amended by removing ''[Agency-specific CFR citation]'' and adding ''45 CFR Part 1183'' in its place.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2542 and 2545

RIN 3045–AA28

FOR FURTHER INFORMATION CONTACT: Suzanne Dupré, Office of General Counsel, Corporation for National and Community Service, Room 8200, 1201 New York Ave., NW., Washington, DC 20525, (202) 606–5000 ext. 396, e-mail: *sdupre@cns.gov.*

List of Subjects

45 CFR Part 2542

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

45 CFR Part 2545

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: June 27, 2003.

Michelle Guillermin,

Chief Financial Officer, Corporation for National and Community Service.

■ Accordingly, as set forth in the common preamble, the Corporation for National and Community Service amends 45 CFR chapter XXV, as follows:

■ 1. Part 2542 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 2542—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
2542.25 How is this part organized?
2542.50 How is this part written?
2542.75 Do terms in this part have special meanings?

Subpart A—General

2542.100 What does this part do?
2542.105 Does this part apply to me?

2542.110 What is the purpose of the nonprocurement debarment and suspension system?
2542.115 How does an exclusion restrict a person's involvement in covered transactions?
2542.120 May we grant an exception to let an excluded person participate in a covered transaction?
2542.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
2542.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
2542.135 May the Corporation exclude a person who is not currently participating in a nonprocurement transaction?
2542.140 How do I know if a person is excluded?
2542.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

2542.200 What is a covered transaction?
2542.205 Why is it important to know if a particular transaction is a covered transaction?
2542.210 Which nonprocurement transactions are covered transactions?
2542.215 Which nonprocurement transactions are not covered transactions?
2542.220 Are any procurement contracts included as covered transactions?
2542.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

2542.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
2542.305 May I enter into a covered transaction with an excluded or disqualified person?
2542.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
2542.315 May I use the services of an excluded person as a principal under a covered transaction?
2542.320 Must I verify that principals of my covered transactions are eligible to participate?
2542.325 What happens if I do business with an excluded person in a covered transaction?
2542.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

2542.335 What information must I provide before entering into a covered transaction with the Corporation?
2542.340 If I disclose unfavorable information required under § 2542.335, will I be prevented from participating in the transaction?
2542.345 What happens if I fail to disclose the information required under § 2542.335?
2542.350 What must I do if I learn of the information required under § 2542.335 after entering into a covered transaction with the Corporation?

Disclosing Information—Lower Tier Participants

2542.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
2542.360 What happens if I fail to disclose the information required under § 2542.355?
2542.365 What must I do if I learn of information required under § 2542.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Corporation Officials Regarding Transactions

2542.400 May I enter into a transaction with an excluded or disqualified person?
2542.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
2542.410 May I approve a participant's use of the services of an excluded person?
2542.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
2542.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
2542.425 When do I check to see if a person is excluded or disqualified?
2542.430 How do I check to see if a person is excluded or disqualified?
2542.435 What must I require of a primary tier participant?
2542.440 What method do I use to communicate those requirements to participants?
2542.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
2542.450 What action may I take if a primary tier participant fails to disclose the information required under § 2542.335?
2542.455 What may I do if a lower tier participant fails to disclose the information required under § 2542.355 to the next higher tier?

Subpart E—Excluded Parties List System

2542.500 What is the purpose of the Excluded Parties List System (EPLS)?
2542.505 Who uses the EPLS?
2542.510 Who maintains the EPLS?
2542.515 What specific information is in the EPLS?
2542.520 Who places the information into the EPLS?
2542.525 Whom do I ask if I have questions about a person in the EPLS?
2542.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

2542.600 How do suspension and debarment actions start?
2542.605 How does suspension differ from debarment?
2542.610 What procedures does the Corporation use in suspension and debarment actions?
2542.615 How does the Corporation notify a person of a suspension and debarment action?
2542.620 Do Federal agencies coordinate suspension and debarment actions?
2542.625 What is the scope of a suspension or debarment action?
2542.630 May the Corporation impute the conduct of one person to another?
2542.635 May the Corporation settle a debarment or suspension action?
2542.640 May a settlement include a voluntary exclusion?
2542.645 Do other Federal agencies know if the Corporation agrees to a voluntary exclusion?

Subpart G—Suspension

2542.700 When may the suspending official issue a suspension?
2542.705 What does the suspending official consider in issuing a suspension?
2542.710 When does a suspension take effect?
2542.715 What notice does the suspending official give me if I am suspended?
2542.720 How may I contest a suspension?
2542.725 How much time do I have to contest a suspension?
2542.730 What information must I provide to the suspending official if I contest a suspension?
2542.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
2542.740 Are suspension proceedings formal?
2542.745 How is fact-finding conducted?
2542.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
2542.755 When will I know whether the suspension is continued or terminated?
2542.760 How long may my suspension last?

Subpart H—Debarment

2542.800 What are the causes for debarment?
2542.805 What notice does the debarring official give me if I am proposed for debarment?
2542.810 When does a debarment take effect?
2542.815 How may I contest a proposed debarment?
2542.820 How much time do I have to contest a proposed debarment?
2542.825 What information must I provide to the debarring official if I contest a proposed debarment?
2542.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
2542.835 Are debarment proceedings formal?

2542.840 How is fact-finding conducted?
2542.845 What does the debarring official consider in deciding whether to debar me?
2542.850 What is the standard of proof in a debarment action?
2542.855 Who has the burden of proof in a debarment action?
2542.860 What factors may influence the debarring official's decision?
2542.865 How long may my debarment last?
2542.870 When do I know if the debarring official debars me?
2542.875 May I ask the debarring official to reconsider a decision to debar me?
2542.880 What factors may influence the debarring official during reconsideration?
2542.885 May the debarring official extend a debarment?

Subpart I—Definitions

2542.900 Adequate evidence.
2542.905 Affiliate.
2542.910 Agency.
2542.915 Agent or representative.
2542.920 Civil judgment.
2542.925 Conviction.
2542.930 Debarment.
2542.935 Debarring official.
2542.940 Disqualified.
2542.945 Excluded or exclusion.
2542.950 Excluded Parties List System.
2542.955 Indictment.
2542.960 Ineligible or ineligibility.
2542.965 Legal proceedings.
2542.970 Nonprocurement transaction.
2542.975 Notice.
2542.980 Participant.
2542.985 Person.
2542.990 Preponderance of the evidence.
2542.995 Principal.
2542.1000 Respondent.
2542.1005 State.
2542.1010 Suspending official.
2542.1015 Suspension.
2542.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 2542—Covered Transactions

Authority: 42 U.S.C. 12651(c); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

■ 2. Part 2542 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''Corporation'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''Corporation'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Corporation Chief Executive Officer or designee'' is added in its place wherever it occurs.

■ 3. Section 2542.440 is added to read as follows:

§ 2542.440 What method do I use to communicate those requirements to participants?

To communicate the requirements, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

■ 4. Part 2545 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 2545—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
2545.100 What does this part do?
2545.105 Does this part apply to me?
2545.110 Are any of my Federal assistance awards exempt from this part?
2545.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

2545.200 What must I do to comply with this part?
2545.205 What must I include in my drug-free workplace statement?
2545.210 To whom must I distribute my drug-free workplace statement?
2545.215 What must I include in my drug-free awareness program?
2545.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
2545.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
2545.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

2545.300 What must I do to comply with this part if I am an individual recipient?
2545.301 [Reserved]

Subpart D—Responsibilities of Corporation Awarding Officials

2545.400 What are my responsibilities as a Corporation awarding official?

Subpart E—Violations of This Part and Consequences

2545.500 How are violations of this part determined for recipients other than individuals?
2545.505 How are violations of this part determined for recipients who are individuals?
2545.510 What actions will the Federal Government take against a recipient determined to have violated this part?
2545.515 Are there any exceptions to those actions?

Subpart F—Definitions

2545.605 Award.
2545.610 Controlled substance.
2545.615 Conviction.
2545.620 Cooperative agreement.
2545.625 Criminal drug statute.
2545.630 Debarment.
2545.635 Drug-free workplace.
2545.640 Employee.
2545.645 Federal agency or agency.
2545.650 Grant.
2545.655 Individual.
2545.660 Recipient.
2545.665 State.
2545.670 Suspension.

Authority: 41 U.S.C. 701, *et seq.*; 42 U.S.C. 12644 and 12651(c).

■ 5. Part 2545 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''Corporation'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''Corporation'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Corporation Chief Executive Officer or designee'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''Corporation Chief Executive Officer'' is added in its place wherever it occurs.

■ 6. Section 2545.510(c) is further amended by removing ''[CFR citation for the Federal Agencies' regulations implementing Executive Order 12549 and Executive Order 12689]'' and adding ''45 CFR Part 2542'' in its place.

■ 7. Section 2545.605(a)(2) is further amended by removing ''[Agency-specific CFR citation]'' and adding ''45 CFR Part 2541'' in its place.

DEPARTMENT OF TRANSPORTATION

49 CFR Parts 29 and 32

RIN 2105–AD07

FOR FURTHER INFORMATION CONTACT: Ladd Hakes, Office of the Senior Procurement Executive (M–62), 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4268, e-mail: *ladd.hakes@ost.dot.gov.*

List of Subjects

49 CFR Part 29

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

49 CFR Part 32

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Dated: August 12, 2003.

Norman Y. Mineta,

Secretary of Transportation.

■ For the reasons stated in the common preamble, the Department of Transportation amends 49 CFR subtitle A, as follows:

■ 1. Part 29 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 29—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
29.25 How is this part organized?
29.50 How is this part written?
29.75 Do terms in this part have special meanings?

Subpart A—General

29.100 What does this part do?
29.105 Does this part apply to me?
29.110 What is the purpose of the nonprocurement debarment and suspension system?
29.115 How does an exclusion restrict a person's involvement in covered transactions?
29.120 May we grant an exception to let an excluded person participate in a covered transaction?
29.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
29.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
29.135 May DOT exclude a person who is not currently participating in a nonprocurement transaction?
29.140 How do I know if a person is excluded?
29.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

29.200 What is a covered transaction?
29.205 Why is it important to know if a particular transaction is a covered transaction?
29.210 Which nonprocurement transactions are covered transactions?
29.215 Which nonprocurement transactions are not covered transactions?
29.220 Are any procurement contracts included as covered transactions?
29.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

29.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
29.305 May I enter into a covered transaction with an excluded or disqualified person?
29.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
29.315 May I use the services of an excluded person as a principal under a covered transaction?
29.320 Must I verify that principals of my covered transactions are eligible to participate?
29.325 What happens if I do business with an excluded person in a covered transaction?
29.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

29.335 What information must I provide before entering into a covered transaction with DOT?
29.340 If I disclose unfavorable information required under § 29.335, will I be prevented from participating in the transaction?
29.345 What happens if I fail to disclose the information required under § 29.335?
29.350 What must I do if I learn of the information required under § 29.335 after entering into a covered transaction with DOT?

Disclosing Information—Lower Tier Participants

29.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
29.360 What happens if I fail to disclose the information required under § 29.355?
29.365 What must I do if I learn of information required under § 29.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of DOT Officials Regarding Transactions

29.400 May I enter into a transaction with an excluded or disqualified person?
29.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
29.410 May I approve a participant's use of the services of an excluded person?
29.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
29.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
29.425 When do I check to see if a person is excluded or disqualified?
29.430 How do I check to see if a person is excluded or disqualified?
29.435 What must I require of a primary tier participant?
29.440 What method do I use to communicate those requirements to participants?
29.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
29.450 What action may I take if a primary tier participant fails to disclose the information required under § 29.335?
29.455 What may I do if a lower tier participant fails to disclose the information required under § 29.355 to the next higher tier?

Subpart E—Excluded Parties List System

29.500 What is the purpose of the Excluded Parties List System (EPLS)?
29.505 Who uses the EPLS?
29.510 Who maintains the EPLS?
29.515 What specific information is in the EPLS?
29.520 Who places the information into the EPLS?
29.525 Whom do I ask if I have questions about a person in the EPLS?
29.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

29.600 How do suspension and debarment actions start?
29.605 How does suspension differ from debarment?
29.610 What procedures does DOT use in suspension and debarment actions?
29.615 How does DOT notify a person of a suspension and debarment action?
29.620 Do Federal agencies coordinate suspension and debarment actions?
29.625 What is the scope of a suspension or debarment action?
29.630 May DOT impute the conduct of one person to another?
29.635 May DOT settle a debarment or suspension action?
29.640 May a settlement include a voluntary exclusion?
29.645 Do other Federal agencies know if DOT agrees to a voluntary exclusion?

Subpart G—Suspension

29.700 When may the suspending official issue a suspension?
29.705 What does the suspending official consider in issuing a suspension?
29.710 When does a suspension take effect?
29.715 What notice does the suspending official give me if I am suspended?
29.720 How may I contest a suspension?
29.725 How much time do I have to contest a suspension?
29.730 What information must I provide to the suspending official if I contest a suspension?
29.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
29.740 Are suspension proceedings formal?
29.745 How is fact-finding conducted?
29.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
29.755 When will I know whether the suspension is continued or terminated?
29.760 How long may my suspension last?

Subpart H—Debarment

29.800 What are the causes for debarment?
29.805 What notice does the debarring official give me if I am proposed for debarment?
29.810 When does a debarment take effect?
29.815 How may I contest a proposed debarment?
29.820 How much time do I have to contest a proposed debarment?

29.825 What information must I provide to the debarring official if I contest a proposed debarment?
29.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
29.835 Are debarment proceedings formal?
29.840 How is fact-finding conducted?
29.845 What does the debarring official consider in deciding whether to debar me?
29.850 What is the standard of proof in a debarment action?
29.855 Who has the burden of proof in a debarment action?
29.860 What factors may influence the debarring official's decision?
29.865 How long may my debarment last?
29.870 When do I know if the debarring official debars me?
29.875 May I ask the debarring official to reconsider a decision to debar me?
29.880 What factors may influence the debarring official during reconsideration?
29.885 May the debarring official extend a debarment?

Subpart I—Definitions

29.900 Adequate evidence.
29.905 Affiliate.
29.910 Agency.
29.915 Agent or representative.
29.920 Civil judgment.
29.925 Conviction.
29.930 Debarment.
29.935 Debarring official.
29.940 Disqualified.
29.945 Excluded or exclusion.
29.950 Excluded Parties List System.
29.955 Indictment.
29.960 Ineligible or ineligibility.
29.965 Legal proceedings.
29.970 Nonprocurement transaction.
29.975 Notice.
29.980 Participant.
29.985 Person.
29.990 Preponderance of the evidence.
29.995 Principal.
29.1000 Respondent.
29.1005 State.
29.1010 Suspending official.
29.1015 Suspension.
29.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 29—Covered Transactions

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

■ 2. Part 29 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''Department of Transportation'' is added in its place wherever it occurs.

■ b. [Agency adjective]'' is removed and ''DOT'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''debarring or suspending official'' is added in its place wherever it occurs.

■ 3. Section 29.120 is further amended by adding a paragraph (c) to read as follows:

§ 29.120 May we grant an exception to an excluded person to participate in a covered transaction?

* * * * *

(c) A debarring or suspending official may grant exceptions and make written determinations under this section.

■ 4. Section 29.440 is added to read as follows:

§ 29.440 What method do I use to communicate those requirements to participants?

To communicate the requirement you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

■ 5. Section 29.520 is further amended by removing the period at the end of paragraph (c)(4) and adding a semi-colon, and adding a paragraph (d) to read as follows:

§ 29.520 Who places the information into the EPLS?

* * * * *

(d) The DOT official's Operating Administration code, as follows: United States Coast Guard [DOT–USCG]; Federal Aviation Administration [DOT–FAA]; Federal Highway Administration [DOT–FHWA]; Federal Motor Carrier Safety Administration [DOT–FMCSA]; Federal Railway Administration [DOT–FRA]; Federal Transit Administration [DOT–FTA]; National Highway Traffic Safety Administration [DOT–NHTSA]; Research and Special Programs [DOT–RSPA]; Maritime Administration [DOT–MARAD]; and DOT (general) [DOT–OST].

■ 6. Section 29.935 is further amended adding a paragraph (b) to read as follows:

§ 29.935 Debarring official.

* * * * *

(b) For DOT ''debarring official'' means the designated head of a DOT operating administration, who may delegate any of his or her functions under this part and authorize successive delegations.

■ 7. Section 29.1010 is further amended adding a paragraph (b) to read as follows:

§ 29.1010 Suspending official.

* * * * *

(b) For DOT ''suspending official'' means the designated head of a DOT operating administration, who may delegate any of his or her functions under this part and authorize successive delegations.

■ 8. Part 32 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 32—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.
32.100 What does this part do?
32.105 Does this part apply to me?
32.110 Are any of my Federal assistance awards exempt from this part?
32.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

32.200 What must I do to comply with this part?
32.205 What must I include in my drug-free workplace statement?
32.210 To whom must I distribute my drug-free workplace statement?
32.215 What must I include in my drug-free awareness program?
32.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
32.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
32.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

32.300 What must I do to comply with this part if I am an individual recipient?
32.301 [Reserved]

Subpart D—Responsibilities of DOT Awarding Officials

32.400 What are my responsibilities as a DOT awarding official?

Subpart E—Violations of This Part and Consequences

32.500 How are violations of this part determined for recipients other than individuals?
32.505 How are violations of this part determined for recipients who are individuals?
32.510 What actions will the Federal Government take against a recipient determined to have violated this part?
32.515 Are there any exceptions to those actions?

Subpart F—Definitions

32.605 Award.
32.610 Controlled substance.
32.615 Conviction.
32.620 Cooperative agreement.
32.625 Criminal drug statute.
32.630 Debarment.
32.635 Drug-free workplace.
32.640 Employee.
32.645 Federal agency or agency.

32.650 Grant.
32.655 Individual.
32.660 Recipient.
32.665 State.
32.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*

■ 9. Part 32 is further amended as set forth below.

■ a. ''[Agency noun]'' is removed and ''Department of Transportation'' is added in its place wherever it occurs.

■ b. ''[Agency adjective]'' is removed and ''DOT'' is added in its place wherever it occurs.

■ c. ''[Agency head or designee]'' is removed and ''Secretary of Transportation'' is added in its place wherever it occurs.

■ d. ''[Agency head]'' is removed and ''Secretary of Transportation'' is added in its place wherever it occurs.

■ 10. Section 32.510 (c) is further amended by removing ''CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689'' and adding ''49 CFR Part 29'' in its place.

■ 11. Section 32.605(a)(2) is further amended by removing ''[Agency-specific CFR citation]'' and adding ''49 CFR Part 18'' in its place.

[FR Doc. 03–28454 Filed 11–21–03; 8:45 am]

BILLING CODE 6325–52–P; 3410–90–P; 6450–01–P; 6690–01–P; 8025–01–P; 7510–01–P; 3510–FA–P; 4191–02–P; 3180–02–P; 4710–05–P; 6116–01–P; 6051–01–P; 7025–01–P; 6117–01–P; 4210–32–P; 4410–18–P; 4510–23–P; 6732–01–P; 4811–16–P; 5001–08–P; 4000–01–P; 7515–01–P; 8320–01–P; 6560–50–P; 6820–61–P; 7025–01–P; 4151–17–P; 7555–01–P; 7537–01–P; 7536–01–P; 7036–01–P; 6050–$$–P; 4910–62–P

Federal Register

Wednesday,
November 26, 2003

Part III

Department of Commerce

Patent and Trademark Office

37 CFR Parts 1, 5, and 41

Rules of Practice Before the Board of Patent Appeals and Interferences; Proposed Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 5, and 41

RIN 0651–AB32

Rules of Practice Before the Board of Patent Appeals and Interferences

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Proposed rule.

SUMMARY: The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office proposes changes to the rules governing practice before the Board of Patent Appeals and Interferences to consolidate and simplify such rules and to reflect developments in case law, legislation, and administrative practice.

DATES: Submit comments on or before January 26, 2004.

ADDRESSES: Submit comments:

1. By electronic mail to *BPAI.Rules@uspto.gov.*

2. By mail to Mail Stop Interference, Director of the United States Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313–1450.

3. By facsimile to 703–308–7953.

See the **SUPPLEMENTARY INFORMATION** for further information about submitting comments.

FOR FURTHER INFORMATION CONTACT:

Appeals: Jeffrey V. Nase or William F. Smith, 703–308–9797.

Otherwise: Richard Torczon, 703–308–9797.

SUPPLEMENTARY INFORMATION:

Relationship to Announced Rule Makings

This notice combines two rule makings previously announced in the Unified Agenda as 0651–AB27 (Appeals) and 0651–AB32 (Interferences).

Filing Comments on This Proposed Rule

To the extent reasonably possible, the Office will make the comments available at *http://www.uspto.gov/web/offices/dcom/bpai/.* To facilitate this goal, the Office strongly encourages the submission of comments electronically, in either ASCII format or ADOBE® portable document format (pdf). Regardless of which submission mode you select, write only ''Consolidated Board Rules'' in the subject line to ensure prompt consideration of your comments.

Since the comments will be made available to the public, the comments should not include information that the submitter does not wish to have published. Comments that include confidentiality notices will not be entered into the record.

The Board of Patent Appeals and Interferences (Board) has significantly overhauled its operations to address concerns about the duration of proceedings before the Board. Improvements include an increase in the number of administrative patent judges, outreach programs to educate parties and examiners about Board operations, and restructuring of Board procedures. This rule making proposes to revise the rules governing Board proceedings to better reflect these new procedures. Consistent with these improvements, the rules are also consolidated and simplified to ease use. Finally, the rules address case law and legislative changes that have occurred since the last significant revision of the Board's rules.

Explanation of Proposed Changes

In keeping with long-standing patent practice, existing rules are denominated ''Rule x'' in this supplementary information. The proposed rules are denominated ''proposed § 41.x'' to help readers distinguish between existing and proposed rules.

Rules 1(a)(1)(iii), 5(e), 6(d)(9), 8(a)(2)(i)(B) and (a)(2)(i)(C), and 11(e), and subpart E of part 1, would be removed to consolidate interference information in proposed part 41, subparts D and E.

Rules 4(a)(2); 9(g); 36; 59(a)(1); 103(g); 112; 113(a); 114(d); 131(a)(1); 136(a)(1) and (a)(2); 181(a)(3); 248(c); 292(a) and (c); 295(b); 302(b); 303(c); 304(a)(1) and (a)(2); 322(a)(3); 323; 324; 565(e); 701(c)(2)(ii); 703(a)(4), (b)(3)(ii), (b)(4), (d)(2), and (e); 704(c)(9); and 993 would be revised to change cross-references to Board proceedings.

Rule 14(e) would be revised to eliminate references to Board actions. An analogous rule for Board actions is proposed in § 41.6(a). The Office previously proposed a similar change to Rule 14(e). See ''Changes to Implement Electronic Maintenance of Official Patent Application Records'', 68 FR 14365 (25 March 2003), in which the paragraph in question was numbered Rule 14(f). The Office received two comments that were specific to then-proposed Rule 14(f). See *http://www.uspto.gov/web/offices/pac/dapp/opla/comments/efw/aipla.pdf* and *http://www.uspto.gov/web/offices/pac/dapp/opla/comments/efw/neifeld.pdf.* To avoid confusion with this proposed rule making, no change was adopted to the language of the rule beyond renumbering it as Rule 14(e). 68 FR 38611, 38612, 38620 (30 June 2003). In the present proposal, the language of the rule has been simplified to avoid some of the criticisms in one comment, but the suggestion in the comments to relax the standards for publishing decisions is not being proposed. Proposed Rule 14(e)(1) would continue to state that publicly available materials are publicly available. Such materials may be published without notification to or permission from the applicant or patent owner.

Rules 17(b)–(d) and (h) would be revised to remove the Board fees, which will be relocated to proposed § 41.20.

Rule 48(a)–(c) and (i) would be revised, and Rule 48(j) added, to consolidate the cross-reference correction of inventorship for applications in contested cases before the Board.

Rules 55(a)(3) and (a)(4), and 136(b) would be revised to eliminate the cross-references to Board rules.

Rule 116 would be amended to limit amendments after a final rejection or other final action (Rule 113) in an application or in an ex parte reexamination filed under Rule 510, or after an action closing prosecution (Rule 949) in an inter partes reexamination filed under Rule 913, to such amendments filed before or with any appeal to the Board under proposed § 41.31 or § 41.61. Amendments after appeal currently treated under Rule 116 would be moved to proposed §§ 41.33 and 41.63. Rule 116(d) would be amended to permit only an amendment canceling claims, where such cancellation does not affect the scope of any other pending claim in the proceeding, to be made in an inter partes reexamination proceeding after the right of appeal notice has issued under Rule 953, except as provided in Rule 981 or as permitted by proposed § 41.77(b)(1). Rule 116(e) would be added to set forth a standard for treatment of an affidavit or other evidence submitted after a final rejection or other final action (Rule 113) in an application or in an ex parte reexamination filed under Rule 510, or in an action closing prosecution (Rule 949) in an inter partes reexamination filed under Rule 913, but before or with any appeal (proposed § 41.31 or proposed § 41.61). The proposed standard would be that such an affidavit or other evidence could be admitted upon a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. This standard is currently in effect under Rule 195 for an affidavit or other evidence submitted

after appeal. Rule 116(f) would be added to prohibit affidavits and other evidence in an inter partes reexamination proceeding after the right of appeal notice under Rule 953, except as provided in Rule 981 or as permitted by proposed § 41.77(b)(1).

Rule 191 would be amended to direct appellants under 35 U.S.C. 134(a) or (b) to proposed part 41, subpart B. Rules 192–196 would be removed and reserved.

Rule 197 would be amended by changing its title to ''Return of Jurisdiction from the Board of Patent Appeals and Interferences; termination of proceedings'' to reflect the two remaining paragraphs of this section. The subject matter of current paragraph (b) would be moved to proposed § 41.52 and the subject matter of current paragraph (c) would be moved to proposed paragraph (b) of this section. In addition, paragraph (a) would be amended to return of jurisdiction of the involved application or patent under ex parte reexamination proceeding to the examiner.

Rule 198 would be amended by changing its title to ''Reopening after a final decision of the Board of Patent Appeals and Interferences'' to better reflect the substance of the section and to clarify that it applies when a decision by the Board of Patent Appeals and Interferences on appeal has become final for judicial review.

Rule 324(a) and (c) would be revised, and Rule 324(d) added, to consolidate cross-references to correction of inventorship for patents in contested cases before the Board.

Rule 959 would be revised to direct inter partes reexamination participants to proposed part 41, subpart C, for information about appeals in such proceedings.

Rules 961–977 would be removed to consolidate inter partes reexamination appeal information in proposed part 41, subpart C.

Rule 979 would be amended by changing its title to ''Return of Jurisdiction from the Board of Patent Appeals and Interferences; termination of proceedings'' to reflect the two paragraphs of this section. Most of the subject matter of current paragraphs (a)–(g) would be moved to proposed §§ 41.79, 41.81 and 41.83. Paragraph (a) would be amended to recite that jurisdiction over an inter partes reexamination proceeding passes to the examiner after a decision by the Board of Patent Appeals and Interferences upon transmittal of the file to the examiner, subject to each appellant's right of appeal or other review, for such further action as the condition of the inter partes reexamination proceeding may require, to carry into effect the decision of the Board of Patent Appeals and Interferences. Paragraph (b) would be amended to state that upon termination of the appeal before the Board of Patent Appeals and Interferences (proposed § 41.83), if no further appeal has been taken (Rule 983), the inter partes reexamination proceeding will be terminated and the Director will issue a certificate under Rule 997. If an appeal to the U.S. Court of Appeals for the Federal Circuit has been filed, that appeal is considered terminated when the mandate is received by the Office.

Rule 981 would be amended by changing its title to ''Reopening after a final decision of the Board of Patent Appeals and Interferences'' to better reflect the substance of the section and to clarify that it applies when a decision by the Board of Patent Appeals and Interferences on appeal has become final for judicial review.

Section 3 of part 5 provides that no interference will be declared with an application under a national secrecy order. In part, this is because the application cannot issue while the secrecy order is in place so the completion requirement of proposed § 41.102 is not met. Cf. Case v. CPC Int'l, Inc., 730 F.2d 745, 750, 221 USPQ 196, 200 (Fed. Cir. 1984) (the Director declares an interference to determine whether the application may issue). The proposed revision to Rule 5.3 would remove the reference to a patent because an interference may be provoked with an application as well (proposed § 41.202(a)(1)). The proposed revision would also remove the requirement to place a notice in the file of the targeted patent. Since the Office will not act on the suggestion for an interference, the notice only serves to cast unexamined doubt on the claims of the patentee without providing any route of relief. An applicant intent on having an interference should take steps to have the secrecy order lifted.

Section 23(c)(7) of part 10 would be amended to change the cross-reference to the interference rules.

A new part 41 would permit consolidation of rules relating to Board practice and to simplify reference to such practices. The Board would continue the practice used in part 1 of this title of citing sections without the part number. In proceedings before the Board, a party could cite ''§ 41.x'' as ''Board Rule x''.

Proposed part 41 would better state the existing practice and should not be read to change the existing practice except as explicitly provided.

Proposed subpart A would state policies, practices, and definitions common to all proceedings before the Board.

Proposed § 41.1 would set forth general principles for proposed part 41. Proposed § 41.1(a) would define the scope of rules. Proposed § 41.1(b) would mandate that the Board's rules be construed to achieve just, speedy, and inexpensive resolutions of all Board proceedings, following the model of Rule 601 and Federal Rule of Civil Procedure 1. Proposed § 41.1(c) would explicitly extend the requirement for decorum under Rule 3 to Board proceedings, including dealings with opposing parties. Board officials are similarly expected to treat parties with courtesy and decorum.

Proposed § 41.2 would set forth definitions for Board proceedings under proposed part 41. The preamble to proposed § 41.2 is based on the preamble of Rule 601, which cautions that context may give a defined word a different meaning. For instance, although ''final'' would be defined for the purposes of identifying final agency actions of the Board, it would not change the meaning of ''final rejection'' in proposed § 41.37(c)(1)(iv), which refers to an action by an examiner.

The proposed definition of ''Board'' would cover three distinct situations. First, for the purposes of a final agency action committed to a panel of Board members, the definition would be identical in scope to 35 U.S.C. 6(b). Second, the definition would include action by the Chief Administrative Patent Judge in matters delegated in these proposed rules to the Chief Administrative Patent Judge. Third, the definition would recognize that non-final actions are often performed by officials other than a panel or the Chief Administrative Patent Judge. See Rule 610(a); cf. 37 CFR 2.127(c). This definition should not be read to authorize a final decision on patentability, priority, or United States Government ownership by anything other than a Board panel. Other than instances in which a panel is required by statute, the selection and authorization of an official to act on behalf of the Board would be entirely a matter of internal administration.

The definition of ''Board member'' would follow the definition in 35 U.S.C. 6(a), under which the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, the Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office, the Commissioner for

Patents, and the Commissioner for Trademarks are ex officio members of the Board.

The phrase ''contested case'' would include patent interferences (35 U.S.C. 135(a)) and proceedings with interference-based procedures (42 U.S.C. 2182 and 2457(d)). The existence of a contested case is a predicate for authorizing a subpoena under 35 U.S.C. 24. Although both appeals in inter partes reexaminations under 35 U.S.C. 134(c) and some petitions to the Chief Administrative Patent Judge, such as a petition for access under 35 U.S.C. 135(c), may involve more than one party, they are not considered contested cases for the purposes of proposed part 41.

Finality is required for judicial review. *Barton* v. *Adang,* 162 F.3d 1140, 1143, 49 USPQ2d 1128, 1131 (Fed. Cir. 1998). The term ''final'' would be defined pursuant to 5 U.S.C. 704 to assist parties in determining when a Board action is ripe for judicial review. In Barton, 162 F.3d at 1143, 49 USPQ2d at 1131, the Court of Appeals for the Federal Circuit held that an adverse judgment against a single party in a multi-party patent interference was a final agency action with respect to that party for the purposes of review under 35 U.S.C. 141. The proposed definition of ''final'' would follow Barton in linking the question of finality to whether an agency action on the merits is operative against the party seeking judicial review. Under 35 U.S.C. 6(b), a decision on the merits in an appeal or a contested case by any entity other than three Board members cannot be a final agency action. Affirming or reversing disposes of an issue on appeal on the merits; vacating or remanding does not. Entry of a new ground of rejection, by definition, does not dispose of an issue on the merits. A petition decision might not be final if, for instance, the decision is rendered without prejudice to take some further action. An issue in a non-final decision may usually be preserved for review in a final decision. See, *e.g.,* proposed § 41.125(c)(5) under which a party may request reconsideration by a panel.

The definition of ''hearing'' would reflect the holding of In re Bose Corp., 772 F.2d 866, 869, 227 USPQ 1, 4 (Fed. Cir. 1985) that a party is entitled to judicial consideration of properly raised issues, but is not entitled to an oral argument or consideration of improperly raised issues.

The definitions of ''panel'' and ''panel proceeding'' would reflect the minimum quorum established in 35 U.S.C. 6(b), which reserves action on patentability and priority to panels. 35 U.S.C. 6(b).

The term ''party'' would set forth a generic term for entities acting in a Board proceeding.

The delegation of petition authority to the Chief Administrative Patent Judge in proposed § 41.3(a) would be new as a rule, but follows a delegation already published in the Manual of Patent Examining Procedure (MPEP) at § 1002.02(f). This delegation by rule would not prejudice the Director's prerogative to decide a petition or to delegate authority to decide a petition to another subordinate. The Chief Administrative Patent Judge could also delegate petition-deciding authority to an official, provided the delegation is stated in writing. Note that under proposed § 41.3(b)(1) decisions committed by statute to the Board would not be subject to petitions for supervisory review. Such decisions would include merits decisions in appeals and contested cases, and decisions on requests for rehearing. 35 U.S.C. 6(b). Review of such decisions would come through a request for rehearing or through judicial review. Proposed § 41.3(b)(2), which would provide for petitions in contested cases to be decided by other officials, would reflect the MPEP's designation of other actions typical in the ordinary course of Board proceedings as ''petitions''. See MPEP § 1002.02(g) (various procedural decisions in interferences). These actions would be considered routine motions or requests.

Proposed § 41.3(c) would reflect current practice in requiring payment of a standard petition fee. Matters that would be excluded from the scope of petitions in § 41.3(a)(2) would not be petitions and so would not require payment of a fee. Petitions seeking supervisory review of a discretionary matter would also not require payment of a petition fee. Compare Rule 181(a)(3) with Rules 182 and 183.

Proposed § 41.3(d) would reflect the current practice of not staying any action for a petition for supervisory review in Rule 181(f). Note that the Court of Appeals for the Federal Circuit has held that a request for rehearing may toll the time for seeking judicial review. In re Graves, 69 F.3d 1147, 1151, 36 USPQ2d 1697, 1700 (Fed. Cir. 1995).

Proposed § 41.3(e) would set times for filing petitions. As with Rule 181(f), failure to file a timely petition would be sufficient basis for dismissing or denying a motion.

Proposed § 41.4(a) and (b) would follow the requirements of Rules 136(b) and 645 in providing rules for extensions of time and for acceptance of untimely papers. Congress has authorized patent term adjustments for time spent in proceedings before the Board. 35 U.S.C. 154(b)(1)(C). Consequently, the Board must be mindful to avoid delays in its administration of its proceedings, including delays requested or caused by a party. The Board might set conditions on extensions to minimize the effects of any delay, including restriction under 35 U.S.C. 121 of claims directed to subject matter not involved in the Board proceeding. Proposed § 41.4(c) would point parties to timeliness rules that are related to Board proceedings, but not within the scope of the Board rules.

Proposed § 41.5 would set forth a limited delegation to the Board under 35 U.S.C. 2(b)(2) and 32 to regulate the conduct of counsel in Board proceedings. It would generally be more efficient to have a Board official familiar with the specific proceeding decide questions of representation limited to the specific proceeding. Disqualification would be a case-specific suspension or exclusion from practice within the meaning of 35 U.S.C. 32. Under the terms of section 32, the official conducting the disqualification hearing would have to be an attorney.

Proposed § 41.5(b) would delegate to the Board the authority to conduct counsel disqualification proceedings while the Board has jurisdiction over a proceeding. It also would clarify counsel disqualification practice under Rule 613(c) by making explicit the fact that a final decision to disqualify is an exercise of the powers of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office under § 32, not the Board. The rule would delegate to the Chief Administrative Patent Judge the authority to make final a decision to disqualify counsel in a proceeding before the Board for the purposes of judicial review. This delegation would not derogate from the Director the prerogative to make such decisions, nor would it prevent the Chief Administrative Patent Judge from further delegating authority to an administrative patent judge, provided the delegation was stated in writing.

Proposed § 41.6(a) would relocate into part 41 the portions of Rule 14(e) that apply to the Board. Proposed § 41.6(a)(1) would continue to state that publicly available materials are publicly available. Such materials may be published without notification to or permission from the applicant. Proposed § 41.6(a)(2) would set forth the basis for making a determination under 35 U.S.C. 122(a) that the publication of a Board action constitutes a special

circumstance. Parties should note that disagreement with a holding is not an appropriate basis for challenging a special circumstance determination. Moreover, a party not entitled to confidentiality under section 122(a) would not have the standing to challenge publication under this paragraph. For instance, an involved patentee could not assert an opposing applicant's confidences as the basis for blocking a publication.

Proposed § 41.6(b) would generalize to all Board proceedings the practice under Rule 11(e) of making the record of most interference proceedings publicly available eventually, although that availability might not occur until an involved patent application becomes available. It also recognizes pre-grant publication as a basis for making a file publicly available.

Proposed § 41.7 would adopt the current practice of Rule 618 regarding duplicate papers and the expunging of papers, but would generalize it to all Board proceedings. In recent decades, the typical size of files has increased significantly. The increase imposes burdens on the Office in managing the records and on users of the record. This rule would provide a tool for managing the size and complexity of the record and for preventing abuses that can occur in filing.

Proposed § 41.8(a) would reflect the current practice under Rules 192(c)(1) and 602 regarding disclosure of the real parties-in-interest. Federal officials must meet high ethical standards. A principal ethical concern is the avoidance of conflicts of interest for the officials, including even the appearance of a conflict. See *e.g., Stanek* v. *Dep't of Transp.,* 805 F.2d 1572, 1577 (Fed. Cir. 1986) (affirming dismissal of employee for appearance of a conflict of interest). In the case of the Board, a conflict would typically arise when an official has an investment in a company with a direct interest in a Board proceeding. Such conflicts could only be avoided if the parties promptly provide the information necessary to identify potential conflicts. The identity of a real party-in-interest might also affect the credibility of evidence presented in a proceeding. For instance, testimony from a source related to a real party-in-interest may be seen as misleading or self-serving compared to evidence from a completely independent source (*e.g., Refac Int'l, Ltd.* v. *Lotus Dev. Corp.,* 81 F.3d 1576, 1581–82, 38 USPQ2d 1665, 1669 (Fed. Cir. 1996) (failure to identify declarants as former co-workers was inequitable conduct)). Finally, in a contested case, the presence of a common real party-in-interest might reflect a lack of genuine adversity between the parties. Common ownership would ordinarily result in prompt termination of any proceeding between the commonly owned parties. Barton, 162 F.3d at 1143, 49 USPQ2d at 1131 (recognizing the practice while noting an exception). See proposed § 41.206.

The notice of judicial proceedings required in proposed § 41.8(b) would be important because a judicial decision in another case might be binding on the Board or a party. The Board might also use such information to determine the best pacing for a Board proceeding. Notice of other administrative proceedings might also be relevant. In the case of other Office proceedings, particularly other Board proceedings, notice might allow the Board to more efficiently allocate its limited resources and to avoid inconsistent outcomes. In re Berg, 140 F.3d 1428, 1435 nn.7&8, 46 USPQ2d 1226, 1231 nn.7&8 (Fed. Cir. 1998) (calling failure to identify a related application relevant to a double-patenting analysis ''misleading''). The ''affect or be affected by'' standard in proposed § 41.8(b) is derived from Federal Circuit Rule 47.5(b). The proposed rule would also follow Rule 660(d) in requiring notice to the Board of judicial review of the proceeding itself. In the absence of such timely notice, the Board would usually distribute records associated in the proceeding to other parts of the Office for further action. Failure to provide a timely mandatory notice under proposed § 41.8 might result in sanctions including disqualification of counsel and adverse judgment.

Proposed § 41.9 would follow Rule 643 regarding action by an assignee to the exclusion of an inventor, but would generalize it to all Board proceedings. Orders permitting an assignee of a partial interest to act to the exclusion of an inventor or co-assignee would rarely be granted outside of contested cases. Even in contested cases, such orders would typically issue only when the partial assignee was in a proceeding against its co-assignee. Ex parte Hinkson, 1904 Comm'r. Dec. 342.

Proposed § 41.20 would consolidate the rules on fees associated with Board practice. Rules 22, 23, and 25–28, which govern fee practice before the Office generally, would continue to apply in Board proceedings. Proposed paragraph (a) would set forth the petition fee, while proposed paragraph (b) would set forth appeals-related fees.

Proposed subpart B would set forth rules for the ex parte appeal under 35 U.S.C. 134 of a rejection in either a national application for a patent, an application for reissue of a patent, or an ex parte reexamination proceeding to the Board.

The preamble to proposed § 41.30 would be based on a similar provision in the preamble of Rule 601. The term ''proceeding'' would set forth a generic term for a national application for a patent, an application for reissue of a patent, and an ex parte reexamination proceeding. The term ''applicant'' would set forth a generic term for either the applicant in a national application for a patent or the applicant in an application for reissue of a patent. The term ''owner'' would set forth a shorthand reference to the owner of the patent undergoing ex parte reexamination under Rule 510.

Proposed § 41.31 would generally incorporate the requirements of current Rule 191(a)–(d). Paragraph (a) would be subdivided into three parts to improve readability. Paragraph (d) would be amended to refer only to the time periods referred to in paragraphs (a)(1)–(a)(3) of this section, while the current extension of time requirements for Rules 192, 193, 194, 196 and 197, now provided in Rule 191(e), would be relocated to proposed §§ 41.37, 41.41, 41.47, 41.50 and 41.52.

Proposed § 41.33(a) and (b) would replace the requirements of current Rule 116 with a prohibition of amendments submitted after the date the proceeding has been appealed pursuant to proposed § 41.31(a)(1)–(a)(3), except amendments canceling claims or rewriting dependent claims into independent form and as permitted by §§ 41.39(b)(1), 41.50(a)(2)(i) and 41.50(b)(1). A dependent claim is rewritten into independent form by including all of the limitations of the base claim and any intervening claims. Thus, no limitation of a dependent claim can be excluded in rewriting that claim into independent form. Proposed § 41.33(c) would replace the requirements of Rule 195 with a prohibition on the admission of affidavits and other evidence submitted after the case has been appealed pursuant to proposed § 41.31(a)(1)–(a)(3), except as permitted by proposed §§ 41.39(b)(1), 41.50(a)(2)(i) and 41.50(b)(1). This would replace the current practice of permitting such evidence based on a showing of good and sufficient reasons why such evidence was not earlier presented. The Office believes that prosecution of an application should occur before the examiner prior to an appeal being filed, not after the case has been appealed pursuant to proposed § 41.31(a)(1)–(a)(3).

Proposed § 41.35 would generally incorporate the requirements of current

Rule 191(e). In addition, the section is proposed to be amended to make clear that jurisdiction over an application may be relinquished by the Board and the application returned to the examining operation to permit processing to be completed by the examining operation before the Board takes up the appeal for decision. This is consistent with the present practice of returning an appealed application to the examining operation where some matter requiring attention has been identified prior to assignment of the appeal number and docketing of the appeal. In addition, it is proposed to permit the Board to take other appropriate action to complete the proceeding. For example, if the proceeding was not complete because one copy of the brief was missing, the Board may contact the appellant to obtain the missing copy.

Proposed § 41.37 would generally incorporate the requirements of Rule 192. In addition, it is proposed to:

(1) Change the title of the section from ''Appellant's brief'' to ''Appeal brief''.

(2) In paragraph (a), require one copy of the brief rather than three copies consistent with the Office's move to an electronic file wrapper.

(3) In paragraph (a), require the brief to be filed within two months from the date of the notice of appeal under proposed § 41.31 even if the time allowed for reply to the action from which the appeal was taken is later, which overall simplifies docketing of the due date.

(4) In paragraph (c)(1)(i), require a statement in the brief identifying by name the real party in interest even if the party named in the caption of the brief is the real party in interest. This amendment would provide appellant the necessary mechanism for complying with proposed § 41.8(a) in an appeal to the Board.

(5) In paragraph (c)(1)(ii), require identification of all other prior and pending appeals, interferences or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal, as well as to set forth a mechanism for complying with proposed § 41.8(b) in an appeal to the Board.

(6) In paragraph (c)(1)(iii), require both a statement of the status of all the claims in the proceeding (*e.g.,* rejected, allowed or confirmed, withdrawn, objected to, canceled) and an identification of those claims that are being appealed.

(7) In paragraph (c)(1)(v), require a concise explanation of the invention defined in each of the independent claims involved in the appeal, which explanation shall refer to the specification by page and line number, and to the drawings, if any, by reference characters. For each claim involved in the appeal, it is proposed that every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, be identified and that the structure, material, or acts described in the specification as corresponding to each claimed function be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters. The current requirement of Rule 192(c)(5) to set forth a concise explanation of the invention defined in the claims involved in the appeal by reference to the specification by page and line number, and to the drawings, if any, by reference characters is not being followed in a great number of briefs before the Board. It is expected that the proposed requirements will be enforced by the examiner. Accordingly, any brief filed by an appellant who is represented by a registered practitioner that fails to set forth a summary which references the specification by page and line number, and to the drawing, if any, by reference characters or which fails to identify every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, would be in non-compliance with this section and would be handled as set forth in proposed paragraph (d) of this section.

(8) In paragraph (c)(1)(vi), require a concise statement listing each ground of rejection presented for review rather than issues for review. An example of a concise statement is ''Claims 1 to 10 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. X.''

(9) Delete the current grouping of claims requirement set forth in Rule 192(c)(7). The general purpose served by Rule 192(c)(7) is addressed in proposed § 41.37(c)(1)(viii). The existing grouping of claims requirement has led to many problems such as (i) Grouping of claims across multiple rejections (*e.g.,* claims 1–9 rejected under 35 U.S.C. 102 over A while claims 10–15 are rejected under 35 U.S.C. 103 over A and the appellant states that claims 1–15 are grouped together); (ii) Claims being grouped together but argued separately (*e.g.,* claims 1–9 rejected under § 102 over A, the appellant groups claims 1–9 together but then argues the patentability of claims 1 and 5 separately); and (iii) examiners disagreeing with the appellant's grouping of claims.

(10) In paragraph (c)(1)(vii), require that any arguments or authorities not included in the brief or a reply brief filed pursuant to proposed § 41.41 will be refused consideration by the Board, unless good cause is shown (requirement currently found in Rule 192(a)), and to require a separate heading for each ground of rejection in place of the previous Grouping of claims section of the brief. For each ground of rejection applying to two or more claims, the claims may be argued separately or as a group. It is proposed that, when an appellant argues as a group multiple claims subject to the same ground of rejection, the Board may select a single claim from that group of claims and treat its disposition of a ground of rejection of that claim as applying to the disposition of that ground of rejection of all claims in the group of claims. Notwithstanding any other provision of this paragraph, it is proposed to make explicit by rule that an appellant's failure to argue separately claims that the appellant has grouped together constitutes a waiver of any argument that the Board must consider the patentability of any grouped claim separately. See In re McDaniel, 293 F.3d 1379, 1384, 63 USPQ2d 1462, 1465–66 (Fed. Cir. 2002) (interpreting Rule 192(c)(7) to require separate treatment of separately rejected claims). It is further proposed that any claim argued separately should be placed under a subheading identifying the claim by number and that claims argued as a group should be placed under a subheading identifying the claims by number. For example, if Claims 1 to 5 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. Y and appellant is only going to argue the limitations of independent claim 1, and thereby group dependent claims 2 to 5 to stand or fall with independent claim 1, then one possible heading as required by this subsection could be *Rejection under 35 U.S.C. 102(b) over U.S. Patent No. Y* and the optional subheading would be *Claims 1 to 5.* As another example, where claims 1 to 3 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. Z and the appellant wishes to argue separately the patentability of each claim, a possible heading as required by this subsection could be *Rejection under 35 U.S.C. 102(b) over U.S. Patent No. Z,* and the optional subheadings would be *Claim 1, Claim 2* and *Claim 3.* Under each subheading the appellant would present the argument for patentability of that claim.

(11) In paragraph (c)(1)(vii), state that ''Merely pointing out differences in

what the claims cover is not an argument as to why the claims are separately patentable'', a statement that in slightly different form appears in Rule 192(c)(7).

(12) In paragraph (c)(1)(vii), eliminate subparagraphs (i) through (v) of Rule 192(c)(8) which relate to the manner in which arguments are to be made. Although they provide useful advice as to what an effective argument ought to include, these provisions have often been ignored by appellants and, for the most part, have not been enforced as set forth in paragraph (d) of that rule.

(13) Add paragraph (c)(1)(ix) to require appellant to include an evidence appendix of any evidence relied upon by appellant in the appeal with a statement setting forth where that evidence was entered in the record by the examiner so that the Board will be able to easily reference such evidence during consideration of the appeal.

(14) Add paragraph (c)(1)(x) to require appellant to include a related proceedings appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section so that the Board can take into consideration such decisions.

(15) Add paragraph (c)(2) to exclude any new or non-admitted amendment, affidavit or other evidence from being included in the brief.

(16) Add paragraph (e) to provide notice that the periods set forth in this section are extendable under the provisions of Rule 136 for patent applications and Rule 550(c) for ex parte reexamination proceedings. This provision currently appears in Rule 191(d), but would be more useful if provided in this section.

Proposed § 41.39 would generally incorporate requirements found in Rule 193(a).

Proposed § 41.39(a)(2) would permit a new ground of rejection to be included in an examiner's answer eliminating the current prohibition of new grounds of rejection in examiner's answers. Many appellants are making new arguments for the first time in their appeal brief (apparently stimulated by a former change to the appeal process that inserted the prohibition on new grounds of rejection in the examiner's answer). Because the current appeal rules only allow the examiner to make a new ground by reopening prosecution, some examiners have allowed cases to go forward to the Board without addressing the new arguments. Thus, the proposed revision would improve the quality of examiner's answers and reduce pendency by providing for the inclusion of the new ground of rejection in an examiner's answer without having to reopen prosecution. By permitting examiners to include a new ground of rejection in an examiner's answer, newly presented arguments can now be addressed by a new ground of rejection in the examiner's answer when appropriate. Furthermore, if new arguments can now be addressed by the examiner by incorporating a new ground of rejection in the examiner's answer, the new arguments may be able to be addressed without reopening prosecution and thereby decreasing pendency. Proposed paragraph (b) of this rule would specify the options available to an appellant who has received a new ground of rejection, including the option to request and have prosecution reopened before the examiner.

The proposed change to permit new grounds of rejection in examiner's answers would not be open-ended but is envisioned to be rare, rather than a routine occurrence. The Office plans to issue instructions that will be incorporated into the MPEP requiring that any new ground of rejection made by an examiner in an answer must be approved by a management official such as a Technology Center Director and that any new ground of rejection made in an answer be prominently identified as such. It is the further intent of the Office to provide guidance to examiners that will also be incorporated into the MPEP as to what circumstances, *e.g.,* responding to a new argument or new evidence submitted prior to appeal, would be appropriate for entry of a new ground of rejection in an examiner's answer rather than the reopening of prosecution. Where, for example, a new argument(s) or new evidence cannot be addressed by the examiner based on the information then of record, the examiner may need to reopen prosecution rather than apply a new ground of rejection in an examiner's answer to address the new argument(s) or new evidence. Paragraph (b) of § 41.39 would provide the appellant two options when a new ground of rejection in an examiner's answer is made, including the option of having prosecution reopened.

The following examples are set forth to provide guidance as to when the Office may or may not consider a factual scenario suitable for introducing new grounds of rejection in the examiner's answer. These examples are not considered an exhaustive list of situations that meet or do not meet the criteria for making a new ground of rejection in an examiner's answer:

Example 1: A new ground of rejection based upon prior art may be allowed if the examiner obviously failed to include a dependent claim in a rejection. For example, in the final rejection, claims 1, 13 and 27 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. Y. Claim 27 depended from claim 22 which depended from claim 13 which depended from independent claim 1. No rejection of claim 22 was set forth in the final rejection; however, the summary sheet of the final rejection indicated that claims 1, 13 and 27 were rejected. In this situation, the examiner would reject claim 22 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. Y as a new ground of rejection in the answer.

Example 2: A new ground of rejection would not be allowed to reject a previously allowed or objected to claim even if the new ground of rejection would rely upon prior art already of record. In this instance, rather than making a new ground of rejection in an examiner's answer, if the basis for the new ground of rejection was approved by a supervisory patent examiner as currently set forth in MPEP 1208.02, the examiner would reopen prosecution.

Example 3: The proposed amendment is intended to continue to permit the examiner to include new grounds of rejection where appellant was advised that an amendment under Rule 116 would be entered for appeal purposes. The proposed rule would eliminate Rule 193(a)(2), which states that the filing of an amendment under Rule 116 represents applicant's consent when so advised that any appeal on that claim will proceed subject to any rejections set forth in an action from which appeal was taken. Proposed § 41.39(a)(2) broadens the situations in which an examiner can make a new ground of rejection to include circumstances currently covered by Rule 193(a)(2).

Paragraph (b) of § 41.39 would set forth the responses an appellant may make when an examiner's answer sets forth a new ground of rejection. Appellant would be required within two months from the date of the examiner's answer containing a new ground of rejection either:

(1) To request that prosecution be reopened by filing a reply under Rule 111 with or without amendment or submission of affidavits (Rules 130, 131 or 132) or other evidence, which would result in prosecution being reopened before the examiner, or

(2) To file a reply brief under § 41.41, which would act as a request that the appeal be maintained. Such a reply brief could not be accompanied by any amendment, affidavit (Rules 130, 131, or 132) or other evidence. If such a reply brief were accompanied by any amendment or evidence, it would be treated as a request that prosecution be reopened before the examiner under paragraph (b)(1) of this section. Any reply brief would have to specify the error in each new ground of rejection as set forth in § 41.37(c)(1)(viii) and should

generally follow the other requirements of a brief set forth in § 41.37(c).

If in response to the examiner's answer containing a new ground of rejection, appellant decides to reopen prosecution of the application before the examiner, the Office will treat the decision to reopen prosecution also as a request to withdraw the appeal. If appellant fails to exercise one of the two options within two months from the date of the examiner's answer, the appeal will be dismissed (*i.e.,* terminated) sua sponte.

Paragraph (c) of § 41.39 is proposed to be added to provide notice that the period set forth in proposed paragraph (b) of this section is extendable under the provisions of Rule 136(b) for patent applications and Rule 550(c) for ex parte reexamination proceedings. This provision currently appears in Rule 191(d), but it would be more useful if provided in this section.

Proposed § 41.41 would generally incorporate requirements found in Rule 193(b). In addition:

(1) Paragraph (a) would make explicit that a reply brief could not include any new or non-admitted amendment, affidavit or other evidence.

(2) Paragraph (b) would be added to make clear that a reply brief not in compliance with paragraph (a) would not be considered. The examiner would notify the appellant in this event.

(3) Paragraph (c) would be added to provide notice that the period set forth in this section would be extendable under the provisions of Rule 136(b) for patent applications and Rule 550(c) for ex parte reexamination proceedings. This provision currently appears in Rule 191(d), but would be more useful if provided in this section.

Proposed § 41.43 is proposed to be added to permit the examiner to furnish a supplemental examiner's answer to respond to any new issue raised in the reply brief. This would dispense with the need for the Board to remand the proceeding to the examiner to treat any new issue raised in the reply brief. It is proposed that a supplemental examiner's answer may not include a new ground of rejection. If a supplemental examiner's answer is furnished by the examiner, it is proposed to permit the appellant to file another reply brief under proposed § 41.41 within two months from the date of the supplemental examiner's answer.

The current prohibition against a supplemental examiner's answer in other than a remand situation would be removed to permit use of supplemental examiner's answers where the examiner is responding only to new issues raised in the reply brief. As a consequence, the requirements pertaining to appellants when prosecution is reopened under Rule 193(b)(2) would be removed.

Section 41.43(a)(1) as proposed would permit the examiner to furnish a supplemental examiner's answer to respond to any new issue raised in a reply brief. It should be noted that an indication of a change in status of claims (*e.g.,* that certain rejections have been withdrawn as a result of a reply brief) is not a supplemental examiner's answer and therefore would not give appellant the right to file a reply brief. Such an indication of a change in status may be made on form PTOL–90. The Office will develop examples to help the examiner determine what would or would not be considered a new issue warranting a supplemental examiner's answer. An appellant who disagrees with an examiner's decision that a supplemental examiner's answer is permitted under this proposed rule may petition for review of the decision under Rule 181. Possible examples of new issues raised in a reply brief include the following:

Example 1: The rejection is under 35 U.S.C. 103 over A in view of B. The brief argues that element 4 of reference B cannot be combined with reference A as it would destroy the function performed by reference A. The reply brief argues that B is nonanalogous art and therefore the two references cannot be combined.

Example 2: Same rejection as in Example 1. The brief argues only that the pump means of claim 1 is not taught in the applied prior art. The reply brief argues that the particular retaining means of claim 1 is not taught in the applied prior art.

Paragraph (a)(1) of proposed § 41.43 would also set forth the ability of the examiner to withdraw the final rejection and reopen prosecution as an alternative to the use of a supplemental examiner's answer. The primary examiner's decision to withdraw the final rejection and reopen prosecution to enter a new ground of rejection will require approval from the supervisory patent examiner as currently set forth in MPEP 1208.02.

Paragraph (b) of proposed § 41.43 would permit appellant to file a supplemental reply brief in response to a supplemental examiner's answer within two months from the date of the supplemental examiner's answer. That two-month time period may be extended under the provisions of Rule 136(b) for patent applications and Rule 550(c) for ex parte reexamination proceedings as set forth in proposed § 41.43(c).

Proposed § 41.47 would generally incorporate the requirements of Rule 194. In addition:

(1) Paragraph (b) is proposed to be amended to require the separate paper requesting the oral hearing to be captioned ''REQUEST FOR ORAL HEARING'' and that such a request can be filed within two months from the date of the examiner's answer or supplemental examiner's answer.

(2) Paragraph (d) is proposed to be added to set forth the procedure for handling the request for oral hearing when an appellant has complied with all the requirements of paragraph (b) of this section. Since notice to the primary examiner is a matter internal to the Office, it is proposed that the requirement for notice to the primary examiner be removed from the rule. It is anticipated that the primary examiner will be sent notice of the hearing time and date by e-mail.

(3) Paragraph (e) is proposed to be added to specifically provide that at the oral hearing (i) appellant may only rely on evidence that has been previously considered by the primary examiner and present argument that has been relied upon in the brief or reply brief; (ii) the primary examiner may only rely on argument and evidence raised in the answer or a supplemental answer; and (iii) that appellant opens and concludes the argument (*i.e.,* the order of the argument at the hearing is: Appellant opens, then the primary examiner argues, then the appellant concludes presuming that appellant has reserved some time for a concluding argument).

(4) The substance of proposed paragraph (f) is found in Rule 194. Exemplary situations where the Board may decide no hearing is necessary include those where the Board has become convinced, prior to hearing, that an application must be remanded for further consideration prior to evaluating the merits of the appeal or that the examiner's position cannot be sustained in any event.

(5) Paragraph (g) is proposed to be added to provide notice that the periods set forth in this section are extendable under the provisions of Rule 136(b) for patent applications and Rule 550(c) for ex parte reexamination proceedings. This provision currently appears in Rule 191(d), but would be more useful if provided in this section.

Proposed § 41.50 would generally incorporate the requirements of Rule 196. In addition:

(1) Paragraph (a)(1) would explicitly provide that the Board, in its principal role under 35 U.S.C. 6(b) of reviewing adverse decisions of examiners, may in its decision affirm or reverse the decision of the examiner in whole or in part on the grounds and on the claims specified by the examiner. The Board

may also remand an application to the examiner.

(2) Paragraph (a)(2) would be added to require appellant to respond to any supplemental examiner's answer issued in response to a remand from the Board to the examiner for further consideration of a rejection to avoid *sua sponte* dismissal of the appeal as to all claims under appeal. It is proposed that appellant must exercise one of the following two options to avoid such *sua sponte* dismissal of the appeal as to all claims under appeal: (i) Request that prosecution be reopened before the examiner by filing a reply under Rule 111 with or without amendment or submission of affidavits (Rules 130, 131 or 132) or other evidence, and (ii) request that the appeal be maintained by filing a reply brief as provided in proposed § 41.41. If such a reply brief is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the examiner under proposed § 41.50(a)(2)(i). Any request that prosecution be reopened under this paragraph would be treated as a request to withdraw the appeal.

A first example of a remand from the Board to the examiner for further consideration of a rejection is a remand for the examiner to provide additional explanation as to how a reference anticipates a claim (*i.e.,* asking the examiner to set forth a *prima facie* case of anticipation). A second example of a remand from the Board to the examiner for further consideration of a rejection is a remand for the examiner to ascertain (*i.e.,* set forth) the differences between the claimed subject matter of the primary reference in an obviousness rejection and then to state why the claimed subject matter as a whole would have been obvious at the time the invention was made to a person of ordinary skill in the art (*i.e.,* asking the examiner to set forth a *prima facie* case of obviousness).

A first example of a remand from the Board to the examiner that is not for further consideration of a rejection is a remand for the examiner to consider an Information Disclosure Statement. A second example of a remand from the Board to the examiner that is not for further consideration of a rejection is a remand for the examiner to consider a reply brief.

(3) Paragraph (b)(2) would eliminate the provision relating to requests that the application or patent under ex parte reexamination be reheard, since that provision would be included in proposed § 41.52(a).

(4) Paragraph (c) would provide that the opinion of the Board may include an explicit statement how a claim on appeal could be amended to overcome a specific rejection and that when the opinion of the Board included such a statement, appellant would have the right to amend in conformity therewith. Such an amendment in conformity with such statement would overcome the specific rejection, but an examiner could still reject a claim so-amended, provided that the rejection constituted a new ground of rejection.

(5) Paragraph (d) would provide that appellant's failure to timely respond to an order of the Board of Patent Appeals and Interferences could result in the dismissal of the appeal.

(6) Paragraph (f) would be added to provide notice that the periods set forth in this section are extendable under the provisions of Rule 136(b) for patent applications and Rule 550(c) for ex parte reexamination proceedings. This provision currently appears in Rule 191(d), but it would appear to be more useful if provided in this section.

Proposed § 41.52 would generally incorporate the requirements of Rule 197(b). In addition, paragraph (a) is proposed to be amended to incorporate the matter being deleted from Rule 196(b)(2) relating to the request that the application or patent under ex parte reexamination be reheard. In addition, the rule as proposed would permit the Board to simply deny a request for rehearing in appropriate cases rather than rendering a new opinion and decision on the request for rehearing. Paragraph (b) is proposed to be added to provide notice that the period set forth in this section is extendable under the provisions of Rule 136(b) for patent applications and Rule 550(c) for ex parte reexamination proceedings. This provision currently appears in Rule 191(d), but would be more useful if provided in this section.

Proposed § 41.54 would generally incorporate the requirements of Rule 197(a).

Proposed § 41.56 provides that an appeal under this proposed subpart is terminated by the dismissal of the appeal or when, after a final Board action a notice of appeal under 35 U.S.C. 141 is filed, a civil action under 35 U.S.C. 146 is commenced, or the time for seeking judicial review (Rule 304) has expired. Termination of an appeal under this proposed subpart is the cessation of the appeal proceeding before the Board and is distinct and separate from the termination of proceedings on an application (proposed Rule 197(b)) or the termination of proceedings on an ex parte reexamination proceeding which is concluded by the issuance of a certificate pursuant to Rule 570. A dismissal of an appeal results in a termination of the appeal proceeding before the Board. After dismissal of an appeal, an application is returned to the examiner to determine the proper course of action (*e.g.*, possible allowance and issuance if there are allowed claims; possible abandonment if there are no allowed claims) as set forth in sections 1214 to 1215.04 of the MPEP. After dismissal of an appeal, an ex parte reexamination proceeding is returned to the examiner to issue the appropriate certificate pursuant to Rule 570.

Proposed subpart C provides rules for the inter partes appeal under 35 U.S.C. 315 of a rejection in an inter partes reexamination proceeding to the Board. This proposed subpart does not apply to any other Board proceeding and is strictly limited to appeals in inter partes reexamination proceedings filed under 35 U.S.C. 311.

The preamble to proposed § 41.60 is based on a similar provision in the preamble of Rule 601. The term ''proceeding'' provides a shorthand reference to an inter partes reexamination proceeding. The term ''owner'' provides a shorthand reference to the owner of the patent undergoing inter partes reexamination under Rule 915. The term ''requester'' provides a generic term to describe each party other than the owner who requested that the patent undergo inter partes reexamination under Rule 915. The term ''appellant'' provides a generic term for any party, whether the owner or a requester, filing a notice of appeal or cross appeal under proposed § 41.61. If more than one party appeals or cross appeals, each appealing or cross appealing party is an appellant with respect to the claims to which his or her appeal or cross appeal is directed. The term ''respondent'' provides a generic term for any requester responding under proposed § 41.68 to the appellant's brief of the owner, or the owner responding under proposed § 41.68 to the appellant's brief of any requester. No requester may be a respondent to the appellant brief of any other requester. The terms ''appellant'' and ''respondent'' are currently defined in Rule 962. The proposed definition of the term ''filing'' provides a generic requirement that any document filed in the proceeding by any party must include a certificate indicating service of the document to all other parties to the proceeding as required by Rule 903.

Proposed § 41.61 would generally incorporate the requirements of current Rule 959 and the changes thereto proposed in ''Changes To Implement the

2002 Inter Partes Reexamination and Other Technical Amendments to the Patent Statute'', 68 FR 22343 (28 April 2003) (RIN 0651–AB57).

Proposed § 41.63(a) and (b) would replace the requirements of current Rule 116 with a prohibition of amendments submitted after the date the proceeding has been appealed pursuant to proposed § 41.61, except for amendments permitted by proposed § 41.77(b)(1) and amendments canceling claims where such cancellation does not affect the scope of any other pending claim in the proceeding. Proposed § 41.63(c) would replace the requirements of Rule 975 with a prohibition on the admission of affidavits and other evidence submitted after the case has been appealed pursuant to proposed § 41.61 except as permitted by proposed § 41.77(b)(1). This would replace the current practice of permitting such evidence based on a showing of good and sufficient reasons why such evidence was not earlier presented. The Office believes that prosecution of an application should occur before the examiner prior to an appeal being filed, not after the case has been appealed pursuant to proposed § 41.61.

Proposed § 41.64 would generally incorporate the requirements of Rule 961, but would make clear that jurisdiction over a proceeding may be relinquished and the proceeding returned to the examining operation to permit processing to be completed before the Board takes up the appeal for decision.

Proposed § 41.66 would generally incorporate the requirements of Rule 963.

Proposed § 41.67 would generally incorporate the requirements of Rule 965 and the changes thereto proposed in ''Changes To Implement the 2002 Inter Partes Reexamination and Other Technical Amendments to the Patent Statute'', 68 FR 22343 (28 April 2003) (RIN 0651–AB57). In addition, it is proposed:

(1) In paragraph (a), to require one copy of the brief rather than three copies consistent with the Office's move to an electronic file wrapper.

(2) In paragraph (c)(1)(i), to require a statement in the brief identifying by name the real party in interest even if the party named in the caption of the brief is the real party in interest. This provides appellant the necessary mechanism of complying with proposed § 41.8(a) in an appeal to the Board;

(3) In paragraph (c)(1)(ii), to require clear identification of all other prior and pending appeals, interferences or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal, as well as to provide a mechanism of complying with proposed § 41.8(b) in an appeal to the Board.

(4) In paragraph (c)(1)(iii), to require both a statement of the status of all the claims in the proceeding (*e.g.*, rejected, allowed or confirmed, withdrawn, objected to, canceled) and an identification of those claims that are being appealed.

(5) In paragraph (c)(1)(v), to require a concise explanation of the subject matter defined in each of the independent claims involved in the appeal and which concise explanation shall refer to the specification by page and line number, and to the drawings, if any, by reference characters. For each claim involved in the appeal, it is proposed that every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, be identified and that the structure, material, or acts described in the specification as corresponding to each claimed function be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters. Any brief filed by an appellant who is represented by a registered practitioner that fails to provide a summary of the claimed subject matter which references the specification by page and line number, and to the drawing, if any, by reference characters or which fails to identify every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, would be in non-compliance with this section and would be handled as provided in proposed paragraph (d) of this section.

(6) In paragraph (c)(1)(vi), to require a concise statement listing each issue presented for review. An example of a concise statement is claims 1 to 10 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. X.

(7) To delete the current grouping of claims requirement set forth in Rule 965(c)(7). The general purpose served by Rule 965(c)(7) is addressed in proposed § 41.67(c)(1)(viii). The existing grouping of claims requirement has led to many problems such as (i) Grouping of claims across multiple rejections (*e.g.*, claims 1–9 rejected under 35 U.S.C. 102 over A while claims 10–15 are rejected under 35 U.S.C. 103 over A and the appellant states that claims 1–15 are grouped together); (ii) claims being grouped together but argued separately (*e.g.*, claims 1–9 rejected under § 102 over A, the appellant groups claims 1–9 together but then argues the patentability of claims 1 and 5 separately); and (iii) examiners disagreeing with the appellant's grouping of claims.

(8) In paragraph (c)(1)(vii), to set forth that any arguments or authorities not included in a brief permitted in this section or filed pursuant to proposed §§ 41.68 and 41.71 will be refused consideration by the Board, unless good cause is shown, and to require a separate heading for each ground of rejection in place of the previous grouping of claims section of the brief. For each ground of rejection applying to two or more claims, the claims may be argued separately or as a group. When an appellant argues as a group multiple claims subject to the same ground of rejection, the Board may select a single claim from that group of claims and treat its disposition of a ground of rejection of that claim as applying to the disposition of that ground of rejection of all claims in the group of claims. Notwithstanding any other provision of this paragraph, it is proposed to make explicit by rule that an appellant's failure to argue separately claims that appellant has grouped together would constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately. *See* In re McDaniel, 293 F.3d 1379, 1384, 63 USPQ2d 1462, 1465–66 (Fed. Cir. 2002) (interpreting analogous Rule 192(c)(7) to require separate treatment of separately rejected claims). It is further proposed that any claim argued separately should be placed under a subheading identifying the claim by number and that claims argued as a group should be placed under a subheading identifying the claims by number.

(9) In paragraph (c)(1)(vii), to state that ''Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.'' This statement in slightly different form is in Rule 965(c)(7).

(10) In paragraph (c)(1)(vii), to eliminate subparagraphs (i) through (v) of Rule 965(c)(8), which relate to the manner in which arguments are to be made. Although providing useful advice as to what an effective argument ought to include, these provisions have often been ignored by appellants and, for the most part, have not been enforced as provided in Rule 965(d).

(11) To add paragraph (c)(1)(ix) to require appellant to include an evidence appendix of any evidence relied upon by appellant in the appeal with a statement setting forth where that evidence was entered in the record by the examiner so that the Board would be

able to reference such evidence easily during their consideration of the appeal.

(12) To add paragraph (c)(1)(x) to require appellant to include a related proceedings appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to proposed § 41.67(c)(1)(ii) so that the Board can take into consideration such decisions.

(13) Add paragraph (c)(2) to exclude any new or non-admitted amendment, affidavit or other evidence from being included in an appellant's brief.

Proposed § 41.68 would generally incorporate requirements found in Rule 967 and the changes thereto proposed in ''Changes To Implement the 2002 Inter Partes Reexamination and Other Technical Amendments to the Patent Statute'', 68 FR 22343 (28 April 2003) (RIN 0651–AB57), and changes similar to those proposed in § 41.67. In addition, it is proposed to add paragraph (b)(2) to exclude any new or non-admitted amendment, affidavit or other evidence from being included in a respondent's brief.

Proposed § 41.69 would generally incorporate requirements found in Rule 969.

Proposed § 41.71 would generally incorporate requirements found in Rule 971 and the changes thereto proposed in ''Changes To Implement the 2002 Inter Partes Reexamination and Other Technical Amendments to the Patent Statute'', 68 FR 22343 (April 28, 2003) (RIN 0651–AB57).

Proposed § 41.73 would generally incorporate the requirements of Rule 973. In addition:

(1) Paragraph (b) would require the separate paper requesting the oral hearing to be captioned ''REQUEST FOR ORAL HEARING'' and that such a request can be filed within two months from the date of the examiner's answer.

(2) Paragraph (d) would be added to provide the procedure for handling the request for oral hearing in which a party has complied with all the requirements of paragraph (b) of this section. Since notice to the primary examiner is a matter internal to the Office, it is proposed that the requirement for notice to the primary examiner be removed from the rule. It is anticipated that the primary examiner will be sent notice of the hearing time and date by e-mail.

(3) Paragraph (e) would be added to specifically provide that at the oral hearing (i) parties may only rely on evidence that has been previously considered by the primary examiner and present argument that has been relied upon in the briefs; (ii) the primary examiner may only rely on argument and evidence relied upon in the answer; and (iii) that the Board will determine the order of the arguments presented at the oral hearing.

(4) The substance of proposed paragraph (f) is found in Rule 194. Exemplary situations where the Board might decide no hearing is necessary include those where the Board has become convinced, prior to hearing, that the proceeding must be remanded for further consideration prior to evaluating the merits of the appeal.

Proposed § 41.77 would generally incorporate the requirements of Rule 977 and the changes thereto proposed in ''Changes To Implement the 2002 Inter Partes Reexamination and Other Technical Amendments to the Patent Statute'', 68 FR 22343 (April 28, 2003) (RIN 0651–AB57).

Proposed § 41.79 would generally incorporate the requirements of current Rule 979 concerning rehearing before the Board. Paragraph (b) is proposed to be amended to generally incorporate the requirements of current Rule 979(d). Paragraph (c) is proposed to be amended to generally incorporate the requirements of current Rule 979(b). Paragraph (d) is proposed to be amended to generally incorporate the requirements of current Rule 979(c). Paragraph (e) is proposed to be amended to generally incorporate the requirements of current Rule 979(g).

Proposed § 41.81 would generally incorporate the requirements of current Rule 979(e) and the changes thereto proposed in ''Changes To Implement the 2002 Inter Partes Reexamination and Other Technical Amendments to the Patent Statute'', 68 FR 22343 (April 28 2003) (RIN 0651–AB57).

Proposed § 41.83 would incorporate some of the requirements found in current Rule 979(f) and would provide that an appeal by a party under this proposed subpart is terminated by the dismissal of that party's appeal, or when, after a final Board action, a notice of appeal under 35 U.S.C. 141 is filed or the time for seeking judicial review (Rule 983) has expired. Termination of an appeal by a party under this proposed subpart is the cessation of that appeal proceeding before the Board and is distinct and separate from the termination of proceedings on an inter partes reexamination proceeding which is concluded by the issuance of a certificate pursuant to Rule 997.

Proposed subpart D would provide rules for contested cases. Contested cases are predominantly patent interferences under 35 U.S.C. 135(a), but also include United States Government ownership contests under 42 U.S.C. 2182[3] and 2457(d). The proposed rules in this proposed subpart would be more general than the existing rules for three reasons. First, while three different statutory proceedings are currently conducted under ''interference rules'', the rules are only tailored to patent interferences. Second, the considerable detail of the current rules has fostered a tendency toward technical compliance with the rules rather than actually proving a case (*e.g.*, *Hillman* v. *Shyamala*, 55 USPQ2d 1220, 1221 (BPAI 2000)). Third, experience with the current rules suggests that attempts to codify the procedures for contested cases too precisely frustrates the policy of administering interferences in a fast, inexpensive, and fair manner. Consequently, the rules would be simplified to give parties adequate guidance about the procedures while permitting the Board to design an approach appropriate to each case. The proposed rules would also better describe the practice for most interferences declared since October 1998. A more complete understanding of existing practice as it relates to the current rules can be obtained from reading the Interference Trial Section's Standing Order, which can be found at *http://www.uspto.gov/web/offices /dcom/bpai/standing 2003May.pdf*.

Proposed § 41.100 would define two terms. The term ''business day'' would be defined in a manner consistent with 35 U.S.C. 21(b) to exclude Saturday, Sunday, and Federal holidays, when the closure of the Board may affect the Board's, or a party's, ability to perform an action.

The term ''involved'' appears in 35 U.S.C. 135(a) with respect to claims and is implicitly defined in Rule 601(f) (for claims) and in Rule 601(l) (for applications), but is not explicitly defined in the current rules. The proposed rule would expressly define ''involved'' as designating any patent application, patent, or claim that is the subject of the contested case.

Proposed § 41.101 would follow the practice in Rule 611(a) and (b) for notifying parties of a contested case. As a courtesy, the Board would make reasonable efforts to provide notice to all parties. Note that failure to maintain a current correspondence address may result in adverse consequences. Cf. *Ray* v. *Lehman*, 55 F.3d 606, 610, 34 USPQ2d 1786, 1788–89 (Fed. Cir. 1995) (finding notice of maintenance fee provided to obsolete, but not updated, address of record to have been adequate).

Proposed § 41.102 would require completion of examination for most applications (and of reexamination for most patents) before the Board will institute a contested case. Contested

cases are generally much more expensive than ex parte proceedings. Consequently, it makes little sense to initiate a contested case before all patentability issues (other than those that are the subject of the contested case) have been resolved. *Brenner* v. *Manson*, 383 U.S. 519, 528 n.12 (1966) (rejecting the proposition that an interference must be declared when the applicant's interfering claims are unpatentable). The main exceptions would be title contests under 42 U.S.C. 2182 and 2457(d), where control of the examination may itself be a consideration.

Proposed § 41.103 would follow the file jurisdiction practice in Rules 614 and 615 except to generalize the temporary transfer of jurisdiction to include parts of the Office other than the examining corps, including, for example, the Office of Public Records. Such transfers of jurisdiction will generally be for short periods and for limited purposes.

Proposed § 41.104(a) would follow the practice of Rule 610(e), which permits an administrative patent judge wide latitude in administering interferences. The waiver provision of proposed § 41.104(b) would be modeled on Rule 183 and would balance the ideal of precise rules for most proceedings against the need for flexibility to achieve reasonably fast, inexpensive, and fair proceedings. The decision to waive a procedural requirement would be committed to the discretion of the administrative patent judge. This provision would eliminate the need for repeatedly stating exceptions throughout proposed subpart D. For instance, the current rules have many instances where a time is set in a rule, but the rule also permits an administrative patent judge to adjust the time. Proposed § 41.104(c) would make clear that any default times set by rule may be changed by order. ''Times'' in paragraph (c) would include both dates and durations.

Proposed § 41.105 would codify existing practice prohibiting ex parte communications about a contested case with an official actually conducting the proceeding. Initiation of an ex parte communication might result in sanctions against the initiating party. The prohibition would include communicating with any member of a panel acting in the proceeding or seeking supervisory review in a proceeding without including the opposing party in the communication. In general, it is wisest to avoid substantive discussions of a pending contested case with a Board official. The prohibition on ex parte communications would not extend to (1) ministerial communications with support staff (for instance, to arrange a conference call), (2) hearings in which opposing counsel declines to participate, (3) informing the Board in one proceeding of the existence or status of a related Board proceeding, or (4) reference to a pending case in support of a general proposition (for instance, citing a published opinion from a pending case or referring to a pending case to illustrate a systemic problem).

Proposed § 41.106 would provide guidance for the filing and service of papers. Under proposed § 41.106(a), papers to be filed would be required to meet standards very similar to those required in patent prosecution, Rule 52(a), and in filings in the Court of Appeals for the Federal Circuit, Fed. R. App. P. 32. Proposed § 41.106(a)(1) would permit a party to file papers in either A4 format or 8½-inch × 11-inch format, but not to alternate between formats. *See* Standing Order ¶ 3.3. At present, the Board prefers papers to be filed in 8½-inch × 11-inch format because the present filing system is best adapted to this paper format. Electronic filing might eventually render this preference moot.

Proposed § 41.106(b) would provide guidance specific to papers other than exhibits. Proposed § 41.106(b)(1) would codify current practices for the cover sheet of a paper. Standing Order ¶¶ 3.1, 3.5 and 3.6; cf. Fed. R. App. P. 32(a)(2). The caption aids in the prompt matching of the paper to its file. The header expedites communications between the Board staff and the party in the event that some prompt action, such as the correction of a filing defect, is necessary. The current practice of requiring a pink cover sheet aids in the processing and filing of papers at the Board and facilitates use of the administrative record by clearly indicating the beginning of each paper.

Proposed § 41.106(b)(2), which would require holes at the top of the paper, would codify the practice under Standing Order ¶ 3.4, which is based on Local Civil Rule 5.1(f) (1999) of the United States District Court for the District of Columbia. The proposed rule would facilitate entry of the paper in the administrative record.

The bar in proposed § 41.106(b)(3) against incorporation by reference and combination of papers would minimize the chance that an argument will be overlooked and would eliminate abuses that arise from incorporation and combination. In *DeSilva* v. *DiLeonardi*, 181 F.3d 865, 866–67 (7th Cir 1999), the court rejected ''adoption by reference'' as ''a self-help increase in the length of the * * * brief'' and noted that ''incorporation is a pointless imposition on the court's time. A brief must make all arguments accessible to the judges, rather than ask them to play archaeologist with the record.'' The same rationale applies to Board proceedings.

Proposed § 41.106(b)(4) would provide rules for the citation of authority. Parallel citation to a West Company reporter and to the United States Patents Quarterly, particularly for patent decisions of Federal courts, is the norm in patent law. *See* Federal Circuit Rule 28(e). Pinpoint citations, also called ''jump citations'', are the norm in legal practice. *See* The Bluebook: A Uniform System of Citation § 3.3(a) (Columbia L. Rev. Ass'n *et al.* 17th ed. 2000). The citation of secondary authority would be discouraged whenever primary authority exists. For instance, a citation to the MPEP is unhelpful if the MPEP itself is merely summarizing binding case law.

Proposed § 41.106(d) would provide additional guidance for special modes of filing. Proposed § 41.106(d)(1) would provide a mailing address. Note that the proposed rule would encourage the use of the EXPRESS MAIL® service of the United States Postal Service. Mail sent by other means would not be considered to have been filed until it is actually received. Cf. proposed § 41.106(e)(3), which would permit service by methods at least as fast and reliable as EXPRESS MAIL®. Proposed § 41.106(d)(2) would permit other modes of filing. For instance, the Board is currently working on a pilot program for electronic filing in contested cases. The diversity of possible filing forms and the varying ability of parties to cope with electronic filing requires a case-by-case determination of whether to place a proceeding in the pilot program. Practitioners permitted to file electronically are encouraged to agree to do so.

Proposed § 41.106(e)(1) would require papers to be served when they are filed if they have not already been served. Under current practice, the usual instance in which filing before service is authorized is the case of preliminary statements where prior filing is a mechanism for ensuring that a party states its priority case based on what it knows about its own proofs rather than on what it knows about what the other party intends to prove. Proposed § 41.106(e)(3) would provide for expedited service, which would place the parties on an equal footing by reducing the disparities that can arise from the use of different forms of delivery.

Proposed § 41.106(f) would provide rules for certificates of service. Proposed § 41.106(f)(1) would require the certificate to be incorporated into each paper other than exhibits. The filing of additional papers like certificates of service and transmittal letters as separate papers places a file maintenance burden on the Board. The filing of transmittal letters is strongly discouraged. Exhibits constitute the exception to the rule since the current practice permits the filing of most or all exhibits at one time. When the exhibits are filed at the same time, the certificate may be incorporated into the exhibit list. See proposed § 41.154(d).

Section 41.107 of proposed subpart D would be reserved. It is likely that rules for electronic filing and service will evolve in the next few years. When they are ready for codification, § 41.107 would be the natural place for them to appear.

Proposed § 41.108 would require each party to identify its counsel, if any. The proposed rule would also follow Rule 613(a), which permits the Board to require the appointment of a lead counsel.

Proposed § 41.109 would follow Rule 612 in permitting parties to obtain copies of certain Office files directly related to the contested case. Current practice is to make the necessary files available for copying immediately after the Board initiates the proceeding. Standing Order ¶ 6. After that initial opportunity passes, files typically become less available because they are often required in other parts of the Office. Proposed § 41.109(c) would require a party that has not received copies of a requested file to notify the Board of the problem promptly. A delay in receiving a file resulting from a failure to order a file promptly, or to notify the Board promptly that a file has not been received, would not justify a delay in the proceeding.

The proposed rule would depart from Rule 612 by eliminating the requirement for withholding declarations under Rule 131 and statements under Rule 608. One reason for withholding such papers is that they give the opponent an advanced view of the applicant's priority case, which is said to be unfair (and can enable fraud by the other party in stating its priority case). This practice, however, is asymmetric because the withholding only applies to applicants while a patentee's Rule 131 declaration is publicly available. Moreover, to the extent the applicant has relied on the declaration to obtain allowable claims, it is an important element in the prosecution history. On balance, the goals of examination are better served by permitting early access to such statements. Nothing in the proposed rule would prevent the Board from authorizing the withholding of such declarations on a showing of good cause.

Proposed § 41.110(a) would require a single clean set of the claims, analogous to the requirement for amendments ''in clean form'' in Rule 121. The annotated copy required in proposed § 41.110(b) would provide the opposing party and the Board with a clear understanding of how the party construes its own claim. The clean and annotated copies would provide everyone in the proceeding with a convenient reference and help to identify mistakes, such as amendments that were not entered or portions of the disclosure that were not printed, before the proceeding begins in earnest. Cf. *Southwest Software, Inc.* v. *Harlequin, Inc.,* 226 F.3d 1280, 1296, 56 USPQ2d 1161, 1173 (Fed. Cir. 2000) (critical portion of disclosure missing). Moreover, identically worded claims in separate applications claims can, when properly construed in view of the specification, have patentably distinct scopes. This possibility is particularly important for claims written in the form permitted under 35 U.S.C. 112[6], where identically worded means or steps might not correspond to equivalent structures, materials, or acts in the respective disclosures. For instance, a limitation requiring ''means for fastening'' might refer to rivets in one specification and glue in another, which on the facts of the case might not prove to be equivalent. Here is an example of the annotation that would be required (except the bracketed portion should also be shown in bold face): ''. . . means for fastening {Fig. 6, item 3; also page 17, lines 9–22} . . . .''

Proposed § 41.120 would provide for notice of requested relief and the basis for that relief in contested cases. Similar notices are already common in patent interferences, e.g., a preliminary statement, a statement under Rule 608, and a motions list currently required at the first status conference. These notices can be effective mechanisms for administering cases efficiently and for placing opponents on notice. Interferences suggested under proposed § 41.202(a) would already include a notice from at least one party, although the Board could require more detail.

Proposed § 41.120(b) would apply present Rule 629(e) regarding the effect of preliminary statements to notices generally. Preliminary statements are binding on the submitting party. The proposed rule would make other such notices presumptively binding because compliance with current notice practices is highly variable and can have the effect of prejudicing the party that complies most completely with a notice requirement. The filing party should not be allowed to hide behind an ambiguous notice. For instance, a notice that alleges a date of conception ''no later than 20 June 2000'' would be construed as limiting the submitting party to proving a date no earlier than 20 June 2000. Note that a notice is not evidence except to the extent it qualifies as a party-opponent admission. See Federal Rule of Evidence 801(d)(2). Proposed § 41.120(c) would permit correction of a notice after the time set for filing the notice, but would set a high threshold for entry of the correction.

Proposed § 41.121(a)(1) would redefine motions practice under Rule 633(a), (b), (c)(2), (c)(3), (c)(4), (f) and (g) to focus more specifically on the central issue in the contested case. Current practice often permits motions that have little to do with the point of the contest. For instance, a motion for unpatentability in an interference is not helpful if it does not result in a loss of standing, a change in the scope of the count, or a change in the accorded benefit.

Proposed § 41.121(a)(1)(iii) would permit a motion for judgment in the contest, which can include an attack on standing as well as a motion for relief on the central issue of the contest. For instance, priority in interferences would be raised through motions. This departure from current practice would address a potential disadvantage to the senior party, which currently may have to make decisions about the junior party's priority case after the junior party has provided its evidence but before it explains the evidence. The prohibition on motions directed to priority and derivation in Rule 633(a) would be removed, although a decision on such motions would likely be contingent on decisions regarding the scope of the interference. Consequently, the Board might not authorize the filing of a priority or derivation motion until after scope issues have been resolved.

Proposed § 41.121(a)(2) and (a)(3) would modify the responsive motion and miscellaneous motion practice under Rules 633(i) and (j), 634, and 635 to ensure that the proceeding remains focused. For instance, current practice allows a motion to correct inventorship at any time (Rule 634). Under the proposed rules, a motion to correct inventorship could be an appropriate responsive motion in the face of a patentability attack or in view of a priority statement, but would not be permitted without some connection to an issue that must be resolved in the

contested case. The authorization requirement in proposed § 41.121(a)(2) would also provide a mechanism for limiting abusive practices, such as moving to add many more claims than are necessary to cure a problem. Proposed § 41.121(a)(3) would provide for miscellaneous motions, which would offer a mechanism for requesting relief on procedural issues and other issues tangential to patentability and priority. See proposed § 41.104. A miscellaneous motion would not be considered a petition; hence, no petition fee is required. See proposed § 41.3(b). Panel review of a decision on a miscellaneous motion would apply an abuse of discretion standard. See proposed § 41.125(c)(5); Rule 655(a).

Proposed § 41.121(b) would place the burden of proof on the moving party, following Rule 637(a). Since priority would be presented as a motion, this paragraph would change the allocation of burden of proof established in Rule 657(a). Cf. *Brown* v. *Barbacid,* 276 F.3d 1327, 1332, 61 USPQ2d 1236, 1239 (Fed. Cir. 2002) (construing Rule 657(a) to require the ultimate burden of proof on priority to remain on the junior party). A motion that fails to justify relief on its face could be dismissed or denied without regard to subsequent briefing.

Proposed § 41.121(c)(1) would follow Rule 637(a) regarding the general contents of motions, but would also codify the current practice of requiring a separate paper for each motion. The separate paper requirement would reduce the chances that an argument will be overlooked and would generally reduce the complexity of any given paper. The numbered paragraphs stating material facts in proposed § 41.121(c)(1)(ii) should be short, ideally just a sentence or two, to permit the opposing party to admit or deny each fact readily. Under proposed § 41.121(c)(1)(iii), sloppy motion drafting would be held against the moving party. A vague argument or citation to the record creates inefficiencies for the Board and is fundamentally unfair to the opposing party. Cf. *Winner Int'l Royalty Corp.* v. *Wang,* 202 F.3d 1340, 1351, 53 USPQ2d 1580, 1589 (Fed. Cir. 2000) (declining to scour the record to make out an argument for a party).

Proposed § 41.121(c)(2) would require the movant to make showings ordinarily required for the requested relief in other parts of the Office. Many actions, particularly corrective actions like changes in inventorship, filing reissue applications, and seeking a retroactive foreign filing license, are governed by other rules of the Office. By requiring the same showings, the proposed rule would keep practice uniform throughout the Office. The Board could temporarily release the affected file to the part of the Office usually responsible for administering the rule to ensure consistency or otherwise take advantage of that entity's expertise. See proposed § 41.103.

Proposed § 41.121(d) would provide authority comparable to Rule 641, which allows an administrative patent judge to raise questions of patentability. The proposed rule would be broader because it would permit the Board to inquire into other issues that may arise, such as whether there continues to be an interference-in-fact in view of a claim construction reached in deciding a motion. In this regard, it would be akin to an order to show cause under Rule 640(d)(1).

Proposed § 41.122 would address the perennial problem of new arguments or requests for relief creeping in at inappropriate times. The proposed rule would largely adopt the present practice in Standing Order ¶ 13.7, but would extend the practice to oppositions as well. Note that a movant need not anticipate all possible bases for opposition, but may be held accountable for positions apparently inconsistent with those taken by the movant during prosecution of an application. For instance, a motion to add a broad claim to an application in which the claims have been narrowed to avoid prior art should explain why the new claim is patentable, not only in terms of written description in the specification but also in terms of the previously applied prior art. The Board could expunge improper papers. See proposed § 41.7(a); *Winter* v. *Fujita,* 53 USPQ2d 1234, 1250 (BPAI 1999).

Proposed § 41.123(a) would maintain the practice of having the Board set the times for filing motions found in Rule 636, but would eliminate the default times provided in that rule. Proposed § 41.123(a)(1)–(3) would provide default times for filing an opposition, a reply, and a responsive motion, but would not themselves authorize the filing of an opposition, a reply, or a responsive motion.

Proposed § 41.123(b) would provide requirements for miscellaneous motions. A conference call would be required before the motion is filed because most relief requested in such motions can be granted (or denied) in a conference call. In other cases, the call would permit the setting of a schedule to accommodate full briefing of the issue. This telephone practice has greatly increased speed and reduced costs associated with miscellaneous motion practice.

A party is not entitled to an oral argument. In re Bose Corp., 772 F.2d 866, 869, 227 USPQ 1, 4 (Fed. Cir. 1985). Hence, a party could request an oral argument under proposed § 41.124(a), but requests would not be automatically granted. Factors considered in setting an oral argument might include the usefulness of an oral argument to the administrative patent judge or panel and the burden on an opponent of attending an oral argument. A corollary is that not all requested issues would necessarily be heard. Under proposed § 41.124(b), the parties would be required to file three working copies of the papers to be considered for the panel if the hearing is set for a panel. This requirement would be comparable to Rule 656(e) and Federal Circuit Rule 31(b).

Proposed § 41.124(c) would provide a default time of 20 minutes per party for oral arguments at the Board because they are not evidentiary hearings. This default time would be comparable to the 15 minutes typically provided for oral argument at the Court of Appeals for the Federal Circuit. Fed. Cir. R. 34, practice note (2001).

Proposed § 41.124(d) would permit the use of demonstrative exhibits. Visual aids requiring special equipment would be discouraged since the argument time would be short and cumbersome exhibits would tend to detract from the user's argument. The use of a compilation with each demonstrative exhibit separately tabbed would be encouraged, particularly when a court reporter is transcribing the oral argument because the tabs provide a convenient way to record which exhibit is being discussed. It is helpful to provide a copy of the compilation to each member of the panel hearing the argument.

Proposed § 41.124(e) would permit the transcription of the argument. The transcription would become part of the record and could be helpful to the panel in reaching its decision. See *Okajima* v. *Bourdeau*, 261 F.3d 1350, 1356, 59 USPQ2d 1795, 1798 (Fed. Cir. 2001) (noting the role of the transcript in the Board's decision). To be helpful, however, the transcript would have to be filed promptly.

Proposed § 41.125(a) would maintain the practice under Rule 640(b) of addressing issues in a manner that is both fair and efficient. Noted with approval in *Berman* v. *Housey*, 291 F.3d 1345, 1352, 63 USPQ2d 1023, 1028 (Fed. Cir. 2002). A decision on a motion might be logically contingent on the outcome of another motion even though

the motion is not expressly identified as a contingent motion. Moreover, efficient allocation of Office resources might require deferral of a motion or referral of a matter to another part of the Office. Given the great cost of contested cases for both parties and the Office, the Board will continue to focus on efficient administration consistent with the requirements of due process.

Proposed § 41.125(b) would clarify the current practice that a decision short of judgment is not final. It would also codify the current practice of having panel decisions bind further action during the proceeding. The practice of having panel decisions bind further proceedings has eliminated much of the uncertainty and added cost that results from deferring any final decision until the end of the proceeding. A party dissatisfied with an interlocutory decision on motions should promptly seek rehearing rather than waiting for a final judgment. A panel could, when the interests of justice require it, reconsider its decision at any time in the proceeding prior to final judgment. A belated request for rehearing would rarely be granted, however, because its untimeliness would detract from the efficiencies that have resulted from making interlocutory decisions binding.

Proposed § 41.125(c) would adopt the time for requesting rehearing from Rule 640(c) and the procedural requirements of the last two sentences of Rule 655(a). Since 35 U.S.C. 6(b) requires a panel decision for finality, a party should request rehearing by a panel to preserve an issue for judicial review. A panel will apply the deferential abuse-of-discretion standard to procedural decisions on rehearing.

Proposed § 41.126 would adopt the arbitration practice of Rule 690. Although parties may submit any issue to binding arbitration, the Board might independently decide any questions of patentability. The proposed rule would also clarify that the Board could independently determine questions like whether an interference-in-fact exists or what an Office rule means.

Proposed § 41.127(a)(1) would adopt the estoppel provision of Rule 658(c). Note that while the second sentence of the proposed paragraph would continue to focus on the losing party, a decision of no interference-in-fact could also estop a party from provoking an interference with the same opponent for the same subject matter under the first sentence. Cf. Rule 665, which cites Rule 658(c).

Proposed § 41.127(a)(2) restates the final disposal provision of Rule 663. Proposed § 41.127(b) would restate the conditions in Rule 662 under which the Board would infer a concession of the contest. Proposed § 41.127(c) would restate the recommendation provision of Rule 659.

The Director has authority to prescribe a time for seeking judicial review. 35 U.S.C. 142 and 146[1]. The prescribed time (2 months) is set in Rule 304(a)(1), but can be extended on petition under Rule 304(a)(3). Proposed § 41.127(d) would provide a time for requesting a rehearing and would delegate to the Board limited discretion to toll the time for seeking judicial review for the pendency of the request. Tolling the time for seeking judicial review would codify the result of In re Graves, 69 F.3d 1147, 1149–51, 36 USPQ2d 1697, 1698–1700 (Fed. Cir. 1995), but such tolling would not be automatic. The Board would not toll the time for seeking review where the request for rehearing appears to be a delaying tactic, for example if a party files requests serially.

Proposed § 41.128 would define the term ''termination'', which appears several times in 35 U.S.C. 135(c). Section 135(c) renders settlement agreements and patents involved in or resulting from the interference unenforceable if the parties fail to file the agreements prior to termination. The Office is required to provide notice of the requirement within a reasonable time before termination or else the agreement may be filed up to sixty days after notice is provided. The Office has generally tried to minimize the potential traps for the unwary by construing the requirements liberally. Over time, this has led to divergent constructions of ''termination''. In *Hunter* v. *Beissbarth,* 15 USPQ2d 1343, 1344 n.1 (Comm'r Pat. 1990), the question of when such agreements must be filed was liberally construed to extend the time until after judicial review was complete. In contrast, the question of what agreements are covered was limited to agreements reached during proceedings before the Board in *Johnston* v. *Beachy,* 60 USPQ2d 1584, 1588 (BPAI 2001). A third construction is possible in which the interference proceeding is tolled during the judicial proceeding such that both Hunter and Johnston are correct. In the proposed rule, the Director would construe section 135(c) to mean the interference terminates when the time for seeking judicial review under 35 U.S.C. 142 and 146[1] expires, whether such review is sought or not. This construction offers several practical benefits. First, by limiting the number of agreements covered, the risk of inadvertent failure to file is correspondingly limited. Second, although parties will have less time to file than they would under the Hunter construction, the outer bound for timely filing will be much closer to the date of all affected agreements, thus reducing the likelihood of an accidental failure to file. Finally, since the Director has authority to extend the time for seeking judicial review, sections 142 and 146[1], the proposed definition permits an additional route of relief when such relief, though otherwise unavailable, would be in the interests of justice.

Proposed § 41.128(a) would codify the holding of In re Graves, 69 F.3d 1147, 1151, 36 USPQ2d 1697, 1699–1700 (Fed. Cir. 1995), that whether the time for seeking judicial review has run or not, a timely notice of appeal on an appealable decision terminates further Board jurisdiction to act on the merits. Proposed § 41.128(b) would extend the same principal to the timely commencement of a district court action under 35 U.S.C. 146 seeking review of an appealable decision.

Proposed § 41.129(a) would restate Rule 616 on sanctions, but would expressly add the examples of misleading arguments and dilatory tactics to the list of reasons for sanctions. A party always has a duty of candor toward a tribunal. Hence, while the proposed rules no longer expressly require a movant to show the patentability of a proposed claim to the movant, the filing of a claim that the party knew or should have known to be unpatentable would be inconsistent with that duty of candor. The concern about dilatory tactics arises from the potential for abuse inherent in patent term adjustments for time spent in an interference provided in 35 U.S.C. 154(b)(1)(C).

Proposed § 41.129(b) would restate the list of sanctions provided in Rule 616, but would add terminal disclaimer as a sanction. Terminal disclaimer would be an appropriate sanction in cases where a party has caused needless delay. The sanction of expunging papers would be consistent with proposed § 41.7(a), under which unauthorized papers may be expunged. Neither the list of sanctionable acts nor the list of sanctions should be considered exhaustive.

Proposed § 41.150(a) would restate the present policy of limited discovery, consistent with the goal of providing contested proceedings that are fast, inexpensive, and fair. Proposed § 41.150(b) would provide for automatic discovery of materials cited in the specification of an involved or benefit disclosure. The proposed rule would place the parties on a level playing field since the party that relied on the requested materials in its disclosure

would ordinarily have easier access to such materials than the requester and would be in a better position to ensure that the requested material is the material cited. It would also eliminate many routine discovery requests and disputes. The requirement would not be a requirement for a party to create materials or to provide materials not cited. See *Scott* v. *Gbur,* 62 USPQ2d 1959 (BPAI 2002) (nonprecedential). Any request under proposed § 41.150(b) should come early in the proceeding to ensure that the requesting party will have timely access to such materials. Proposed § 41.150(c) would restate existing practice under Rule 687 regarding additional testimony.

Proposed § 41.151 would continue the practice under Rule 671(i) of making failure to comply with the rules a basis for challenging admissibility.

Proposed § 41.152 would continue the current practice of using the Federal Rules of Evidence in contested cases. Experience since this practice was implemented in 1984 has shown it to be beneficial without being unduly restrictive for either the parties or the Board. Moreover, the Federal Rules of Evidence embrace a well-developed body of case law and are familiar to the courts charged with reviewing Board decisions in contested cases. Minor changes to the rule have been made to conform the rule with amendments to the Federal Rules of Evidence since 1984.

No special provisions for electronic records are proposed beyond the provisions already in the Federal Rules of Evidence. See Fed. R. Evid. 1001(3). While electronic records appear to be of special concern because they often may be easily altered, the requirements already present in the Federal Rules of Evidence adequately addressed this concern. The Board's limited experience with electronic records in interferences has not suggested any unique admissibility problems requiring special provisions. Electronic records have been admissible in interferences on the same basis as other records.

Proposed § 41.153 would restate the practice under Rule 671(d) of admitting Office records that are available to all parties without certification. Cf. 28 U.S.C. 1744, which provides for the admissibility of certified Office records. Note that under proposed § 41.154(a), each Office record cited as evidence would have to be submitted as an exhibit, following the practice of Standing Order ¶ 14.5. In the case of application files and similar files, only the specific record cited should be submitted as an exhibit. Submitting the entire file when only discrete portions are cited would create a record-management problem for the Board and confusion about what the fact-finders must consider in reaching a decision. The Board might expunge such filings sua sponte.

Proposed § 41.154(a) would restate Rule 671(a), which sets the form of evidence, and would codify the existing practice that all evidence must be submitted as an exhibit. Proposed § 41.154(b) would restate Rule 647 regarding translation of foreign language evidence. Proposed § 41.154(c) would set forth additional formal requirements for exhibits consistent with current practice under Standing Order ¶ 14.8.1. An exhibit list would be required under proposed § 41.154(d), following the current practice under Standing Order ¶ 14.8.5.

Proposed § 41.155 would set forth rules for objecting to evidence and responding to objections. The current practice is to provide a time for filing motions to exclude. Under proposed § 41.155(b)(1), the default time for serving an objection to evidence other than testimony would be five business days. Since evidence would have to be served by EXPRESS MAIL® or comparably fast means, see proposed § 41.106(e)(3), five business days would ordinarily be adequate time to object.

Proposed § 41.155(b)(2) would permit a party that submitted evidence ten business days after service of the objection to cure any defect in the evidence. (Standing Order ¶ 14.2 provides two weeks.) The Board would not ordinarily address an objection unless the objecting party filed a motion to exclude under § 41.155(c) because the objection either might have been cured or might prove unimportant in light of subsequent developments. Proposed § 41.155(d) would provide for a motion in limine for a ruling on admissibility, following the practice of Standing Order ¶ 13.10.3.2.

Under 35 U.S.C. 23, the Director may establish rules for affidavit and deposition testimony. Under 35 U.S.C. 24[1], a party in a contested case may apply for a subpoena to compel testimony in the United States, but only for testimony to be used in the contested case. Proposed § 41.156(a) would require the party seeking a subpoena to first obtain authorization from the Board; otherwise the compelled evidence would not be used in the contested case. Proposed § 41.156(b) would impose additional requirements on a party seeking testimony or production outside the United States because the use of foreign testimony generally increases the cost and complexity of the proceeding for both the parties and the Board. The Board would give weight to foreign deposition testimony to the extent warranted in view of all the circumstances, including the laws of the foreign country governing the testimony. Little, if any, weight might be given to deposition testimony taken in a foreign country unless the party taking the testimony proved, as a matter of fact, that knowingly giving false testimony in that country in connection with a Board proceeding is punishable under the laws of that country and that the punishment in that country for such false testimony is comparable to or greater than the punishment for perjury committed in the United States. Proposed § 41.156(c) would advise that the Board may rely on official notice and hearsay to determine the scope and effect of foreign law.

Proposed § 41.157 would restate existing practice regarding the taking of testimony. The time period for cross-examination set in proposed § 41.157(c)(2) would follow the current practice under Standing Order ¶ 14.3 and would set a norm for the conference held under proposed § 41.157(c)(1). A party seeking to push the deposition outside this period would have to be prepared to show good cause. Proposed § 41.157(c)(3) would clarify the practice of providing documents in advance by limiting the practice to direct testimony. Since direct testimony is generally in the form of a declaration, the circumstance in which proposed § 41.157(c)(3) would apply should rarely occur apart from compelled testimony.

Proposed § 41.157(d) would codify the existing requirement for a conference before a deposition with an interpreter. Board experience suggests that the complexity of foreign language depositions can be so great that in many cases the resulting testimony is not very useful to the fact-finder. To avoid a waste of resources in the production of an unhelpful record, the Board must approve of the deposition format in advance and may require that the testimony occur before the Board. Occasionally other testimony that particularly touches on the credibility of the witness, such as testimony about best mode, derivation, or inequitable conduct, will also be required to be taken before the Board so the Board may directly observe the demeanor of the witness.

Proposed § 41.157(e) would depart from the current rules in adopting ''officer'', the term used in 35 U.S.C. 23, to refer to the person qualified to administer testimony.

The certification of proposed § 41.157(e)(6)(vi) would substantially adopt the standard of Rule 674 for

disqualifying an officer from administering a deposition. The use of financial interest as a disqualification, however, would be broader than the employment interest currently barred. Payment for ordinary services rendered in the ordinary course of administering the deposition and preparing the transcript would not be a disqualifying financial interest. An interest acknowledged by the parties on the record without objection would not be a disqualifying interest.

Proposed § 41.157(e)(7) would require the proponent of the testimony to file the transcript of the testimony. If the original proponent of the testimony declined to file the transcript (for instance, because that party no longer intended to rely on the testimony), but another party wished to rely on the testimony, that party becomes the proponent and could file the transcript as its own exhibit.

Proposed § 41.157(f) would codify the existing practice of requiring the proponent of testimony to pay the reasonable costs associated with making the witness available for cross examination, including the costs of the reporter and transcript.

Proposed § 41.158 would codify the practice under Standing Order ¶¶ 14.9 and 14.10 regarding expert testimony and scientific tests and data. Opinions expressed without disclosing the underlying facts or data may be given little, if any, weight. *Rohm & Haas Co.* v. *Brotech Corp.,* 127 F.3d 1089, 1092, 44 USPQ2d 1459, 1462 (Fed. Cir. 1997). United States patent law is not an appropriate topic for expert testimony before the Board.

Proposed subpart E would provide rules specific to patent interferences. Proposed § 41.200(a) would specifically identify patent interferences as contested cases subject to the rules in proposed subpart D.

Proposed § 41.200(b) would continue the practice under Rule 633(a) of looking at the applicant's specification to determine the meaning of a copied claim, not the specification from which the claim was copied. See *Rowe* v. *Dror,* 112 F.3d 473, 479, 42 USPQ2d 1550, 1554 (Fed. Cir. 1997) (explaining the change in practice). Claims in interferences are not to be treated any differently than any other claim before the Office. In this regard, the proposed rule would also clarify that claims are given their broadest reasonable interpretation in light of the associated specification. In re Van Geuns, 988 F.2d 1181, 1185, 26 USPQ2d 1057, 1059 (Fed. Cir. 1993) (application claim in interference); In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) (application claim after interference); In re Etter, 756 F.2d 852, 858–59, 225 USPQ 1, 5–6 (Fed. Cir. 1985) (en banc) (patent claim in reexamination). The court in Etter noted that a patentee in reexamination can amend its claim, while a patentee in litigation ordinarily may not. A patentee in an interference can contingently narrow its claim by filing a reissue application. 35 U.S.C. 251; Rule 633(h) and (i); proposed § 41.121(a)(2). Indeed, a patentee may face an estoppel if it does not seek to amend its claim when necessary. Rule 658(c); proposed § 41.127(a)(1).

Proposed § 41.200(c) would set forth the policy now found in Rule 610(c) setting two years as the maximum normal pendency for patent interferences. New procedures adopted since October 1998 have permitted the Board to meet or exceed this goal in most interferences declared since that time. The cooperation of the parties has been a critical factor in this success. The proposed rules would build on this success by codifying procedures that have facilitated efficiency, removing procedures that delayed proceedings, and creating new opportunities for improvement.

Proposed § 41.201 would set forth definitions specific to patent interferences. The phrase ''accorded benefit'' would be defined as an act by the Board with regard to priority. Specifically, it would be the Board's recognition of an application as providing a proper constructive reduction to practice for a party. This recognition would create a presumption that is important for setting the burdens for proving priority. ''Accorded benefit'' in this proposed subpart would be a term of art limited to priority determinations under 35 U.S.C. 102(g). In this regard accorded benefit should be understood to be distinct from benefit under 35 U.S.C. 119, 120, 121, or 365(a), which impose additional requirements not directly relevant to a priority determination under section 102(g).

A definition would be set forth for the phrase ''constructive reduction to practice'' because this phrase would be used in the proposed rules instead of ''earliest effective filing date'' to explain more precisely how benefit would be accorded for the purpose of determining priority. ''Earliest effective filing date'' has proved confusing because the same term is used to discuss compliance with the disclosure requirements of 35 U.S.C. 119, 120, 121, and 365. Compliance with these statutes is important when considering most questions of patentability, but the question of benefit for priority under 35 U.S.C. 102(g) is narrower than full compliance with the disclosure statutes. Sections 119, 120, 121, and 365 focus on whether the full scope of a claim is adequately disclosed, while an interference is focused on whether at least one embodiment anticipates the interfering subject matter as defined in a count.

The phrase ''constructive reduction to practice'' would focus consideration on the value of a disclosure as a potentially anticipating reference under section 102(g). Only a single enabled embodiment is necessary for anticipation of the count. Note that abandonment of an application without a co-pending (section 120 and 121) or timely filed (sections 119 and 365) successor application can render an otherwise anticipating disclosure under section 102(g) ''inoperative for any purpose, save as evidence of conception.'' In re Costello, 717 F.2d 1346, 1350, 219 USPQ 389, 391 (Fed. Cir. 1983). The phrase ''earliest constructive reduction to practice'' would reflect this requirement for continuity in the disclosure of the anticipating embodiment under section 102(g).

The term ''count'' would be redefined to emphasize the relationship of the count to admissible proofs of priority under section 102(g). *Eaton* v. *Evans,* 204 F.3d 1094, 1097, 53 USPQ2d 1696, 1698 (Fed. Cir. 2000) (priority cannot be established with a reduction to practice outside the count). There has been a theoretical debate in the interference bar about whether a count is necessary. Opponents hold that a count is an artificial construct that imposes significant administrative costs. It is true that the use of a count is the principal reason why interferences almost always proceed in two phases: a first phase to examine issues related to the scope of the count and a second phase to determine priority for the count. Moreover, use of a count might in some cases obscure the relationship between the priority proofs and the patentability of claims said to correspond to the count. Proponents, however, note that addressing the separate unpatentability of claims without the benefit of a count to focus the analysis also imposes extensive costs and uncertainties.

While a count may be theoretically unnecessary, experience with the current rules suggests that a count is desirable. The costs associated with the count are outweighed by the advantages flowing from having a single description of the interfering subject matter both for the purpose of determining priority and, perhaps more importantly, for the

purpose of claim correspondence. The Federal Circuit recently reached a similar conclusion regarding the use of a count in the context of interfering patents in 35 U.S.C. 291 proceedings. *Slip-Track Sys.* v. *Metal-Lite, Inc.,* 304 F.3d 1256, 1264, 64 USPQ2d 1423, 1428 (Fed. Cir. 2002) (requiring the use of a count). Note that the requirement that counts be separately patentable preserves the current practice of having genus and species counts in appropriate cases, e.g., *Hester* v. *Allgeier,* 687 F.2d 464, 215 USPQ 481 (CCPA 1982) because a generic invention and a specific invention are often patentably distinct.

The definition of ''involved claim'' would be based on a similar definition in Rule 601(f). This definition would be consistent with the definition of ''involved'' for contested cases in proposed § 41.100 because only claims that correspond to the count are at risk in an interference, except to the extent a question is raised as to whether a claim that does not correspond should.

The definition of ''senior party'' would depart from the current definition in Rule 601(m) by focusing on the earliest constructive reduction to practice to determine which party, if any, is senior. Identification of the senior party is important because a presumption of priority attaches to the senior party under proposed § 41.207(a)(1).

The phrase ''threshold issue'' would be defined to include three specific issues that affect the standing of a party to participate in an interference. All three are of particular interest to the Board because they have been subject to abuse by parties using interferences as a type of opposition proceeding. An adverse decision on these issues with respect to all of a party's claims would ordinarily end the interference. The list would be open-ended and thus admit the possibility that another issue might qualify as a threshold issue on the particular facts of a specific case. Note that these threshold issues would exist in addition to the possibility that a junior party has failed to allege a prima facie sufficient case of priority. See proposed §§ 41.202(d) and 41.204(a).

The first identified threshold issue would be no interference-in-fact. Without an interference-in-fact, there would be no reason to place either party's claim in jeopardy in the context of an interference proceeding.

The other two specifically identified issues, the bar under 35 U.S.C. 135(b) and lack of written description under 35 U.S.C. 112[1], would be directed to the prevention of spuriously provoked interferences and would consequently be limited to motions from a party with a patent or published application against a party with an involved application. Note that the section 135(b) bar and lack of written description address complementary problems: Under section 135(b) a claim may be supported but untimely, while a claim lacking written description may be timely but is unsupported. For the purposes of the proposed rule, provocation of an interference would be inferred from the circumstances, such as entry of a claim after publication of the movant's application or issuance of the movant's patent. It would not require any determination that the opponent had an intent to provoke the interference.

Proposed § 41.202(a) would restate the requirements of Rules 604, 607, and 608 for applicants provoking an interference. A showing of priority need not anticipate all possible bases for opposing the showing. For instance, when the applicant's earliest constructive reduction to practice of the interfering subject matter occurred before the apparent earliest constructive reduction to practice of a targeted patent, it would typically suffice for the applicant to show precisely where its earliest constructive reduction to practice was disclosed.

Proposed § 41.202(a)(5) would continue the practice under Rule 633(a) of looking at the applicant's specification to determine the meaning of a copied claim, not the specification from which the claim was copied. *See Rowe* v. *Dror,* 112 F.3d 473, 479, 42 USPQ2d 1550, 1554 (Fed. Cir. 1997) (explaining the change in practice). It would also set forth a mechanism for weeding out frivolous attempts to provoke an interference. A protester under Rule 291 hoping to prompt an examiner to propose an interference could improve its chances of success by satisfying the requirements of proposed § 41.202(a)(1)–(a)(4) in its protest.

Proposed § 41.202(c) would restate the practice under Rule 605 of requiring an applicant to add a claim to provoke an interference. This requirement is an effective and sometimes necessary method for determining whether an interference actually exists between two parties. In re Ogiue, 517 F.2d 1382, 1390, 186 USPQ 227, 235 (CCPA 1975). The requirement may be used to obtain a clearer definition of the interfering subject matter or to establish whether the applicant will pursue claims to the interfering subject matter. While an applicant must add the claim or forfeit the subject matter of the claim, the applicant may contest the requirement and the examiner may withdraw the requirement. Where the requirement is based on a patent or a published application, the examiner should note the patent or application in making the requirement. In challenging the requirement, the applicant may point to another claim in the application that already claims the subject matter of the required claim. The applicant may also propose an alternative claim with an explanation of why the alternative claim would be better for the purpose of determining the interference. A common reason for proposing an alternative claim is that the applicant believes the required claim to be unpatentable at least to the applicant.

Proposed § 41.202(d) would set forth the basis for a summary proceeding when an applicant does not appear to be able to show it would prevail on priority. Proposed § 41.202(d)(1) would restate Rule 608, but would eliminate the distinction between Rule 608(a) and Rule 608(b). The requirement could be made under 35 U.S.C. 132 even when a rejection is not available. Failure to comply with the requirement would result in abandonment of the application under 35 U.S.C. 133. Proposed § 41.202(d)(2) would restate Rule 617 by providing a basis for a summary proceeding on priority when the applicant fails to make a sufficient showing of priority. To be sufficient, under proposed § 41.202(e), the showing would by itself, if unrebutted, have to warrant a determination of priority.

Proposed § 41.203(a) would state the standard for declaring a patent interference. The Director uses a two-way unpatentability test to determine whether claimed inventions interfere because, while a one-way test is only sufficient for rejecting a claim under 35 U.S.C. 102(g), a two-way test is necessary to ensure that the claims of both parties are directed to the same invention.

The case law provides that there is no interference-in-fact when there is patentable distinctness between the claims of the parties (e.g., *Case* v. *CPC Int'l, Inc.,* 730 F.2d 745, 221 USPQ 196 (Fed. Cir.1984); *Aelony* v. *Arni,* 547 F.2d 566, 192 USPQ 486 (CCPA 1977); *Nitz* v. *Ehrenreich,* 537 F.2d 539, 190 USPQ 413 (CCPA 1976)). Consequently, to declare an interference, the Director requires patentable indistinctness between the claimed subject matter of the parties. *Eli Lilly & Co.* v. *Bd. of Regents of Univ. of Washington,* 334 F.3d 1264, 67 USPQ2d 1161 (Fed. Cir. 2003). In practice this means that a claim of A and a claim of B interfere if the subject matter of A's claim would, if treated as prior art, have anticipated or rendered obvious (alone or in

combination with prior art) the subject matter of B's claim, and vice versa. This standard has recently come to be known as the ''two-way'' test because it concisely summarizes the analysis. If this test is not effectively satisfied there is no interference-in-fact, i.e., no priority question to be resolved, although there may be other applicable rejections.

Proposed § 41.203(b) would specifically delegate this discretion to an administrative patent judge. Proposed § 41.203(c) would similarly authorize an administrative patent judge to redeclare the interference sua sponte or in response to a decision on motions. An administrative patent judge could redeclare an interference sua sponte, for instance, when another interfering patent or application came to light. An interference is often redeclared after a motion is decided, particularly when there are changes in the scope of the count, in the order of the parties, or in the claims that would be affected by the judgment as the result of the decision.

Proposed § 41.203(d) would depart from current practice regarding adding files or declaring additional interferences. Rules 633(d), (e), and (h) treat the addition of a party's application or patent, or the declaration of an additional interference involving the parties, as substantive motions, while Rule 642 treats the addition of other patents or applications to the interference as an action more akin to the original declaration. The proposed rule would eliminate this difference in treatment and permit a suggestion, like an applicant's request for an interference, to have an administrative patent judge exercise discretion to declare a new interference or to redeclare the existing interference to accommodate such files. The net effect of these changes would be to unify the treatment and legal effect of declaring and redeclaring interferences.

Proposed § 41.204 would define notices of requested relief in interferences. Proposed § 41.204(a) would greatly simplify the formal requirements for the principal notice on priority, the preliminary statement (which is renamed a ''priority statement''). It would not specify the information that needs to be filed with a priority statement. Instead, the rule would require each party to state with particularity the facts on which it intends to rely. The requirement for filing documentary support would reflect the current practice under Rule 623(c) of filing first drawings and written descriptions. The requirement would be limited to documents under the control of a party because those documents are more susceptible to alteration in light of subsequent developments in the interference. Derivation would not be treated separately in the proposed rule since it is a type of attack on priority.

Proposed § 41.204(b) would codify the existing practice of requiring a list of motions, but under the proposed rule a party would ordinarily be limited to filing substantive motions consistent with its notice of requested relief. No default times would be set for statements in proposed § 41.204(c) because the time for filing such statements would be contingent on too many other variables to make default times useful. Generally, such statements would be required early in the interference because there would be very little discovery permitted so most motions will be based on information under the party's control. Subsequent developments in the proceeding, such as a change in the count, might justify corrections to a statement.

Proposed § 41.205 would restate practice under Rule 666 regarding the filing of settlement agreements and would implement the requirements of 35 U.S.C. 135(c).

Proposed § 41.206 would revise practice under Rule 602(a) to use the ''commonly owned'' test discussed in Barton, 162 F.3d at 1144, 49 USPQ2d at 1132. Common ownership in a contested case is a concern because it can lead to manipulation of the process. The proposed rule would be stated permissively because not all cases of overlapping ownership would be cause for concern. The cases of principal concern involve a real party-in-interest with the ability to control the conduct of more than one party.

Proposed § 41.207(a)(1) would adopt the presumption regarding order of invention from Rule 657(a). The presumption is based on the date of the earliest constructive reduction to practice and permits a different senior party for each count. Proposed § 41.207(a)(2) would adopt the evidentiary standards for proving priority stated in Rule 657(b) and (c), but would restate the standard of Rule 657(c) in terms of the date of the earliest constructive reduction to practice. The proposed rule would also add publication under 35 U.S.C. 122(b) as a reason for requiring proof of priority under a clear and convincing evidence standard.

Proposed § 41.207(b) would clarify claim correspondence practice and explicitly state the effect of claim correspondence. Proposed § 41.207(b)(1) would reflect the practice under In re Van Geuns, 988 F.2d 1181, 1184, 26 USPQ2d 1057, 1059 (Fed. Cir. 1993), for grounds of unpatentability other than priority, under which patentability must be determined for claims, not counts. The Board could rely, however, on claim grouping that is explicit in the arguments of the parties, see *e.g.,* In re Roemer, 258 F.3d 1303, 1307, 59 USPQ2d 1527, 1529 (Fed. Cir. 2001) (noting party concession to have claims stand or fall according to correspondence), or implicit from a logical relationship of the claims (*e.g.,* lack of written support for a limitation in a claim might also affect its dependent claims).

Under proposed § 41.207(b)(2), a claim would correspond to the count if the subject matter of the claim would have been anticipated by or obvious (alone or in combination with prior art) in view of the subject matter of the count. The Director proposes to use a one-way test for claim correspondence because correspondence is a provisional rejection based on 35 U.S.C. 102(g). The count defines the scope of admissible proofs for proving priority and thus, in theory, defines a single inventive concept based on the claims of the parties. An adverse determination of priority for the invention of the count would be the basis for the rejection under section 102(g) or section 103.

The claims that correspond to the count are the ''claims involved'' in the interference as that phrase is used in 35 U.S.C. 135(a). Claim correspondence identifies the parties' claims that are at risk in the event of an adverse judgment on priority such that they will be finally refused (involved application claims) or cancelled (involved patent claims) by virtue of the judgment as required under section 135(a). If a party loses on priority with respect to the subject matter of a count, the party would not be entitled to a claim that is anticipated by (section 102(g)) or obvious in view of (section 103) the subject matter of the lost count. Since correspondence is effectively a provisional rejection under section 102(g), only a one-way test is required to determine which claims would be at risk (*e.g.,* In re Saunders, 219 F.2d 455, 104 USPQ 394 (CCPA 1955) (generic claim unpatentable in view of lost count to species)).

The current rules use both count-based and claim-based correspondence. Compare Rules 603, 606, and 637(c)(2)(ii) (count based) with Rules 637(c)(3)(ii) and (c)(4)(ii) (claim based). The principal virtue of claim-based correspondence is that it clearly reflects the implicit rejection of the corresponding claim based on 35 U.S.C. 102(g). A rejection based on § 102(g) must look to the invention of another.

Ordinarily in proceedings before the Office, a determination of the invention must be based on what is claimed. 35 U.S.C. 112[2]. A claim is not a prerequisite for a rejection under section 102(g), however (*e.g., Apotex USA, Inc.* v. *Merck & Co., Inc.,* 254 F.3d 1031, 59 USPQ2d 1139 (Fed. Cir. 2001) (prior invention of another not based on a claim)). It has long been the practice to determine priority in an interference based on a count, which might not even be fully supported by the disclosure of either party, *Aelony* v. *Arni,* although other patentability determinations must be based on claims, In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The count is understood be the common inventive concept of the parties.

Both claim-based and count-based correspondence rest on the assumptions that the claim or count on which correspondence is based defines a single inventive concept and that any obviousness relationship between the proof of priority and a corresponding claim is not too attenuated. Either of these problems can be addressed by filing an appropriate motion regardless of the basis on which correspondence is determined.

In cases where the count is closely based on actual claims and where the number of claims is small, there is generally very little practical difference between claim-based and count-based correspondence. In cases involving very large numbers of claims, however, claim-based correspondence places a huge burden on a party seeking to have a claim designated as not corresponding because a comparison must be made with every single corresponding claim. Count-based correspondence would make analysis of claim correspondence easier by providing a single point of reference—the count—for determining correspondence. Moreover, by basing correspondence exclusively on the count, the proposed rule would make the basis for claim correspondence consistent with the basis for the priority determination.

The presumption in proposed § 41.207(c) would restate the presumption in Rule 637(a) that prior art cited against an opponent is presumed to apply against the movant's claims. Note that the proposed rule would clarify the current practice by not triggering the presumption unless the motion is granted with respect to an opponent's claim. Although the proposed rule would omit the reference to priority statements, a party could not rely on its notice of requested relief as evidence, see proposed § 41.120(b), so the repetition in this section would not be necessary.

The presumption of abandonment after one year in proposed § 41.207(d) would be new. It is modeled after the one-year statutory bars (*e.g.,* 35 U.S.C. 102(b), 102(d), and 135(b)) and other incentives for prompt filing (*e.g.,* 35 U.S.C. 119(a) and 273(b)(1)). The presumption is intended to encourage prompt filing of patent applications and to help parties facing the issue by simplifying the analysis of an apparent abandonment, suppression, or concealment. An invention, though completed, is deemed abandoned, suppressed, or concealed if, within a reasonable time after completion, no steps are taken to make the invention publicly known. For example, failure to file a patent application, to describe the invention in a publicly disseminated document, or to use the invention publicly, has been held to constitute abandonment, suppression, or concealment. *Correge* v. *Murphy,* 705 F.2d 1326, 1330, 217 USPQ 753, 756 (Fed. Cir. 1983). The case law does not give definitive guidance on when abandonment, suppression, or concealment has occurred. This uncertainty makes it harder to determine what evidence to present in order to show an abandonment, suppression or concealment; and to determine in close cases whether abandonment, suppression, or concealment has occurred. Although this presumption is designed to encourage prompt filing, it does not exclude rebuttal proofs of continuing activity other than filing, such as those listed in the Correge decision.

Proposed § 41.208(a) would focus substantive motions on the core questions of priority.

Proposed § 41.208(b) would place the burden of proof on the movant and would provide guidance on how to satisfy the burden of going forward.

Proposed § 41.208(c) would set forth some guidance to parties about specific motions, but would not attempt to list all possible substantive requirements for each motion, nor would it exhaustively list all possible kinds of motions. In practice, interference practice has proved too varied to permit an exhaustive list. The specific requirements of the analogous Rule 637 have proved both over-inclusive, see Chief Admin. Pat. J., ''Interference Practice—Interference Rules Which Require a Party to 'Show the Patentability' of a Claim'', 1217 Official Gaz. 17 (USPTO 1998) (limiting the scope of showings), and under-inclusive, see *Hillman* v. *Shyamala,* 55 USPQ2d 1220, 1221 (BPAI 2000) (holding the required showings to be insufficient). Ultimately, the movant would have to justify the relief sought substantively, which means compliance with statutes, rules, and case law that could never be fully replicated in a rule governing the content of motions.

Substantive motions in an interference essentially ask three questions. First, should the proceeding reach the question of priority at all? Second, what is the scope of the proofs necessary and proper for proving priority and what claims must be cancelled in the event of an adverse judgment? Third, which party will lose the determination of priority? While final judgment is possible on a wide array of issues, the fundamental purpose of an interference is to determine priority. Consequently, substantive motions without some nexus to an ultimate question of priority would not ordinarily be considered. For example, a motion that a claim is unpatentable might be dismissed if it does not affect a party's standing, the scope of the count, or the accorded benefit.

The first question implicates the three ''threshold issues'' that are ordinarily taken up early because they affect a party's standing in an interference. *Berman* v. *Housey,* 291 F.3d 1345, 1352, 63 USPQ2d 1023, 1028 (Fed. Cir. 2002) (endorsing the Board practice of early determination of threshold issues). These threshold issues are no interference-in-fact, repose under 35 U.S.C. 135(b), and lack of written description supporting claims added to provoke an interference. Threshold issues present a movant with an opportunity to escape the burdens of a full-scale interference. A party that failed to request such relief early would not ordinarily receive an early determination. The practice of deciding threshold issues early evolved to address abuses on the part of some applicants provoking interferences.

An attack on standing must necessarily be effective with respect to all of an opponent's claims on which the determination of interference-in-fact depends; otherwise, it would really be some other type of motion, such as a motion to change the count, claim correspondence, or accorded benefit. Occasionally, more than one threshold issue might need to be raised (in separate motions) to address all involved claims. For instance, an opponent's copied claims might lack written description, while its other corresponding claims would not in fact interfere. Issues other than threshold issues could also affect standing, but would rarely be taken up early because they have less connection with the

threshold determination of whether the Director is of the opinion that an interference exists.

Proposed § 41.208(c)(1) would set forth guidance on filing a motion for judgment of no interference-in-fact. The proposed rule would require a showing that the test for an interference under proposed § 41.203(a) is not met. The showing must be for all claims because a single claim of each party is sufficient to support the Director's opinion that an interference exists in fact.

Proposed § 41.208(c)(2) would set forth guidance on filing a motion for judgment that a patentee is entitled to repose under 35 U.S.C. 135(b). Section 135(b) has two aspects. It is a statute of repose, *Berman* v. *Housey,* 291 F.3d 1345, 1351, 63 USPQ2d 1023, 1027 (Fed. Cir. 2002), and a statutory bar, In re McGrew, 120 F.3d 1236, 1238–39, 43 USPQ2d 1632, 1635 (Fed. Cir. 1997). As a statute of repose, it presents a threshold issue; otherwise, it is simply an attack on patentability. To be a threshold issue, the motion must satisfy two conditions. First, the party moving for repose must be the patentee or published applicant entitled to repose under the statute. Second, it must apply (possibly in combination with other threshold issues) to all of an opponent's involved claims; otherwise, the interference would continue whether the motion is granted or not. If either condition is not met, the motion would be treated as a motion for unpatentability, but not as a threshold issue.

Proposed § 41.208(c)(3) would set forth general guidance for attacking patentability. This guidance would apply to a non-threshold motion alleging unpatentability under 35 U.S.C. 135(b) in view of non-party's patent or published application. A motion attacking patentability could be a threshold issue (*e.g.,* an attack on the written description of a copied claim), an effort to change the count (by showing that claims within the scope of the count are not patentable over prior art), or a priority issue, depending on the claims attacked and the basis for the attack. Note that because counts would continue to be used, the Board would continue the practice of ordinarily either not authorizing the filing of, or deferring any decision on, a patentability motion that raises questions of priority or derivation during the first part of the interference. Generally motions attacking patentability under 35 U.S.C. 102(a), 102(e), 102(f), or 102(g) will be deferred, in whole or in part. This practice does not, however, relieve a party of its obligation to state these grounds as bases for relief when required.

The second set of substantive questions would involve changes to the scope of the count, claim correspondence, and accorded benefit. Motions under proposed § 41.208(c)(3) attacking the patentability of claimed subject matter within the scope of the count might also fall within this category if they have the effect of narrowing the count.

Proposed § 41.208(c)(4) would set forth guidance for some common motions to change the count. If the count changes, no change in accorded benefit will be presumed; it would have to be established in a contingent motion to change benefit. Proposed § 41.208(c)(4)(i) would restate the requirement of Rule 637(c)(1)(v) to show that counts are separately patentable. Proposed § 41.208(c)(4)(ii)(C) would codify the practice in *Louis* v. *Okada,* 59 USPQ2d 1073, 1076 (BPAI 2001), which required a movant seeking to broaden a count to cover its best proof of priority to proffer that proof so the Board could evaluate the merits of the motion.

Proposed § 41.208(c)(5) would set forth guidance for parties moving to change claim correspondence. Proposed § 41.208(c)(5)(i) would require that any added claim be patentable and correspond to the count. A motion to add a claim that did not correspond to the count would in effect be a request for an advisory action, which the Board would not ordinarily give. A patentee could not use a reissue application to circumvent this requirement that all claims in an interference must correspond to the count. *Winter* v. *Fujita,* 53 USPQ2d 1234, 1249 (BPAI 1999). The proposed rule could be used to compel an opponent to add a claim to its involved application or patent. Note that patentee cannot be literally compelled to file a reissue application for any reason, including to add a claim. *Green* v. *Rich Iron Co.,* 944 F.2d 852, 854, 20 USPQ2d 1075, 1076–77 (Fed. Cir. 1991). The consequence of an opponent's refusal to add a claim, however, may be a concession of priority with respect to the subject matter that the patentee refuses to add. See Rule 605(a); cf. In re Ogiue, 517 F.2d at 1390, 186 USPQ at 235 (an applicant surrenders the subject matter of a claim it refuses to copy); proposed § 41.202(c). The remainder of proposed § 41.208(c)(5) would restate the correspondence test in terms of a one-way test for patentability in which the subject matter of the count is used as the primary reference.

Proposed § 41.208(c)(6) would restate the test for according benefit of an application in terms of recognition for a constructive reduction to practice. In doing so, the test would avoid confusion with the related, but distinct, tests for benefit of a disclosure for the purposes of 35 U.S.C. 119, 120, 121, and 365. Note that a constructive reduction to practice relates to the count, not a claim. Moreover, the showing for a constructive reduction to practice would generally be narrower because only a single embodiment is necessary to anticipate a count. By contrast, § 120 incorporates the requirements of 35 U.S.C. 112[1], which include disclosure of sufficient embodiments to support the full scope of a claim. See *Cromlish* v. *D.Y.,* 57 USPQ2d 1318 (BPAI 2000) (discussing this difference).

Proposed § 41.208(c)(7) would permit the Board to require additional showings. For example if a party had copied a claim and during the interference proposed to argue that its opponent's claim was indefinite under 35 U.S.C. 112[2], the Board could require the movant to explain why its copied claim was not also indefinite.

Proposed § 41.208(d) would require the use of claim charts whenever a claim is being compared to something else. Claim charts are often the most effective way to present the comparison convincingly. Claim charts would not, however, be a substitute for argument since the comparison would generally require additional explanation. The proposed rule would refer to a ''paper'' rather than a ''motion'' because such comparisons can arise in oppositions and even replies.

Regulatory Flexibility Act

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 under the provisions of section 605(b) of the Regulatory Flexibility Act that this proposed rule making will not have a significant economic impact on a substantial number of small entities.

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 proposed rule involves information collection requirements

which 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.*).

Currently approved forms include PTO/SB/31 (Notice of appeal) and PTO/SB/32 (Request for hearing), both of which were cleared under the OMB 0651–0031 collection, which will expire at the end of July 2006.

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

37 CFR Part 1

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

37 CFR Part 5

Classified information, Exports, Foreign relations, Inventions and patents.

37 CFR Part 41

Administrative practice and procedure, Inventions and patents, Lawyers.

For the reasons stated in the preamble, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office proposes to amend 37 CFR chapter I as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

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

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

§ 1.1 [Amended]

2. Remove and reserve § 1.1(a)(1)(iii).

3. In § 1.4, revise paragraph (a)(2) to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

(a) * * *

(2) Correspondence in and relating to a particular application or other proceeding in the Office. See particularly the rules relating to the filing, processing, or other proceedings of national applications in subpart B, §§ 1.31 to 1.378; of international applications in subpart C, §§ 1.401 to 1.499; of ex parte reexaminations of patents in subpart D, §§ 1.501 to 1.570; of extension of patent term in subpart F, §§ 1.710 to 1.785; of inter partes reexaminations of patents in subpart H, §§ 1.902 to 1.997; and of the Board of Patent Appeals and Interferences in part 41 of this title.

* * * * *

§ 1.5 [Amended]

4. Remove and reserve § 1.5(e).

§ 1.6 [Amended]

5. Remove and reserve § 1.6(d)(9).

§ 1.8 [Amended]

6. Remove and reserve § 1.8(a)(2)(i)(B) and (a)(2)(i)(C).

7. In § 1.9, revise paragraph (g) to read as follows:

§ 1.9 Definitions.

* * * * *

(g) For definitions in Board of Patent Appeals and Interferences proceedings, see part 41 of this title.

* * * * *

8. In § 1.14, revise paragraph (e) to read as follows:

§ 1.14 Patent applications preserved in confidence.

* * * * *

(e) *Decisions on petition.* (1) Any decision on petition is available for public inspection without applicant's or patent owner's permission if rendered in a file open to the public pursuant to § 1.11 or in an application that has been published in accordance with §§ 1.211 through 1.221. The Office may independently publish any decision that is available for public inspection.

(2) Any decision on petition not publishable under paragraph (e)(1) of this section may be published or made available for public inspection if the Director believes that special circumstances warrant publication and the applicant does not, within two months after being notified of the intention to make the decision public, object in writing on the ground that the decision discloses a trade secret or other confidential information and states that such information is not otherwise publicly available. If a decision discloses such information, the applicant shall identify the deletions in the text of the decision considered necessary to protect the information. If the applicant considers that the entire decision must be withheld from the public to protect such information, the applicant must explain why. The applicant will be given time, not less than twenty days, to request reconsideration and seek court review before any contested portion of a decision is made public over its objection. See § 2.27 for trademark applications.

* * * * *

9. In § 1.17, remove and reserve paragraphs (b)–(d), and revise paragraph (h) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

* * * * *

(h) For filing a petition under one of the following sections which refers to this paragraph: $130.00.

§ 1.12—for access to an assignment record.

§ 1.14—for access to an application.

§ 1.47—for filing by other than all the inventors or a person not the inventor.

§ 1.53(e)—to accord a filing date.

§ 1.59—for expungement and return of information.

§ 1.84—for accepting color drawings or photographs.

§ 1.91—for entry of a model or exhibit.

§ 1.102—to make an application special.

§ 1.103(a)—to suspend action in an application.

§ 1.138(c)—to expressly abandon an application to avoid publication.

§ 1.182—for decision on a question not specifically provided for.

§ 1.183—to suspend the rules.

§ 1.295—for review of refusal to publish a statutory invention registration.

§ 1.313—to withdraw an application from issue.

§ 1.314—to defer issuance of a patent.

§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.

§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent.

§ 1.741(b)—to accord a filing date to an application under § 1.740 for extension of a patent term.

§ 5.12—for expedited handling of a foreign filing license.

§ 5.15—for changing the scope of a license.

§ 5.25—for retroactive license.

§ 104.3—for waiver of a rule in Part 104 of this title.

* * * * *

10. Revise § 1.36 to read as follows:

§ 1.36 Revocation of power of attorney; withdrawal of patent attorney or agent.

(a) A power of attorney, pursuant to § 1.32(b), may be revoked at any stage in the proceedings of a case by the applicant for patent (§ 1.41(b)) or the assignee of the entire interest. A

registered patent attorney or patent agent will be notified of the revocation of the power of attorney. Where power of attorney is given to the patent practitioners associated with a Customer Number (§ 1.32(b)(2)(iii)), the practitioners so appointed will also be notified of the revocation of the power of attorney when the power of attorney to the practitioners associated with the Customer Number is revoked. The notice of revocation will be mailed to the correspondence address for the application (§ 1.33) in effect before the revocation. An assignment will not of itself operate as a revocation of a power previously given, but the assignee of the entire interest may revoke previous powers and give another power of attorney as provided in § 1.32(b) of the assignee's own selection. See § 41.5 of this title for proceedings before the Board of Patent Appeals and Interferences.

(b) A registered patent attorney or patent agent who has been given a power of attorney pursuant to § 1.32(b) may withdraw upon application to and approval by the Director. The applicant or patent owner will be notified of the withdrawal of the registered patent attorney or patent agent. Where power of attorney is given to the patent practitioners associated with a Customer Number, a request to delete all of the patent practitioners associated with the Customer Number may not be granted if an applicant has given power of attorney to the patent practitioners associated with the Customer Number and insufficient time remains for the applicant to file a reply. See § 41.5(c) of this title for withdrawal in a proceeding before the Board of Patent Appeals and Interferences.

11. Amend § 1.48 to revise paragraphs (a)–(c) and (i), and to add paragraph (j), to read as follows:

§ 1.48 Correction of inventorship in a patent application, other than a reissue application, pursuant to 35 U.S.C. 116.

(a) *Nonprovisional application after oath/declaration filed.* If the inventive entity is set forth in error in an executed § 1.63 oath or declaration in a nonprovisional application, and such error arose without any deceptive intention on the part of the person named as an inventor in error or on the part of the person who through error was not named as an inventor, the inventorship of the nonprovisional application may be amended to name only the actual inventor or inventors. Amendment of the inventorship requires:

(1) A request to correct the inventorship that sets forth the desired inventorship change;

(2) A statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part;

(3) An oath or declaration by the actual inventor or inventors as required by § 1.63 or as permitted by §§ 1.42, 1.43 or § 1.47;

(4) The processing fee set forth in § 1.17(i); and

(5) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b) of this chapter).

(b) *Nonprovisional application—fewer inventors due to amendment or cancellation of claims.* If the correct inventors are named in a nonprovisional application, and the prosecution of the nonprovisional application results in the amendment or cancellation of claims so that fewer than all of the currently named inventors are the actual inventors of the invention being claimed in the nonprovisional application, an amendment must be filed requesting deletion of the name or names of the person or persons who are not inventors of the invention being claimed. Amendment of the inventorship requires:

(1) A request, signed by a party set forth in § 1.33(b), to correct the inventorship that identifies the named inventor or inventors being deleted and acknowledges that the inventor's invention is no longer being claimed in the nonprovisional application; and

(2) The processing fee set forth in § 1.17(i).

(c) *Nonprovisional application—inventors added for claims to previously unclaimed subject matter.* If a nonprovisional application discloses unclaimed subject matter by an inventor or inventors not named in the application, the application may be amended to add claims to the subject matter and name the correct inventors for the application. Amendment of the inventorship requires:

(1) A request to correct the inventorship that sets forth the desired inventorship change;

(2) A statement from each person being added as an inventor that the addition is necessitated by amendment of the claims and that the inventorship error occurred without deceptive intention on his or her part;

(3) An oath or declaration by the actual inventors as required by § 1.63 or as permitted by §§ 1.42, 1.43, or § 1.47;

(4) The processing fee set forth in § 1.17(i); and

(5) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b) of this chapter).

* * * * *

(i) *Correction of inventorship in patent.* See § 1.324 for correction of inventorship in a patent.

(j) *Correction of inventorship in a contested case before the Board of Patent Appeals and Interferences.* In a contested case under part 41, subpart D, of this title, a request for correction of an application must be in the form of a motion under § 41.121(a)(2) of this title and must comply with the requirements of this section.

12. In § 1.55, revise paragraphs (a)(3) and (a)(4) to read as follows:

§ 1.55 Claim for foreign priority.

(a) * * *

(3) The Office may require that the claim for priority and the certified copy of the foreign application be filed earlier than provided in paragraphs (a)(1) or (a)(2) of this section:

(i) When the application becomes involved in an interference (see § 41.202 of this title),

(ii) When necessary to overcome the date of a reference relied upon by the examiner, or

(iii) When deemed necessary by the examiner.

(4)(i) An English language translation of a non-English language foreign application is not required except:

(A) When the application is involved in an interference (see § 41.202 of this title),

(B) When necessary to overcome the date of a reference relied upon by the examiner, or

(C) When specifically required by the examiner.

(ii) If an English language translation is required, it must be filed together with a statement that the translation of the certified copy is accurate.

* * * * *

13. In § 1.59, revise paragraph (a)(1) to read as follows:

§ 1.59 Expungement of information or copy of papers in application file.

(a)(1) Information in an application will not be expunged and returned, except as provided in paragraph (b) of this section or § 41.7(a) of this title.

* * * * *

14. In § 1.103, revise paragraph (g) to read as follows:

§ 1.103 Suspension of action by the Office.

* * * * *

(g) *Statutory invention registration.* The Office will suspend action by the

Office for the entire pendency of an application if the Office has accepted a request to publish a statutory invention registration in the application, except for purposes relating to patent interference proceedings under part 41, subpart D, of this title.

15. Revise § 1.112 to read as follows:

§ 1.112 Reconsideration before final action.

After reply by applicant or patent owner (§ 1.111 or § 1.945) to a non-final action and any comments by an inter partes reexamination requester (§ 1.947), the application or the patent under reexamination will be reconsidered and again examined. The applicant, or in the case of a reexamination proceeding the patent owner and any third party requester, will be notified if claims are rejected, objections or requirements made, or decisions favorable to patentability are made, in the same manner as after the first examination (§ 1.104). Applicant or patent owner may reply to such Office action in the same manner provided in § 1.111 or § 1.945, with or without amendment, unless such Office action indicates that it is made final (§ 1.113) or an appeal (§ 41.31 of this title) has been taken (§ 1.116), or in an inter partes reexamination, that it is an action closing prosecution (§ 1.949) or a right of appeal notice (§ 1.953).

16. In § 1.113, revise paragraph (a) to read as follows:

§ 1.113 Final rejection or action.

(a) On the second or any subsequent examination or consideration by the examiner the rejection or other action may be made final, whereupon applicants, or for ex parte reexaminations filed under § 1.510, patent owner's reply is limited to appeal in the case of rejection of any claim (§ 41.31 of this title), or to amendment as specified in § 1.114 or § 1.116. Petition may be taken to the Director in the case of objections or requirements not involved in the rejection of any claim (§ 1.181). Reply to a final rejection or action must comply with § 1.114 or paragraph (c) of this section. For final actions in an inter partes reexamination filed under § 1.913, see § 1.953.

* * * * *

17. In § 1.114, revise paragraph (d) to read as follows:

§ 1.114 Request for continued examination.

* * * * *

(d) If an applicant timely files a submission and fee set forth in § 1.17(e), the Office will withdraw the finality of any Office action and the submission will be entered and considered. If an applicant files a request for continued examination under this section after appeal, but prior to a decision on the appeal, it will be treated as a request to withdraw the appeal and to reopen prosecution of the application before the examiner. An appeal brief (§ 41.37 of this title) or a reply brief (§ 41.41 of this title), or related papers, will not be considered a submission under this section.

* * * * *

18. Revise § 1.116 to read as follows:

§ 1.116 Amendments and affidavits or other evidence after final action.

(a) An amendment after final action must comply with § 1.114 or this section.

(b) After a final rejection or other final action (§ 1.113) in an application or in an ex parte reexamination filed under § 1.510, or an action closing prosecution (§ 1.949) in an inter partes reexamination filed under § 1.913, but before or with any appeal (§ 41.31 or § 41.61).

(1) An amendment may be made canceling claims or complying with any requirement of form expressly set forth in a previous Office action;

(2) An amendment presenting rejected claims in better form for consideration on appeal may be admitted;

(3) An amendment touching the merits of the application or patent under reexamination may be admitted upon a showing of good and sufficient reasons why the amendment is necessary and was not earlier presented.

(c) The admission of, or refusal to admit, any amendment after a final rejection, a final action, an action closing prosecution, or any related proceedings will not operate to relieve the application or reexamination proceeding from its condition as subject to appeal or to save the application from abandonment under § 1.135, or the reexamination prosecution from termination under § 1.550(d) or § 1.957(b) or limitation of further prosecution under § 1.957(c).

(d)(1) Notwithstanding the provisions of paragraph (b) of this section, no amendment other than canceling claims, where such cancellation does not affect the scope of any other pending claim in the proceeding, can be made in an inter partes reexamination proceeding after the right of appeal notice under § 1.953 except as provided in § 1.981 or as permitted by § 41.77(b)(1).

(2) Notwithstanding the provisions of paragraph (b) of this section, an amendment made after a final rejection or other final action (§ 1.113) in an ex parte reexamination filed under § 1.510, or an action closing prosecution (§ 1.949) in an inter partes reexamination filed under § 1.913 may not cancel claims where such cancellation affects the scope of any other pending claim in the reexamination proceeding except as provided in § 1.981 or as permitted by § 41.77(b)(1).

(e) An affidavit or other evidence submitted after a final rejection or other final action (§ 1.113) in an application or in an ex parte reexamination filed under § 1.510, or an action closing prosecution (§ 1.949) in an inter partes reexamination filed under § 1.913 but before or with any appeal (§ 41.31 or § 41.61), may be admitted upon a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented.

(f) Notwithstanding the provisions of paragraph (e) of this section, no affidavit or other evidence can be made in an inter partes reexamination proceeding after the right of appeal notice under § 1.953 except as provided in § 1.981 or as permitted by § 41.77(b)(1).

(g) After decision on appeal, amendments, affidavits and other evidence can only be made as provided in §§ 1.198 and 1.981, or to carry into effect a recommendation under § 41.50(c).

19. In § 1.131, revise paragraph (a)(1) to read as follows:

§ 1.131 Affidavit or declaration of prior invention.

(a) * * *

(1) The rejection is based upon a U.S. patent or U.S. patent application publication of a pending or patented application to another or others that claims interfering subject matter as defined in § 41.203(a) of this title, in which case an applicant may suggest an interference pursuant to § 41.202(a); or

* * * * *

20. In § 1.136, revise paragraphs (a)(1), (a)(2), and (b) to read as follows:

§ 1.136 Extensions of time.

(a)(1) If an applicant is required to reply within a nonstatutory or shortened statutory time period, applicant may extend the time period for reply up to the earlier of the expiration of any maximum period set by statute or five months after the time period set for reply, if a petition for an extension of time and the fee set in § 1.17(a) are filed, unless:

(i) Applicant is notified otherwise in an Office action;

(ii) The reply is a reply brief submitted pursuant to § 41.41 of this title;

(iii) The reply is a request for an oral hearing submitted pursuant to § 41.47(a) of this title;

(iv) The reply is to a decision by the Board of Patent Appeals and Interferences pursuant to § 1.304 or to § 41.50 or § 41.52 of this title; or

(v) The application is involved in a contested case (§ 41.101(a) of this title).

(2) The date on which the petition and the fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The expiration of the time period is determined by the amount of the fee paid. A reply must be filed prior to the expiration of the period of extension to avoid abandonment of the application (§ 1.135), but in no situation may an applicant reply later than the maximum time period set by statute, or be granted an extension of time under paragraph (b) of this section when the provisions of this paragraph are available. See § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.550(c) for extensions of time in ex parte reexamination proceedings, § 1.956 for extensions of time in inter partes reexamination proceedings; and §§ 41.4(a) and 41.121(a)(3) of this title for extensions of time in contested cases before the Board of Patent Appeals and Interferences.

* * * * *

(b) When a reply cannot be filed within the time period set for such reply and the provisions of paragraph (a) of this section are not available, the period for reply will be extended only for sufficient cause and for a reasonable time specified. Any request for an extension of time under this paragraph must be filed on or before the day on which such reply is due, but the mere filing of such a request will not affect any extension under this paragraph. In no situation can any extension carry the date on which reply is due beyond the maximum time period set by statute. See § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.550(c) for extensions of time in ex parte reexamination proceedings; and § 1.956 for extensions of time in inter partes reexamination proceedings.

* * * * *

21. In § 1.181, revise paragraph (a)(3) to read as follows:

§ 1.181 Petition to the Director.

(a) * * *

(3) To invoke the supervisory authority of the Director in appropriate circumstances. For petitions involving action of the Board of Patent Appeals and Interferences, see § 41.3 of this title.

* * * * *

22. Revise § 1.191 to read as follows:

§ 1.191 Appeal to Board of Patent Appeals and Interferences.

Appeals to the Board of Patent Appeals and Interferences under 35 U.S.C. 134(a) and (b) are conducted according to part 41, subpart B, of this title.

§§ 1.192–1.196 [Removed and reserved]

23. Remove and reserve §§ 1.192–1.196.

24. Revise § 1.197 to read as follows:

§ 1.197 Return of Jurisdiction from the Board of Patent Appeals and Interferences; termination of proceedings.

(a) Jurisdiction over an application or patent under ex parte reexamination proceeding passes to the examiner after a decision by the Board of Patent Appeals and Interferences upon transmittal of the file to the examiner, subject to appellant's right of appeal or other review, for such further action by appellant or by the examiner, as the condition of the application or patent under ex parte reexamination proceeding may require, to carry into effect the decision of the Board of Patent Appeals and Interferences.

(b) Proceedings on an application are considered terminated by the dismissal of an appeal or the failure to timely file an appeal to the court or a civil action (§ 1.304) except: Where claims stand allowed in an application; or where the nature of the decision requires further action by the examiner. The date of termination of proceedings on an application is the date on which the appeal is dismissed or the date on which the time for appeal to the court or review by civil action (§ 1.304) expires. If an appeal to the court or a civil action has been filed, proceedings on an application are considered terminated when the appeal or civil action is terminated. An appeal to the U.S. Court of Appeals for the Federal Circuit is terminated when the mandate is issued by the Court. A civil action is terminated when the time to appeal the judgment expires.

25. Revise § 1.198 to read as follows:

§ 1.198 Reopening after a final decision of the Board of Patent Appeals and Interferences.

When a decision by the Board of Patent Appeals and Interferences on appeal has become final for judicial review, prosecution of the proceeding before the primary examiner will not be reopened or reconsidered by the primary examiner except under the provisions of § 1.114 or § 41.50 without the written authority of the Director, and then only for the consideration of matters not already adjudicated, sufficient cause being shown.

26. In § 1.248, revise paragraph (c) to read as follows:

§ 1.248 Service of papers; manner of service; proof of service in cases.

* * * * *

(c) See § 41.105(f) of this title for service of papers in contested cases before the Board of Patent Appeals and Interferences.

27. In § 1.292, revise paragraphs (a) and (c) to read as follows:

§ 1.292 Public use proceedings.

(a) When a petition for the institution of public use proceedings, supported by affidavits or declarations is found, on reference to the examiner, to make a prima facie showing that the invention claimed in an application believed to be on file had been in public use or on sale more than one year before the filing of the application, a hearing may be had before the Director to determine whether a public use proceeding should be instituted. If instituted, the Director may designate an appropriate official to conduct the public use proceeding, including the setting of times for taking testimony, which shall be taken as provided by part 41, subpart D, of this title. The petitioner will be heard in the proceedings but after decision therein will not be heard further in the prosecution of the application for patent.

* * * * *

(c) A petition for institution of public use proceedings shall not be filed by a party to an interference as to an application involved in the interference. Public use and on sale issues in an interference shall be raised by a motion under § 41.121(a)(1) of this title.

28. In § 1.295, revise paragraph (b) to read as follows:

§ 1.295 Review of decision finally refusing to publish a statutory invention registration.

* * * * *

(b) Any requester who is dissatisfied with a decision finally rejecting claims pursuant to 35 U.S.C. 112 may obtain review of the decision by filing an appeal to the Board of Patent Appeals and Interferences pursuant to § 41.31 of this title. If the decision rejecting claims pursuant to 35 U.S.C. 112 is reversed, the request for a statutory invention registration will be approved and the registration published if all of the other provisions of § 1.293 and this section are met.

29. In § 1.302, revise paragraph (b) to read as follows:

§ 1.302 Notice of appeal.

* * * * *

(b) In interferences, the notice must be served as provided in § 41.106(f) of this title.

* * * * *

30. In § 1.303, revise paragraph (c) to read as follows:

§ 1.303 Civil action under 35 U.S.C. 145, 146, 306.

* * * * *

(c) A notice of election under 35 U.S.C. 141 to have all further proceedings on review conducted as provided in 35 U.S.C. 146 must be filed with the Office of the Solicitor and served as provided in § 41.106(f) of this title.

* * * * *

31. In § 1.304, revise paragraphs (a)(1) and (a)(2) to read as follows:

§ 1.304 Time for appeal or civil action.

(a)(1) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is two months from the date of the decision of the Board of Patent Appeals and Interferences. If a request for rehearing or reconsideration of the decision is filed within the time period provided under § 41.52(a), § 41.79(a), or § 41.127(d) of this title, the time for filing an appeal or commencing a civil action shall expire two months after action on the request. In contested cases before the Board of Patent Appeals and Interferences, the time for filing a cross-appeal or cross-action expires:

(i) Fourteen days after service of the notice of appeal or the summons and complaint; or

(ii) Two months after the date of decision of the Board of Patent Appeals and Interferences, whichever is later.

(2) The time periods set forth in this section are not subject to the provisions of § 1.136, § 1.550(c), or § 1.956, or of § 41.4 of this title.

* * * * *

32. In § 1.322, revise paragraph (a)(3) to read as follows:

§ 1.322 Certificate of correction of Office mistake.

(a) * * *

(3) If the request relates to a patent involved in an interference, the request must comply with the requirements of this section and be accompanied by a motion under § 41.121(a)(2) of this title.

* * * * *

33. Revise § 1.323 to read as follows:

§ 1.323 Certificate of correction of applicant's mistake.

The Office may issue a certificate of correction under the conditions specified in 35 U.S.C. 255 at the request of the patentee or the patentee's assignee, upon payment of the fee set forth in § 1.20(a). If the request relates to a patent involved in an interference, the request must comply with the requirements of this section and be accompanied by a motion under § 41.121(a)(2) of this title.

34. In § 1.324, revise paragraphs (a) and (c), and add paragraph (d), to read as follows:

§ 1.324 Correction of inventorship in patent, pursuant to 35 U.S.C. 256.

(a) Whenever through error a person is named in an issued patent as the inventor, or through error an inventor is not named in an issued patent and such error arose without any deceptive intention on his or her part, the Director may, on petition, or on order of a court before which such matter is called in question, issue a certificate naming only the actual inventor or inventors. A petition to correct inventorship of a patent involved in an interference must comply with the requirements of this section and must be accompanied by a motion under § 41.121(a)(2) of this title.

* * * * *

(c) For correction of inventorship in an application, see §§ 1.48 and 1.497, and in a contested case before the Board of Patent Appeals and Interferences, see § 41.121(a)(2) of this title.

(d) *Correction of inventorship in a contested case before the Board of Patent Appeals and Interferences.* In a contested case under part 41, subpart D, of this title, a request for correction of a patent must be in the form of a motion under § 41.121(a)(2) of this title.

35. In § 1.565, revise paragraph (e) to read as follows:

§ 1.565 Concurrent Office proceedings which include an ex parte reexamination proceeding.

* * * * *

(e) If a patent in the process of ex parte reexamination is or becomes involved in an interference, the Director may suspend the reexamination or the interference. The Director will not consider a request to suspend an interference unless a motion (§ 41.121(a)(3) of this title) to suspend the interference has been presented to, and denied by, an administrative patent judge, and the request is filed within ten (10) days of a decision by an administrative patent judge denying the motion for suspension or such other time as the administrative patent judge may set. For concurrent *inter partes* reexamination and interference of a patent, see § 1.993.

§§ 1.601–1.690 (Subpart E) [Removed and reserved]

36. Remove and reserve subpart E, consisting of §§ 1.601 through 1.690, of part 1.

37. In § 1.701, revise paragraph (c)(2)(ii) to read as follows:

§ 1.701 Extension of patent term due to examination delay under the Uruguay Round Agreements Act (original applications, other than designs, filed on or after June 8, 1995, and before May 29, 2000).

* * * * *

(c) * * *

(2) * * *

(ii) The number of days, if any, in the period beginning on the date of mailing of an examiner's answer under § 41.39 of this title in the application under secrecy order and ending on the date the secrecy order and any renewal thereof was removed;

* * * * *

38. In § 1.703, revise paragraphs (a)(4), (b)(3)(ii), (b)(4), (d)(2), and (e) to read as follows:

§ 1.703 Period of adjustment of patent term due to examination delay.

(a) * * *

(4) The number of days, if any, in the period beginning on the day after the date that is four months after the date an appeal brief in compliance with § 41.37 of this title was filed and ending on the date of mailing of any of an examiner's answer under § 41.39 of this title, an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;

* * * * *

(b) * * *

(3) * * *

(ii) The number of days, if any, in the period beginning on the date of mailing of an examiner's answer under § 41.39 of this title in the application under secrecy order and ending on the date the secrecy order was removed;

* * * * *

(4) The number of days, if any, in the period beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was under 35 U.S.C. 134 and § 41.31 of this title and ending on the date of the last decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145, or on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs

first, if the appeal did not result in a decision by the Board of Patent Appeals and Interferences.

* * * * *

(d) * * *

(2) The number of days, if any, in the period beginning on the date of mailing of an examiner's answer under § 41.39 of this title in the application under secrecy order and ending on the date the secrecy order was removed;

* * * * *

(e) The period of adjustment under § 1.702(e) is the sum of the number of days, if any, in the period beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31 of this title and ending on the date of a final decision in favor of the applicant by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145.

* * * * *

39. In § 1.704, revise paragraph (c)(9) to read as follows:

§ 1.704 Reduction of period of adjustment of patent term.

* * * * *

(c) * * *

(9) Submission of an amendment or other paper after a decision by the Board of Patent Appeals and Interferences, other than a decision designated as containing a new ground of rejection under § 41.50(b) of this title or statement under § 41.50(c) of this title, or a decision by a Federal court, less than one month before the mailing of an Office action under 35 U.S.C. 132 or notice of allowance under 35 U.S.C. 151 that requires the mailing of a supplemental Office action or supplemental notice of allowance, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the day after the mailing date of the original Office action or notice of allowance and ending on the mailing date of the supplemental Office action or notice of allowance; or

(ii) Four months;

* * * * *

40. Revise § 1.959 to read as follows:

§ 1.959 Appeal in inter partes reexamination.

Appeals to the Board of Patent Appeals and Interferences under 35 U.S.C. 134(c) are conducted according to part 41, subpart C, of this title.

§§ 1.961–1.977 [Removed and reserved]

41. Remove and reserve §§ 1.961–1.977.

42. Revise § 1.979 to read as follows:

§ 1.979 Return of Jurisdiction from the Board of Patent Appeals and Interferences; termination of proceedings.

(a) Jurisdiction over an *inter partes* reexamination proceeding passes to the examiner after a decision by the Board of Patent Appeals and Interferences upon transmittal of the file to the examiner, subject to each appellant's right of appeal or other review, for such further action as the condition of the *inter partes* reexamination proceeding may require, to carry into effect the decision of the Board of Patent Appeals and Interferences.

(b) Upon termination of the appeal before the Board of Patent Appeals and Interferences (§ 41.83), if no further appeal has been taken (§ 1.983), the *inter partes* reexamination proceeding will be terminated and the Director will issue a certificate under § 1.997 terminating the proceeding. If an appeal to the U.S. Court of Appeals for the Federal Circuit has been filed, that appeal is considered terminated when the mandate is issued by the Court.

43. Revise § 1.981 to read as follows:

§ 1.981 Reopening after a final decision of the Board of Patent Appeals and Interferences.

When a decision by the Board of Patent Appeals and Interferences on appeal has become final for judicial review, prosecution of the *inter partes* reexamination proceeding will not be reopened or reconsidered by the primary examiner except under the provisions of § 41.77 without the written authority of the Director, and then only for the consideration of matters not already adjudicated, sufficient cause being shown.

44. Revise § 1.993 to read as follows:

§ 1.993 Suspension of concurrent interference and inter partes reexamination proceeding.

If a patent in the process of inter partes reexamination is or becomes involved in an interference, the Director may suspend the *inter partes* reexamination or the interference. The Director will not consider a request to suspend an interference unless a motion under § 41.121(a)(3) of this title to suspend the interference has been presented to, and denied by, an administrative patent judge and the request is filed within ten (10) days of a decision by an administrative patent judge denying the motion for suspension or such other time as the administrative patent judge may set.

PART 5—SECRECY OF CERTAIN INVENTIONS AND LICENSES TO EXPORT AND FILE APPLICATIONS IN FOREIGN COUNTRIES

45. The authority citation for Part 5 continues to read as follows:

Authority: 35 U.S.C.2(b)(2), 41, 181–188, as amended by the patent Law Foreign Filing Amendments Act of 1988, Pub. L. 100–418, 102 Stat. 1567; the Arms Export Control Act, as amended, 22 U.S.C. 2751 *et seq.*; the Atomic Energy Act of 1954, as amended, 42 U.S.CX. 2011 *et seq.*; the Nuclear Non Proliferation Act of 1978, 22 U.S.C. 3201 *et seq.*; and the delegations in the regulations under these Acts of the Commissioner (15 CFR 3701.10(j), 22 CFR 125.04, and 10 CFR 810.7).

45a. In § 5.3, revise paragraph (b) to read as follows:

§ 5.3 Prosecution of application under secrecy orders; withholding patent.

* * * * *

(b) An interference will not be declared involving a national application under secrecy order. An applicant whose application is under secrecy order may suggest an interference (§ 41.202(a)), but the Office will not act on the request while the application remains under a secrecy order.

* * * * *

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

46. The authority citation for Part 10 continues to read as follows:

Authority: 5 U.S.C. 500, 15 U.S.C. 1123; 35 U.S.C. 2(b)(2), 31, 32, 41.

46a. In § 10.23, revise paragraph (c)(7) to read as follows:

§ 10.23 Misconduct.

* * * * *

(c) * * *

(7) Knowingly withholding from the Office information identifying a patent or patent application of another from which one or more claims have been copied. See § 41.202(a)(1) of this title.

* * * * *

47. Add part 41 to read as follows:

PART 41—PRACTICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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Sec.

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Authority: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 134, 135.

Subpart A—General Provisions

§ 41.1 Policy.

(a) *Scope.* This Part 41 governs proceedings before the Board of Patent Appeals and Interferences. Sections 1.1 to 1.36 and 1.181 to 1.183 of this title also apply to practice before the Board, as do other sections of part 1 of this title that are cited in this part 41.

(b) *Construction.* The provisions of this Part 41 shall be construed to secure the just, speedy, and inexpensive resolution of every proceeding before the Board.

(c) *Decorum.* Each party must act with courtesy and decorum in all proceedings before the Board, including interactions with other parties.

§ 41.2 Definitions.

Unless otherwise clear from the context, the following definitions apply to proceedings under this part:

Affidavit means affidavit, declaration under § 1.68 of this title, or statutory declaration under 28 U.S.C. 1746. A transcript of an ex parte deposition may be used as an affidavit in a contested case.

Board means the Board of Patent Appeals and Interferences and includes:

(1) For a final Board:

(i) In an appeal or contested case, a panel of the Board.

(ii) In a proceeding under § 41.3, the Chief Administrative Patent Judge or another official acting under an express delegation from the Chief Administrative Patent Judge.

(2) For non-final actions, a Board member or employee acting with the authority of the Board.

Board member means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, the Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office, the Commissioner for Patents, the Commissioner for Trademarks, and the administrative patent judges.

Contested case means a Board proceeding other than an appeal under 35 U.S.C. 134 or a petition under § 41.3. An appeal in an inter partes reexamination is not a contested case.

Final means, with regard to a Board action, final for the purposes of judicial review. A decision is final only if:

(1) *In a panel proceeding.* The decision is rendered by a panel, disposes of all issues with regard to the party seeking judicial review, and does not indicate that further action is required; and

(2) *In other proceedings.* The decision disposes of all issues or the decision states it is final.

Hearing means consideration of the issues of record. *Rehearing* means reconsideration.

Office means United States Patent and Trademark Office.

Panel means at least three Board members acting in a panel proceeding.

Panel proceeding means a proceeding in which final action is reserved by statute to at least three Board members, but includes a non-final portion of such a proceeding whether administered by panel or not.

Party, in this part, means any entity participating in a Board proceeding, other than officers and employees of the Office, including:

(1) An appellant;

(2) A participant in a contested case;

(3) A petitioner; and

(4) Counsel for any of the above, where context permits.

§ 41.3 Petitions.

(a) *Deciding official.* Petitions must be addressed to the Chief Administrative Patent Judge. A panel or an administrative patent judge may certify a question of policy to the Chief Administrative Patent Judge for decision. The Chief Administrative Patent Judge may delegate authority to decide petitions.

(b) The following matters are not subject to petition:

(1) Issues committed by statute to a panel, and

(2) In pending contested cases, procedural issues. See § 41.121(a)(3) and § 41.125(c).

(c) *Petition fee.* The fee set in § 41.20(a) must accompany any petition under this section except no fee is required for a petition under this section seeking supervisory review.

(d) *Effect on proceeding.* The filing of a petition does not stay the time for any other action in a Board proceeding.

(e) *Time for action.*

(1) Except as otherwise provided in this part or as the Board may authorize in writing, a party may:

(i) File the petition within 14 calendar days from the date of the action from which the party is requesting relief, and

(ii) File any request for reconsideration of a petition decision within 14 calendar days of the decision on petition or such other time as the Board may set.

(2) A party may not file an opposition or a reply to a petition without Board authorization.

§ 41.4 Timeliness.

(a) *Extensions of time.* Extensions of time will be granted only on a showing of good cause except as otherwise provided by rule.

(b) *Late filings.* Late filings will not be considered absent a showing of excusable neglect or a Board determination that consideration on the merits would be in the interest of justice.

(c) *Scope.* This section governs all proceedings before the Board, but does not apply to Board-related proceedings outside the Board, such as:

(1) *Seeking judicial review* (see §§ 1.301–1.304 of this title) or

(2) *Extensions during prosecution* (see § 1.136 of this title).

§ 41.5 Counsel.

While the Board has jurisdiction:

(a) *Appearance pro hac vice.* The Board may authorize a person other than a patent practitioner to appear as counsel in a specific proceeding.

(b) *Disqualification.* (1) The Board may disqualify counsel in a specific proceeding after notice and an opportunity to be heard.

(2) A decision to disqualify is not final for the purposes of judicial review until certified by the Chief Administrative Patent Judge.

(c) *Withdrawal.* Counsel may not withdraw from a proceeding before the Board unless the Board authorizes such withdrawal.

(d) *Procedure.* The Board may institute a proceeding under this section on its own or a party in a contested case may request relief under this section.

(e) *Referral to the Director of Enrollment and Discipline.* The Board may refer a question arising under paragraphs (a) or (b) of this section to the Director of Enrollment and Discipline for action.

§ 41.6 Public availability of Board records.

(a) *Publication.*—(1) *Generally.* Any Board action is available for public inspection without a party's permission if rendered in a file open to the public pursuant to § 1.11 of this title or in an application that has been published in accordance with §§ 1.211 through 1.221 of this title. The Office may independently publish any Board action that is available for public inspection.

(2) *Determination of special circumstances.* Any Board action not publishable under paragraph (a)(1) of this section may be published or made available for public inspection if the Director believes that special circumstances warrant publication and a party does not, within two months after being notified of the intention to make the action public, object in writing on the ground that the action discloses the objecting party's trade secret or other confidential information and states with specificity that such information is not otherwise publicly available. If the action discloses such information, the party shall identify the deletions in the text of the action considered necessary to protect the information. If the affected party considers that the entire action must be withheld from the public to protect such information, the party must explain why. The party will be given time, not less than twenty days, to request reconsideration and seek court review before any contested portion of the action is made public over its objection.

(b) *Record of proceeding.*—(1) The record of a Board proceeding is available to the public unless a patent application not otherwise available to the public is involved.

(2) Notwithstanding paragraph (b)(1) of this section, after a final Board action in or termination of a Board proceeding, the record of the Board proceeding will be made available to the public if any involved file is or becomes open to the public under § 1.11 of this title or an involved application is or becomes published under §§ 1.211–1.221 of this title.

§ 41.7 Management of the record.

(a) The Board may expunge any paper that is not authorized under this part or in a Board order, or that is filed contrary to a Board order.

(b) A party may not file a paper previously filed in the same Board proceeding, not even as an exhibit or appendix, without Board authorization.

§ 41.8 Mandatory notices.

In an appeal (§§ 41.37, 41.67, or § 41.68) or at the initiation of a contested case (§ 41.101), and within 20 days of any change during the proceeding, a party must identify:

(a) Its real party-in-interest, and

(b) Each judicial or administrative proceeding that could affect, or be affected by, the Board proceeding, specifically including judicial review of the Board proceeding.

§ 41.9 Action by owner.

(a) *Entire interest.* An owner of the entire interest in an application or patent involved in a Board proceeding may act in the proceeding to the exclusion of the inventor (see § 3.73(b) of this title).

(b) *Part interest.* An owner of a part interest in an application or patent involved in a Board proceeding may petition to act in the proceeding to the exclusion of an inventor or a co-owner. The petition must show the inability or refusal of an inventor or co-owner to prosecute the proceeding or other cause why it is in the interest of justice to permit the owner of a part interest to act in the proceeding. An order granting the petition may set conditions on the actions of the parties during the proceeding.

§ 41.20 Fees.

(a) *Petition fee.* The fee for filing a petition under this part is—§ 130.00.

(b) *Appeal fees.*

(1) For filing a notice of appeal from the examiner to the Board:

(i) By a small entity (§ 1.27(a) of this title)—$165.00.

(ii) By other than a small entity—$330.00.

(2) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:

(i) By a small entity (§ 1.27(a) of this title)—$165.00.

(ii) By other than a small entity—$330.00.

(3) For filing a request for an oral hearing before the Board in an appeal under 35 U.S.C. 134:

(i) By a small entity (§ 1.27(a) of this title)—$145.00

(ii) By other than a small entity—$290.00.

Subpart B—Ex parte Appeals to the Board

§ 41.30 Definitions.

In addition to the definitions in § 41.2, the following definitions apply to proceedings under this subpart unless otherwise clear from the context:

Proceeding means either a national application for a patent, an application for reissue of a patent, or an *ex parte* reexamination proceeding. Appeal to the Board in an *inter partes* reexamination proceeding is controlled by subpart C of this part.

Applicant means either the applicant in a national application for a patent or the applicant in an application for reissue of a patent.

Owner means the owner of the patent undergoing *ex parte* reexamination under § 1.510 of this title.

§ 41.31 Appeal to Board.

(a) Who may appeal and how to file an appeal:

(1) Every applicant, any of whose claims has been twice or finally (§ 1.113 of this title) rejected, may appeal the decision of the examiner to the Board by filing a notice of appeal accompanied by the fee set forth in § 41.20(b)(1) within the time period provided under § 1.134 of this title for reply.

(2) Every owner of a patent under *ex parte* reexamination filed under § 1.510 of this title before November 29, 1999, any of whose claims has been twice or finally (§ 1.113 of this title) rejected, may appeal from the decision of the examiner to the Board by filing a notice of appeal accompanied by the fee set forth in § 41.20(b)(1) within the time period provided under § 1.134 of this title for reply.

(3) Every owner of a patent under *ex parte* reexamination filed under § 1.510 of this title on or after November 29, 1999, any of whose claims has been finally (§ 1.113 of this title) rejected, may appeal from the decision of the examiner to the Board by filing a notice of appeal accompanied by the fee set forth in § 41.20(b)(1) within the time period provided under § 1.134 of this title for reply.

(b) The signature requirement of § 1.33 of this title does not apply to a notice of appeal filed under this section.

(c) An appeal, when taken, must be taken from the rejection of all claims under rejection which the applicant or owner proposes to contest. Questions relating to matters not affecting the merits of the invention may be required to be settled before an appeal can be considered.

(d) The time periods set forth in paragraphs (a)(1)–(a)(3) of this section are extendable under the provisions of § 1.136 of this title for patent applications and § 1.550(c) of this title for *ex parte* reexamination proceedings.

§ 41.33 Amendments and affidavits or other evidence after appeal.

(a) Amendments submitted after the date the proceeding has been appealed pursuant to § 41.31(a)(1)–(a)(3) may be admitted:

(1) To cancel claims, where such cancellation does not affect the scope of any other pending claim in the proceeding, or

(2) To rewrite dependent claims into independent form.

(b) All other amendments submitted after the date the proceeding has been appealed pursuant to § 41.31(a)(1)–(a)(3) will not be admitted except as permitted by §§ 41.39(b)(1), 41.50(a)(2)(i) and 41.50(b)(1).

(c) Affidavits or other evidence submitted after the date the proceeding has been appealed pursuant to § 41.31(a)(1)–(a)(3) will not be admitted except as permitted by §§ 41.39(b)(1), 41.50(a)(2)(i) and 41.50(b)(1).

§ 41.35 Jurisdiction over appeal.

(a) Jurisdiction over the proceeding passes to the Board upon transmittal of the file, including all briefs and examiner's answers, to the Board.

(b) If, after receipt and review of the proceeding, the Board determines that the file is not complete or is not in compliance with the requirements of this subpart, the Board may relinquish jurisdiction to the examiner or take other appropriate action to permit completion of the proceeding.

(c) Prior to the entry of a decision on the appeal by the Board, the Director may *sua sponte* order the proceeding remanded to the examiner.

§ 41.37 Appeal brief.

(a)(1) Appellant must file a brief under this section within two months from the date of the notice of appeal under § 41.31.

(2) The brief must be accompanied by the fee set forth in § 41.20(b)(2).

(b) On failure to file the brief, accompanied by the requisite fee, within the period specified in paragraph (a) of this section, the appeal will stand dismissed.

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(i) *Real party in interest.* A statement identifying by name the real party in interest.

(ii) *Related appeals and interferences.* A statement identifying by application, patent, appeal or interference number all other prior and pending appeals, interferences or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. Copies of any decisions rendered by a court or the Board in any proceeding identified under this paragraph must be included in an appendix as required by paragraph (c)(1)(x) of this section.

(iii) *Status of claims.* A statement of the status of all the claims in the proceeding (*e.g.*, rejected, allowed or confirmed, withdrawn, objected to, canceled) and an identification of those claims that are being appealed.

(iv) *Status of amendments.* A statement of the status of any amendment filed subsequent to final rejection.

(v) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each claim involved in the appeal, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

(vi) *Grounds of rejection to be reviewed on appeal.* A concise statement of each ground of rejection presented for review.

(vii) *Argument.* The contentions of appellant with respect to each ground of rejection presented for review in paragraph (c)(1)(vi) of this section, and the basis therefor, with citations of the statutes, regulations, authorities, and parts of the record relied on. Any arguments or authorities not included in the brief or a reply brief filed pursuant to § 41.41 will be refused consideration by the Board, unless good cause is shown. Each ground of rejection must be treated under a separate heading. For each ground of rejection applying to two or more claims, the claims may be argued separately or as a group. When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately. Any claim argued separately should be placed under a subheading identifying the claim by number. Claims argued as a group should be placed

under a subheading identifying the claims by number. A statement which merely points out what a claim recites will not be considered an argument for patentability of the claim.

(viii) *Claims appendix.* An appendix containing a copy of the claims involved in the appeal.

(ix) *Evidence appendix.* An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) *Related proceedings appendix.* An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

(2) A brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. See § 1.116 of this title for amendments, affidavits or other evidence filed after final action but before or with any appeal and § 41.33 for amendments, affidavits or other evidence filed after the date of the appeal.

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and given a time period within which to file an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

(e) The time periods set forth in this section are extendable under the provisions of § 1.136 of this title for patent applications and § 1.550(c) of this title for ex parte reexamination proceedings.

§ 41.39 Examiner's answer.

(a)(1) The primary examiner may, within such time as may be directed by the Director, furnish a written answer to the appeal brief including such explanation of the invention claimed and of the references relied upon and grounds of rejection as may be necessary, supplying a copy to appellant. If the primary examiner determines that the appeal does not comply with the provisions of §§ 41.31–41.37 or does not relate to an appealable action, the primary examiner shall make such determination of record.

(2) An examiner's answer may include a new ground of rejection.

(b) If an examiner's answer contains a new ground of rejection, appellant must within two months from the date of the examiner's answer exercise one of the following two options to avoid sua sponte dismissal of the appeal as to the claims subject to the new ground of rejection:

(1) *Reopen prosecution.* Request that prosecution be reopened before the primary examiner by filing a reply under § 1.111 of this title with or without amendment or submission of affidavits (§§ 1.130, 1.131 or 1.132 of this title) or other evidence. Any amendment or submission of affidavits or other evidence must be relevant to the new ground of rejection. A request that complies with this paragraph will be entered and the application or the patent under ex parte reexamination will be reconsidered by the examiner under the provisions of § 1.112 of this title. Any request that prosecution be reopened under this paragraph will be treated as a request to withdraw the appeal.

(2) *Maintain appeal.* Request that the appeal be maintained by filing a reply brief as set forth in § 41.41. Such a reply brief must address each new ground of rejection as set forth in § 41.37(c)(1)(vii) and should follow the other requirements of a brief as set forth in § 41.37(c). A reply brief may not be accompanied by any amendment, affidavit (§§ 1.130, 1.131 or 1.132 of this title) or other evidence. If a reply brief filed pursuant to this section is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under paragraph (b)(1) of this section.

(c) Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time period set forth in this section. See § 1.136(b) of this title for extensions of time to reply for patent applications and § 1.550(c) of this title for extensions of time to reply for ex parte reexamination proceedings.

§ 41.41 Reply brief.

(a)(1) Appellant may file a reply brief to an examiner's answer within two months from the date of the examiner's answer.

(2) A reply brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. See § 1.116 of this title for amendments, affidavits or other evidence filed after final action but before or with any appeal and § 41.33 for amendments, affidavits or other evidence filed after the date of the appeal.

(b) A reply brief that is not in compliance with paragraph (a) of this section will not be considered. Appellant will be notified if a reply brief is not in compliance with paragraph (a) of this section.

(c) Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time period set forth in this section. See § 1.136(b) of this title for extensions of time to reply for patent applications and § 1.550(c) of this title for extensions of time to reply for ex parte reexamination proceedings.

§ 41.43 Examiner's response to reply brief.

(a)(1) After receipt of a reply brief in compliance with § 41.41, the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.

(2) A supplemental examiner's answer may not include a new ground of rejection.

(b) If a supplemental examiner's answer is furnished by the examiner, appellant may file another reply brief under § 41.41 to any supplemental examiner's answer within two months from the date of the supplemental examiner's answer.

(c) Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time period set forth in this section. See § 1.136(b) of this title for extensions of time to reply for patent applications and § 1.550(c) of this title for extensions of time to reply for ex parte reexamination proceedings.

§ 41.47 Oral hearing.

(a) An oral hearing should be requested only in those circumstances in which appellant considers such a hearing necessary or desirable for a proper presentation of the appeal. An appeal decided on the briefs without an oral hearing will receive the same consideration by the Board as appeals decided after an oral hearing.

(b) If appellant desires an oral hearing, appellant must file, as a separate paper captioned ''REQUEST FOR ORAL HEARING,'' a written request for such hearing accompanied by the fee set forth in § 41.20(b)(3) within two months from the date of the examiner's answer or supplemental examiner's answer.

(c) If no request and fee for oral hearing have been timely filed by appellant as required by paragraph (b) of this section, the appeal will be assigned for consideration and decision on the briefs without an oral hearing.

(d) If appellant has complied with all the requirements of paragraph (b) of this section, a date for the oral hearing will be set, and due notice thereof given to appellant. If an oral hearing is held, an oral argument may be presented by, or on behalf of, the primary examiner if considered desirable by either the primary examiner or the Board. A hearing will be held as stated in the notice, and oral argument will ordinarily be limited to twenty minutes for appellant and fifteen minutes for the primary examiner unless otherwise ordered.

(e) Appellant will argue first and may reserve time for rebuttal. At the oral hearing, appellant may only rely on evidence that has been previously entered and considered by the primary examiner and present argument that has been relied upon in the brief or reply brief. The primary examiner may only rely on argument and evidence relied upon in an answer or a supplemental answer.

(f) Notwithstanding the submission of a request for oral hearing complying with this rule, if the Board decides that a hearing is not necessary, the Board will so notify appellant.

(g) Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time periods set forth in this section. See § 1.136(b) of this title for extensions of time to reply for patent applications and § 1.550(c) of this title for extensions of time to reply for ex parte reexamination proceedings.

§ 41.50 Decisions and other actions by the Board.

(a)(1) The Board, in its decision, may affirm or reverse the decision of the examiner in whole or in part on the grounds and on the claims specified by the examiner. The affirmance of the rejection of a claim on any of the grounds specified constitutes a general affirmance of the decision of the examiner on that claim, except as to any ground specifically reversed. The Board may also remand an application to the examiner.

(2) If a supplemental examiner's answer is written in response to a remand by the Board for further consideration of a rejection pursuant to paragraph (a)(1) of this section, the appellant must exercise one of the following two options to avoid sua sponte dismissal of the appeal as to all claims under appeal:

(i) *Reopen prosecution.* Request that prosecution be reopened before the examiner by filing a reply under § 1.111 of this title with or without amendment or submission of affidavits (§§ 1.130, 1.131 or 1.132 of this title) or other evidence. Any amendment or submission of affidavits or other evidence must be relevant to the issues set forth in the remand or raised in the supplemental examiner's answer. A request that complies with this paragraph will be entered and the application or the patent under ex parte reexamination will be reconsidered by the examiner under the provisions of § 1.112 of this title. Any request that prosecution be reopened under this paragraph will be treated as a request to withdraw the appeal.

(ii) *Maintain appeal.* Request that the appeal be maintained by filing a reply brief as provided in § 41.41. If such a reply brief is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the examiner under paragraph (a)(2)(i) of this section.

(b) Should the Board have knowledge of any grounds not involved in the appeal for rejecting any pending claim, it may include in its opinion a statement to that effect with its reasons for so holding, which statement constitutes a new ground of rejection of the claim. A new ground of rejection pursuant to this paragraph shall not be considered final for judicial review. When the Board makes a new ground of rejection, the appellant, within two months from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal (§ 41.56) as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or a showing of facts relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. The new ground of rejection is binding upon the examiner unless an amendment or showing of facts not previously of record is made which, in the opinion of the examiner, overcomes the new ground of rejection stated in the decision. Should the examiner reject the claims, appellant may again appeal to the Board pursuant to §§ 41.31 through 41.56.

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same record. The request for rehearing must address any new ground of rejection and state with particularity the points believed to have been misapprehended or overlooked in entering the new ground of rejection and also state all other grounds upon which rehearing is sought.

(c) The opinion of the Board may include an explicit statement how a claim on appeal may be amended to overcome a specific rejection. When the opinion of the Board includes such a statement, appellant has the right to amend in conformity therewith. An amendment in conformity with such statement will overcome the specific rejection. An examiner may reject a claim so-amended, provided that the rejection constitutes a new ground of rejection.

(d) The Board may order appellant to additionally brief any matter that the Board considers to be of assistance in reaching a reasoned decision on the pending appeal. Appellant will be given a non-extendable time period within which to respond to such an order. Failure to timely comply with the order may result in the sua sponte dismissal of the appeal.

(e) Whenever a decision of the Board includes a remand, that decision shall not be considered final for judicial review. When appropriate, upon conclusion of proceedings on remand before the examiner, the Board may enter an order otherwise making its decision final for judicial review.

(f) Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time periods set forth in this section. See § 1.136(b) of this title for extensions of time to reply for patent applications and § 1.550(c) of this title for extensions of time to reply for ex parte reexamination proceedings.

§ 41.52 Rehearing.

(a) Appellant may file a single request for rehearing within 2 months of the date of the original decision of the Board. No request for rehearing from a decision on rehearing will be permitted, unless the rehearing decision so modified the original decision as to become, in effect, a new decision, and the Board states that a second request for rehearing would be permitted. The request for rehearing must state with particularity the points believed to have been misapprehended or overlooked by the Board. Except for arguments responding to a new ground of rejection made pursuant to § 41.50(b), arguments not raised in the briefs before the Board and evidence not previously relied upon in the brief and any reply brief(s) are not permitted in the request for rehearing. When a request for rehearing is made, the Board shall render a decision on the request for rehearing. The decision on the request for rehearing is deemed to

incorporate the earlier opinion reflecting its decision for appeal, except for those portions specifically withdrawn on rehearing, and is final for the purpose of judicial review, except when noted otherwise in the decision on rehearing.

(b) Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time period set forth in this section. See § 1.136(b) of this title for extensions of time to reply for patent applications and § 1.550(c) of this title for extensions of time to reply for ex parte reexamination proceedings.

§ 41.54 Action following decision.

After decision by the Board, the proceeding will be returned to the examiner, subject to appellant's right of appeal or other review, for such further action by appellant or by the examiner, as the condition of the proceeding may require, to carry into effect the decision.

§ 41.56 Termination of appeal.

An appeal under this subpart is terminated by the dismissal of the appeal or when, after a final Board action:

(a) A notice of appeal under 35 U.S.C. 141 is filed,

(b) A civil action under 35 U.S.C. 146 is commenced, or

(c) The time for seeking judicial review (§ 1.304 of this title) has expired.

Subpart C—Inter Partes Appeals to the Board

§ 41.60 Definitions.

In addition to the definitions in § 41.2, the following definitions apply to proceedings under this subpart unless otherwise clear from the context:

Proceeding means an *inter partes* reexamination proceeding. Appeal to the Board in an *ex parte* reexamination proceeding is controlled by subpart B of this part. An *inter partes* reexamination proceeding is not a contested case subject to subpart D of this part.

Owner means the owner of the patent undergoing *inter partes* reexamination under § 1.915 of this title.

Requester means each party, other than the owner, who requested that the patent undergo *inter partes* reexamination under § 1.915 of this title.

Appellant means any party, whether the owner or a requester, filing a notice of appeal or cross appeal under § 41.61. If more than one party appeals or cross appeals, each appealing or cross appealing party is an appellant with respect to the claims to which his or her appeal or cross appeal is directed.

Respondent means any requester responding under § 41.68 to the appellant's brief of the owner, or the owner responding under § 41.68 to the appellant's brief of any requester. No requester may be a respondent to the appellant brief of any other requester.

Filing means filing with a certificate indicating service of the document under § 1.903 of this title.

§ 41.61 Notice of appeal and cross appeal to Board.

(a)(1) Upon the issuance of a Right of Appeal Notice under § 1.953 of this title, the owner may appeal to the Board with respect to the final rejection of any claim of the patent by filing a notice of appeal within the time provided in the Right of Appeal Notice and paying the fee set forth in § 41.20(b)(1).

(2) Upon the issuance of a Right of Appeal Notice under § 1.953 of this title, the requester may appeal to the Board with respect to any final decision favorable to the patentability, including any final determination not to make a proposed rejection, of any original, proposed amended, or new claim of the patent by filing a notice of appeal within the time provided in the Right of Appeal Notice and paying the fee set forth in § 41.20(b)(1).

(b)(1) Within fourteen days of service of a requester's notice of appeal under paragraph (a)(2) of this section and upon payment of the fee set forth in § 41.20(b)(1), an owner who has not filed a notice of appeal may file a notice of cross appeal with respect to the final rejection of any claim of the patent.

(2) Within fourteen days of service of an owner's notice of appeal under paragraph (a)(1) of this section and upon payment of the fee set forth in § 41.20(b)(1), a requester who has not filed a notice of appeal may file a notice of cross appeal with respect to any final decision favorable to the patentability, including any final determination not to make a proposed rejection, of any original, proposed amended, or new claim of the patent.

(c) The notice of appeal or cross appeal in the proceeding must identify the appealed claim(s) and must be signed by the owner, the requester, or a duly authorized attorney or agent.

(d) An appeal or cross appeal, when taken, must be taken from all the rejections of the claims in a Right of Appeal Notice which the patent owner proposes to contest or from all the determinations favorable to patentability, including any final determination not to make a proposed rejection, in a Right of Appeal Notice which a requester proposes to contest. Questions relating to matters not affecting the merits of the invention may be required to be settled before an appeal is decided.

(e) The time periods for filing a notice of appeal or cross appeal may not be extended.

(f) If a notice of appeal or cross appeal is timely filed but does not comply with any requirement of this section, appellant will be notified of the reasons for non-compliance and given a non-extendable time period within which to file an amended notice of appeal or cross appeal. If the appellant does not then file an amended notice of appeal or cross appeal within the set time period, or files a notice which does not overcome all the reasons for non-compliance stated in the notification of the reasons for non-compliance, that appellant's appeal or cross appeal will stand dismissed.

§ 41.63 Amendments and affidavits or other evidence after appeal.

(a) Amendments submitted after the date the proceeding has been appealed pursuant to § 41.61 canceling claims may be admitted where such cancellation does not affect the scope of any other pending claim in the proceeding.

(b) All other amendments submitted after the date the proceeding has been appealed pursuant to § 41.61 will not be admitted except as permitted by § 41.77(b)(1).

(c) Affidavits or other evidence submitted after the date the proceeding has been appealed pursuant to § 41.61 will not be admitted except as permitted by reopening prosecution under § 41.77(b)(1).

§ 41.64 Jurisdiction over appeal in inter partes reexamination.

(a) Jurisdiction over the proceeding passes to the Board upon transmittal of the file, including all briefs and examiner's answers, to the Board.

(b) If, after receipt and review of the proceeding, the Board determines that the file is not complete or is not in compliance with the requirements of this subpart, the Board may relinquish jurisdiction to the examiner or take other appropriate action to permit completion of the proceeding.

(c) Prior to the entry of a decision on the appeal by the Board, the Director may sua sponte order the proceeding remanded to the examiner.

§ 41.66 Time for filing briefs.

(a) An appellant's brief must be filed no later than two months from the latest filing date of the last-filed notice of appeal or cross appeal or, if any party to the proceeding is entitled to file an appeal or cross appeal but fails to timely

do so, the expiration of time for filing (by the last party entitled to do so) such notice of appeal or cross appeal. The time for filing an appellant's brief or an amended appellant's brief may not be extended.

(b) Once an appellant's brief has been properly filed, any brief must be filed by respondent within one month from the date of service of the appellant's brief. The time for filing a respondent's brief or an amended respondent's brief may not be extended.

(c) The examiner will consider both the appellant's and respondent's briefs and may prepare an examiner's answer under § 41.69.

(d) Any appellant may file a rebuttal brief under § 41.71 within one month of the date of the examiner's answer. The time for filing a rebuttal brief or an amended rebuttal brief may not be extended.

(e) No further submission will be considered and any such submission will be treated in accordance with § 1.939 of this title.

§ 41.67 Appellant's brief.

(a)(1) Appellant(s) may once, within time limits for filing set forth in § 41.66, file a brief and serve the brief on all other parties to the proceeding in accordance with § 1.903 of this title.

(2) The brief must be signed by the appellant, or the appellant's duly authorized attorney or agent and must be accompanied by the requisite fee set forth in § 41.20(b)(2).

(b) A party's appeal shall stand dismissed upon failure of that party to file an appellant's brief, accompanied by the requisite fee, within the time allowed under § 41.66(a).

(c)(1) The appellant's brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(xi) of this section.

(i) *Real party in interest.* A statement identifying by name the real party in interest.

(ii) *Related appeals and interferences.* A statement identifying by application, patent, appeal or interference number all other prior and pending appeals, interferences or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. Copies of any decisions rendered by a court or the Board in any proceeding identified under this paragraph must be included in an appendix as required by paragraph (c)(1)(xi) of this section.

(iii) *Status of claims.* A statement of the status of all the claims in the proceeding (*e.g.*, rejected, allowed or confirmed, withdrawn, objected to, canceled). If the appellant is the owner, the appellant must also identify the rejected claims whose rejection is being appealed. If the appellant is a requester, the appellant must identify the claims that the examiner has made a determination favorable to patentability, which determination is being appealed.

(iv) *Status of amendments.* A statement of the status of any amendment filed subsequent to the close of prosecution.

(v) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by column and line number, and to the drawing(s), if any, by reference characters. For each claim involved in the appeal, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

(vi) *Issues to be reviewed on appeal.* A concise statement of each issue presented for review. No new ground of rejection can be proposed by a third party requester appellant, unless such ground was withdrawn by the examiner during the prosecution of the proceeding, and the third party requester has not yet had an opportunity to propose it as a third party requester proposed ground of rejection.

(vii) *Argument.* The contentions of appellant with respect to each issue presented for review in paragraph (c)(1)(vi) of this section, and the basis therefor, with citations of the statutes, regulations, authorities, and parts of the record relied on. Any arguments or authorities not included in the brief permitted under this section or §§ 41.68 and 41.71 will be refused consideration by the Board, unless good cause is shown. Each issue must be treated under a separate heading. If the appellant is the patent owner, for each ground of rejection in the Right of Appeal Notice which appellant contests and which applies to two or more claims, the claims may be argued separately or as a group. When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately. Any claim argued separately should be placed under a subheading identifying the claim by number. Claims argued as a group should be placed under a subheading identifying the claims by number. A statement which merely points out what a claim recites will not be considered an argument for patentability of the claim.

(viii) *Claims appendix.* An appendix containing a copy of the claims to be reviewed on appeal.

(ix) *Evidence appendix.* An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.63 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner in any ground of rejection to be reviewed on appeal.

(x) *Related proceedings appendix.* An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

(xi) *Certificate of service.* A certification that a copy of the brief has been served in its entirety on all other parties to the reexamination proceeding. The names and addresses of the parties served must be indicated.

(2) A brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. See § 1.116 of this title for amendments, affidavits or other evidence filed after final action but before or with any appeal and § 41.63 for amendments, affidavits or other evidence after the date of the appeal.

(d) If a brief is filed which does not comply with all the requirements of paragraph (a) and paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and given a non-extendable time period within which to file an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief which does not overcome all the reasons for non-compliance

stated in the notification, that appellant's appeal will stand dismissed.

§ 41.68 Respondent's brief.

(a)(1) Respondent(s) in an appeal may once, within the time limit for filing set forth in § 41.66, file a respondent brief and serve the brief on all parties in accordance with § 1.903 of this title.

(2) The brief must be signed by the party, or the party's duly authorized attorney or agent, and must be accompanied by the requisite fee set forth in § 41.20(b)(2).

(3) The respondent brief shall be limited to issues raised in the appellant brief to which the respondent brief is directed.

(4) A requester's respondent brief may not address any brief of any requester.

(b)(1) The respondent brief shall contain the following items under appropriate headings and in the order here indicated, and may include an appendix containing only those portions of the record on which reliance has been made.

(i) *Real Party in Interest.* A statement identifying by name the real party in interest.

(ii) *Related Appeals and Interferences.* A statement identifying by application, patent, appeal or interference number all other prior and pending appeals, interferences or judicial proceedings known to respondent, the respondent's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. Copies of any decisions rendered by a court or the Board in any proceeding identified under this paragraph must be included in an appendix as required by paragraph (b)(1)(ix) of this section.

(iii) *Status of claims.* A statement accepting or disputing appellant's statement of the status of claims. If appellant's statement of the status of claims is disputed, the errors in appellant's statement must be specified with particularity.

(iv) *Status of amendments.* A statement accepting or disputing appellant's statement of the status of amendments. If appellant's statement of the status of amendments is disputed, the errors in appellant's statement must be specified with particularity.

(v) *Summary of claimed subject matter.* A statement accepting or disputing appellant's summary of the subject matter defined in each of the independent claims involved in the appeal. If appellant's summary of the subject matter is disputed, the errors in appellant's summary must be specified.

(vi) *Issues to be reviewed on appeal.* A statement accepting or disputing appellant's statement of the issues presented for review. If appellant's statement of the issues presented for review is disputed, the errors in appellant's statement must be specified. A counter statement of the issues for review may be made. No new ground of rejection can be proposed by a requester respondent.

(vii) *Argument.* A statement accepting or disputing the contentions of appellant with each of the issues presented by the appellant for review. If a contention of the appellant is disputed, the errors in appellant's argument must be specified, stating the basis therefor, with citations of the statutes, regulations, authorities, and parts of the record relied on. Each issue must be treated under a separate heading. An argument may be made with each of the issues stated in the counter statement of the issues, with each counter-stated issue being treated under a separate heading.

(viii) *Evidence appendix.* An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, 1.132 of this title or of any other evidence entered by the examiner and relied upon by respondent in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the respondent's brief. See § 41.63 for treatment of evidence submitted after appeal.

(ix) *Related proceedings appendix.* An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (b)(1)(ii) of this section.

(x) *Certificate of service.* A certification that a copy of the respondent brief has been served in its entirety on all other parties to the reexamination proceeding. The names and addresses of the parties served must be indicated.

(2) A respondent brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. See § 1.116 of this title for amendments, affidavits or other evidence filed after final action but before or with any appeal and § 41.63 for amendments, affidavits or other evidence filed after the date of the appeal.

(c) If a respondent brief is filed which does not comply with all the requirements of paragraph (a) and paragraph (b) of this section, respondent will be notified of the reasons for non-compliance and given a non-extendable time period within which to file an amended brief. If respondent does not file an amended respondent brief within the set time period, or files an amended respondent brief which does not overcome all the reasons for non-compliance stated in the notification, the respondent brief and any amended respondent brief by that respondent will not be considered.

§ 41.69 Examiner's answer.

(a) The primary examiner may, within such time as directed by the Director, furnish a written answer to the owner's and/or requester's appellant brief or respondent brief including, as may be necessary, such explanation of the invention claimed and of the references relied upon, the grounds of rejection, and the reasons for patentability, including grounds for not adopting any proposed rejection. A copy of the answer shall be supplied to the owner and all requesters. If the primary examiner determines that the appeal does not comply with the provisions of §§ 41.61–41.68 or does not relate to an appealable action, the primary examiner shall make such determination of record.

(b) An examiner's answer may not include a new ground of rejection.

(c) An examiner's answer may not include a new determination not to make a proposed rejection of a claim.

(d) Any new ground of rejection, or any new determination not to make a proposed rejection, must be made in an Office action reopening prosecution.

§ 41.71 Rebuttal brief.

(a) Within one month of the examiner's answer, any appellant may once file a rebuttal brief.

(b)(1) The rebuttal brief of the owner may be directed to the examiner's answer and/or any respondent brief.

(2) The rebuttal brief of the owner shall not include any new or non-admitted amendment, or an affidavit or other evidence. See § 1.116 of this title for amendments, affidavits or other evidence filed after final action but before or with any appeal and § 41.63 for amendments, affidavits or other evidence filed after the date of the appeal.

(c)(1) The rebuttal brief of any requester may be directed to the examiner's answer and/or the respondent brief of the owner.

(2) The rebuttal brief of a requester may not be directed to the respondent brief of any other requester.

(3) No new ground of rejection can be proposed by a requester.

(4) The rebuttal brief of a requester shall not include any new or non-

admitted affidavit or other evidence. See § 1.116(d) of this title for affidavits or other evidence filed after final action but before or with any appeal and § 41.63(c) for affidavits or other evidence filed after the date of the appeal.

(d) The rebuttal brief must include a certification that a copy of the rebuttal brief has been served in its entirety on all other parties to the proceeding. The names and addresses of the parties served must be indicated.

(e) If a rebuttal brief is timely filed under paragraph (a) of this section but does not comply with all the requirements of paragraphs (a)–(d) of this section, appellant will be notified of the reasons for non-compliance and provided with a non-extendable period of one month within which to file an amended rebuttal brief. If the appellant does not file an amended rebuttal brief during the one-month period, or files an amended rebuttal brief which does not overcome all the reasons for non-compliance stated in the notification, that appellant's rebuttal brief and any amended rebuttal brief by that appellant will not be considered.

§ 41.73 Oral hearing.

(a) An oral hearing should be requested only in those circumstances in which an appellant or a respondent considers such a hearing necessary or desirable for a proper presentation of the appeal. An appeal decided on the briefs without an oral hearing will receive the same consideration by the Board as an appeal decided after an oral hearing.

(b) If an appellant or a respondent desires an oral hearing, he or she must file, as a separate paper captioned ''REQUEST FOR ORAL HEARING,'' a written request for such hearing accompanied by the fee set forth in § 41.20(b)(3) within two months after the date of the examiner's answer. The time for requesting an oral hearing may not be extended. The request must include a certification that a copy of the request has been served in its entirety on all other parties to the proceeding. The names and addresses of the parties served must be indicated.

(c) If no request and fee for oral hearing have been timely filed by appellant or respondent as required by paragraph (b) of this section, the appeal will be assigned for consideration and decision on the briefs without an oral hearing.

(d) If appellant or respondent has complied with all the requirements of paragraph (b) of this section, a hearing date will be set, and notice given to the owner and all requesters. If an oral hearing is held, an oral argument may be presented by, or on behalf of, the primary examiner if considered desirable by either the primary examiner or the Board. The notice shall set a non-extendable period within which all requests for oral hearing shall be submitted by any other party to the appeal desiring to participate in the oral hearing. A hearing will be held as stated in the notice, and oral argument will be limited to thirty minutes for each appellant and respondent who has requested an oral hearing, and twenty minutes for the primary examiner unless otherwise ordered. No appellant or respondent will be permitted to participate in an oral hearing unless he or she has requested an oral hearing and submitted the fee set forth in § 41.20(b)(3).

(e) At the oral hearing, each appellant and respondent may only rely on evidence that has been previously entered and considered by the primary examiner and present argument that has been relied upon in the briefs. The primary examiner may only rely on argument and evidence relied upon in an answer. The Board will determine the order of the arguments presented at the oral hearing.

(f) Notwithstanding the submission of a request for oral hearing complying with this rule, if the Board decides that a hearing is not necessary, the Board will so notify the owner and all requesters.

§ 41.77 Decisions and other actions by the Board.

(a) The Board of Patent Appeals and Interferences, in its decision, may affirm or reverse each decision of the examiner on all issues raised on each appealed claim, or remand the reexamination proceeding to the examiner for further consideration. The reversal of the examiner's determination not to make a rejection proposed by the third party requester constitutes a decision adverse to the patentability of the claims which are subject to that proposed rejection which will be set forth in the decision of the Board of Patent Appeals and Interferences as a new ground of rejection under paragraph (b) of this section. The affirmance of the rejection of a claim on any of the grounds specified constitutes a general affirmance of the decision of the examiner on that claim, except as to any ground specifically reversed.

(b) Should the Board reverse the examiner's determination not to make a rejection proposed by a requester, the Board shall set forth in the opinion in support of its decision a new ground of rejection; or should the Board have knowledge of any grounds not raised in the appeal for rejecting any pending claim, it may include in its opinion a statement to that effect with its reasons for so holding, which statement shall constitute a new ground of rejection of the claim. Any decision which includes a new ground of rejection pursuant to this paragraph shall not be considered final for judicial review. When the Board makes a new ground of rejection, the owner, within one month from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal proceeding as to the rejected claim:

(1) *Reopen prosecution.* The owner may file a response requesting reopening of prosecution before the examiner. Such a response must be either an amendment of the claims so rejected, a showing of facts or new evidence relating to the claims so rejected, or both.

(2) *Request rehearing.* The owner may request that the proceeding be reheard under § 41.79 by the Board upon the same record. The request for rehearing must address any new ground of rejection and state with particularity the points believed to have been misapprehended or overlooked in entering the new ground of rejection and also state all other grounds upon which rehearing is sought.

(c) Where the owner has filed a response requesting reopening of prosecution under paragraph (b)(1) of this section, any requester, within one month of the date of service of the owner's response, may once file comments on the response. Such written comments must be limited to the issues raised by the Board's opinion reflecting its decision and the owner's response. Any requester that had not previously filed an appeal or cross appeal and is seeking under this subsection to file comments or a reply to the comments is subject to the appeal and brief fees under § 41.20(b)(1) and (2), respectively, which must accompany the comments or reply.

(d) Following any response by the owner under paragraph (b)(1) of this section and any written comments from a requester under paragraph (c) of this section, the proceeding will be remanded to the examiner. The statement of the Board shall be binding upon the examiner unless an amendment or showing of facts not previously of record is made which, in the opinion of the examiner, overcomes the new ground of rejection stated in the decision. The examiner will consider any owner response under paragraph (b)(1) of this section and any written

comments by a requester under paragraph (c) of this section and issue a determination that the rejection is maintained or has been overcome.

(e) Within one month of the examiner's determination pursuant to paragraph (d) of this section, the owner or any requester may once submit comments in response to the examiner's determination. Within one month of the date of service of comments in response to the examiner's determination, the owner and any requesters may file a reply to the comments. No requester reply may address the comments of any other requester reply. Any requester that had not previously filed an appeal or cross appeal and is seeking under this subsection to file comments or a reply to the comments is subject to the appeal and brief fees under §§ 41.20(b)(1) and (2), respectively, which must accompany the comments or reply.

(f) After submission of any comments and any reply pursuant to paragraph (e) of this section, or after time has expired, the proceeding will be returned to the Board which shall reconsider the matter and issue a new decision. The new decision is deemed to incorporate the earlier decision, except for those portions specifically withdrawn.

(g) The time period set forth in paragraph (b) of this section is subject to the extension of time provisions of § 1.956 of this title when the owner is responding under paragraph (b)(1) of this section. The time period set forth in paragraph (b) of this section may not be extended when the owner is responding under paragraph (b)(2) of this section. The time periods set forth in paragraphs (c) and (e) of this section may not be extended.

§ 41.79 Rehearing.

(a) Parties to the appeal may file a request for rehearing of the decision within one month of the date of:

(1) The original decision of the Board under § 41.77(a),

(2) the original § 41.77(b) decision under the provisions of § 41.77(b)(2),

(3) the expiration of the time for the owner to take action under § 41.77(b)(2), or

(4) the new decision of the Board under § 41.77(f).

(b) The request for rehearing must state with particularity the points believed to have been misapprehended or overlooked in rendering the Board's opinion reflecting its decision. Arguments not raised in the briefs before the Board and evidence not previously relied upon in the briefs are not permitted in the request for rehearing except for arguments responding to a new ground of rejection made pursuant to § 41.77(b).

(c) Within one month of the date of service of any request for rehearing under paragraph (a) of this section, or any further request for rehearing under paragraph (d) of this section, the owner and all requesters may once file comments in opposition to the request for rehearing or the further request for rehearing. The comments in opposition must be limited to the issues raised in the request for rehearing or the further request for rehearing.

(d) If a party to an appeal files a request for rehearing under paragraph (a) of this section, or a further request for rehearing under this section, the Board shall render a decision on the request for rehearing. The decision on the request for rehearing is deemed to incorporate the earlier opinion reflecting its decision for appeal, except for those portions specifically withdrawn on rehearing and is final for the purpose of judicial review, except when noted otherwise in the decision on rehearing. If the Board opinion reflecting its decision on rehearing becomes, in effect, a new decision, and the Board so indicates, then any party to the appeal may, within one month of the new decision, file a further request for rehearing of the new decision under this subsection. Such further request for rehearing must comply with paragraph (b) of this section.

(e) The times for requesting rehearing under paragraph (a) of this section, for requesting further rehearing under paragraph (c) of this section, and for submitting comments under paragraph (b) of this section may not be extended.

§ 41.81 Action following decision.

The parties to an appeal to the Board may not appeal to the U.S. Court of Appeals for the Federal Circuit under § 1.983 of this title until all parties' rights to request rehearing have been exhausted, at which time the decision of the Board is final and appealable by any party to the appeal to the Board.

§ 41.83 Termination of appeal.

An appeal to the Board by a party under this subpart is terminated by the dismissal of that party's appeal or when, after a final Board action:

(a) A notice of appeal under 35 U.S.C. 141 is filed, or

(b) The time for seeking judicial review (§ 1.983 of this title) has expired.

Subpart D—Contested Cases

§ 41.100 Definitions.

In addition to the definitions in § 41.2, the following definitions apply to proceedings under this subpart:

Business day means a day other than a Saturday, Sunday, or Federal holiday within the District of Columbia.

Involved means the Board has declared the patent application, patent, or claim so described to be a subject of the contested case.

§ 41.101 Notice of proceeding.

(a) Notice of a contested case will be sent to every party to the proceeding. The entry of the notice initiates the proceeding.

(b) When the Board is unable to provide actual notice of a contested case on a party through the correspondence address of record for the party, the Board may authorize other modes of notice, including:

(1) Sending notice to another address associated with the party, or

(2) Publishing the notice in the Official Gazette of the United States Patent and Trademark Office.

§ 41.102 Completion of examination.

Except as the Board may otherwise authorize, before a contested case is initiated:

(a) Examination of each involved application and any pending reexamination of each involved patent must be completed, and

(b) Each involved application and patent must have at least one claim that:

(1) Is patentable, and

(2) Would be involved in the contested case.

§ 41.103 Jurisdiction over involved files.

The Board has jurisdiction over any involved file from the time the Board initiates a contested case until the termination of the contested case. Other proceedings for the involved file within the Office are suspended except as the Board may order.

§ 41.104 Conduct of contested case.

(a) The Board may determine a proper course of conduct in a proceeding for any situation not specifically covered by this part and may enter non-final orders to administer the proceeding.

(b) An administrative patent judge may waive or suspend in a proceeding the application of any rule in this subpart, subject to such conditions as the administrative patent judge may impose.

(c) Times set in this subpart are defaults. In the event of a conflict between a time set by rule and a time set by order, the time set by order is controlling. Action due on a day other than a business day may be completed on the next business day unless the Board expressly states otherwise.

§ 41.105 Ex parte communications.

An ex parte communication about a contested case with a Board member or a Board employee conducting the proceeding is not permitted.

§ 41.106 Filing and service.

(a) *General format requirements.* (1) The paper used for filings must be durable and white. A party must choose to file on either A4-sized paper or 8½ inch × 11 inch paper except in the case of exhibits that require a larger size in order to preserve details of the original. A party may not switch between paper sizes in a single proceeding. Only one side of the paper may be used.

(2) In papers, including affidavits, created for the proceeding:

(i) The ink must be black or must otherwise provide an equivalently permanent, dark, high-contrast image on the paper. The quality of the printing must be equivalent to the quality produced by a laser printer. Either a proportional or monospaced font may be used, but the proportional font must be 12-point or larger and a monospaced font must not contain more than 4 characters per centimeter (10 characters per inch). Case names must be underlined or italicized.

(ii) Double spacing must be used except in headings, signature blocks, and certificates of service. Block quotations may be single-spaced and must be indented. Margins must be at least 2.5 centimeters (1 inch) on all sides.

(b) *Papers other than exhibits.*—(1) *Cover sheet.* (i) The cover sheet must include the caption the Board specifies for the proceeding, a header indicating the party and contact information for the party, and a title indicating the sequence and subject of the paper. For example, ''JONES MOTION 2, For benefit of an earlier application''.

(ii) If the Board specifies a color other than white for the cover sheet, the cover sheet must be that color.

(2) Papers must have two 0.5 cm (¼inch) holes with centers 1 cm (½ inch) from the top of the page and 7 cm (2¾ inch) apart, centered horizontally on the page.

(3) *Incorporation by reference; combined papers.* Arguments must not be incorporated by reference from one paper into another paper. Combined motions, oppositions, replies, or other combined papers are not permitted.

(4) *Citation of authority.*

(i) Citations to authority must include:

(A) A *United States Reports* citation for any Supreme Court case.

(B) *Parallel citation of cases* to both the West Reporter System and to the United States Patents Quarterly whenever a case is published in both. Other parallel citations are discouraged.

(C) *Pinpoint citations* whenever a specific holding or portion of an authority is invoked.

(ii) Non-binding authority should be used sparingly. If the authority is not an authority of the Office and is not reproduced in one of the reporters listed in paragraph (c)(4)(i) of this section, a copy of the authority should be filed with the first paper in which it is cited.

(5) *Exhibits.* Additional requirements for exhibits appear in § 41.154(c).

(c) *Working copy.* Every paper filed must be accompanied by a working copy marked ''APJ Copy''.

(d) *Specific filing forms.*—(1) *Filing by mail.* A paper filed by mail must be addressed to Mail Stop INTERFERENCE, Board of Patent Appeals and Interferences, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450. A paper filed using the EXPRESS MAIL® service of the United States Postal Service will be deemed to be filed as of ''date-in'' on the EXPRESS MAIL® mailing label; otherwise, mail will be deemed to be filed as of the stamped date of receipt at the Board.

(2) *Other modes of filing.* The Board may authorize other modes of filing, including electronic filing, and may set conditions for the use of such other modes.

(e) *Service.* (1) Papers filed with the Board, if not previously served, must be served simultaneously on every opposing party except as the Board expressly directs.

(2) If a party is represented by counsel, service must be on counsel.

(3) Service must be by EXPRESS MAIL® (an expedited-delivery service of the United States Postal Service) or by means at least as fast and reliable as EXPRESS MAIL®. Electronic service is not permitted without Board authorization.

(4) The date service is received does not count in computing the time for responding.

(f) *Certificate of service.*

(1) Papers other than exhibits must include a certificate of service as a separate page at the end of each paper that must be served on an opposing party.

(2) Exhibits must be accompanied by a certificate of service, but a single certificate may accompany any group of exhibits submitted together.

(3) A certificate of service must state:

(i) The name of each paper served,

(ii) The date and manner of service, and

(iii) The name and address of every person served.

(4) A certificate made by a person other than a registered patent practitioner must be in the form of an affidavit.

§ 41.107 [Reserved]

§ 41.108 Lead counsel.

(a) A party may be represented by counsel. The Board may require a party to appoint a lead counsel. If counsel is not of record in a party's involved application or patent, then a power of attorney for that counsel for the party's involved application or patent must be filed with the notice required in paragraph (b) of this section.

(b) Within 14 days of the initiation of each contested case, each party must file a separate notice identifying its counsel, if any, and providing contact information for each counsel identified or, if the party has no counsel, then for the party. Contact information must, at a minimum, include:

(1) A mailing address;

(2) An address for courier delivery when the mailing address is not available for such delivery (for example, when the mailing address is a Post Office box);

(3) A telephone number;

(4) A facsimile number; and

(5) An electronic mail address.

(c) A party must promptly notify the Board of any change in the contact information required in paragraph (b).

§ 41.109 Access to and copies of Office records.

(a) *Request for access or copies.* Any request from a party for access to or copies of Office records directly related to a contested case must be filed with the Board. The request must precisely identify the records and in the case of copies include the appropriate fee set under § 1.19(b) of this title.

(b) *Authorization of access and copies.* Access and copies will ordinarily only be authorized for the following records:

(1) The application file for an involved patent;

(2) An involved application; and

(3) An application for which a party has been accorded benefit under subpart E of this part.

(c) *Missing or incomplete copies.* If a party does not receive a complete copy of a record within 21 days of the authorization, the party must promptly notify the Board.

§ 41.110 Filing claim information.

(a) *Clean copy of claims.* Within 14 days of the initiation of the proceeding, each party must file a clean copy of its involved claims and, if a biotechnology material sequence is a limitation, a clean copy of the sequence.

(b) *Annotated copy of claims.* Within 28 days of the initiation of the proceeding, each party must:

(1) For each involved claim having a limitation that is illustrated in a drawing or biotechnology material sequence, file an annotated copy of the claim indicating in bold face between braces ({ }) where each limitation is shown in the drawing or sequence.

(2) For each involved claim that contains a means-plus-function or step-plus-function limitation in the form permitted under 35 U.S.C. 112[6], file an annotated copy of the claim indicating in bold face between braces ({ }) the specific portions of the specification that describe the structure, material, or acts corresponding to each claimed function.

(c) Any motion to amend a claim or add a reissue claim must include an addendum containing a clean set of the claims and, where applicable, an addendum containing claims annotated according to paragraph (b) of this section.

§ 41.120 Notice of basis for relief.

(a) The Board may require a party to provide a notice stating the relief it requests and the basis for its entitlement to relief. The Board may provide for the notice to be maintained in confidence for a limited time.

(b) *Effect.* If a notice under paragraph (a) is required, a party will be limited to filing substantive motions consistent with the notice. Ambiguities in the notice will be construed against the party. A notice is not evidence except as an admission by a party-opponent.

(c) *Correction.* A party may move to correct its notice. The motion should be filed promptly after the party becomes aware of the basis for the correction. A correction filed after the time set for filing notices will only be entered if entry would serve the interests of justice.

§ 41.121 Motions.

(a) *Types of motions.*—(1) *Substantive motions.* Consistent with the notice of requested relief, if any, and to the extent the Board authorizes, a party may file a motion:

(i) To redefine the scope of the contested case,

(ii) To change benefit accorded for the contested subject matter, or

(iii) For judgment in the contested case.

(2) *Responsive motions.* The Board may authorize a party to file a motion to amend, add, or cancel a claim, to change inventorship, or otherwise to cure a defect raised in a notice of requested relief or in a substantive motion.

(3) *Miscellaneous motions.* Any request for relief other than a substantive or responsive motion must be filed as a miscellaneous motion.

(b) *Burden of proof.* The party filing the motion has the burden of proof to establish that it is entitled to the requested relief.

(c) *Content of motions; oppositions and replies.* (1) Each motion must be filed as a separate paper and must include:

(i) A statement of the precise relief requested,

(ii) A statement of material facts in support of the motion in short numbered paragraphs, with specific citations to the portions of the record that support each fact, and

(iii) A full statement of the reasons for the relief requested, including a detailed explanation of the significance of the evidence and the governing law, rules, and precedent.

(2) *Compliance with rules.* Where a rule in part 1 of this title ordinarily governs the relief sought, the motion must make any showings required under that rule in addition to any showings required in this part.

(3) The Board may order additional showings or explanations as a condition for filing a motion.

(4) *Oppositions and replies* must comply with the content requirements for motions and must include a statement identifying material facts in dispute. Any material fact not specifically denied will be considered admitted.

(d) *Board-ordering briefings.* The Board may order briefing on any issue that could be raised by motion.

§ 41.122 New arguments in opposition or reply.

All arguments for the relief requested must be made in a motion. An opposition may raise new arguments, but only in response to arguments made in the corresponding motion. A reply may only respond to arguments raised in the corresponding opposition.

§ 41.123 Time for acting on motions.

(a) A *motion,* other than a miscellaneous motion, may only be filed according to a schedule the Board sets. The default times for acting are:

(1) An *opposition* is due 30 days after service of the motion.

(2) A *reply* is due 30 days after service of the opposition.

(3) A *responsive motion* is due within 30 days of the service of the motion.

(b) *Miscellaneous motions.* (1) If no time for filing a specific miscellaneous motion is provided in this part or in a Board order:

(i) The opposing party must be consulted prior to filing the miscellaneous motion, and

(ii) If an opposing party plans to oppose the miscellaneous motion, the movant may not file the motion without Board authorization. Such authorization should ordinarily be obtained through a telephone conference including the Board and every other party to the proceeding. Delay in seeking relief may justify a denial of the motion.

(2) An opposition may not be filed without authorization. The default times for acting are:

(i) An *opposition* to a miscellaneous motion is due five business days after service of the motion.

(ii) A *reply* to a miscellaneous motion opposition is due three business days after service of the opposition.

§ 41.124 Oral argument.

(a) *Request for oral argument.* A party may request an oral argument on an issue raised in a paper within five business days of the filing of the paper. The request must be filed as a separate paper and must specify the issues to be considered.

(b) *Copies for panel.* If a hearing is set for a panel, the movant on any issue to be heard must provide three working copies of the motion, the opposition, and the reply. Each party is responsible for providing three working copies of its exhibits relating to the motion.

(c) *Length of argument.* If the request is granted, each party will have 20 minutes to present its argument, including any time for rebuttal.

(d) *Demonstrative exhibits* must be served at least five business days before the oral argument and filed no later than the time of the oral argument.

(e) *Transcription.* The Board encourages the use of a transcription service at oral arguments but, if such a service is to be used, the Board must be notified in advance to ensure adequate facilities are available and a transcript must be filed with the Board promptly after the oral argument.

§ 41.125 Decision on motions.

(a) *Order of consideration.* The Board may take up motions for decisions in any order, may grant, deny, or dismiss any motion, and may take such other action appropriate to secure the just, speedy, and inexpensive determination of the proceeding. A decision on a motion may include deferral of action on an issue until a later point in the proceeding.

(b) *Interlocutory decisions.* A decision on motions without a judgment terminating the proceeding is not final for the purposes of judicial review. A

panel decision on an issue will govern further proceedings in the contested case.

(c) *Rehearing.*—(1) *Time for request.* A request for rehearing of a decision must be filed within fourteen days of the decision.

(2) *No tolling.* The filing of a request for rehearing does not toll times for taking action.

(3) *Burden on rehearing.* The burden of showing a decision should be modified lies with the party attacking the decision. The request must specifically identify:

(i) All matters the party believes to have been misapprehended or overlooked, and

(ii) The place where the matter was previously addressed in a motion, opposition, or reply.

(4) *Opposition; reply.* Neither an opposition nor a reply to a request for rehearing may be filed without Board authorization.

(5) *Panel rehearing.* If a decision is not a panel decision, the party requesting rehearing may request that a panel rehear the decision. A panel rehearing a procedural decision will review the decision for an abuse of discretion.

§ 41.126 Arbitration.

(a) Parties to a contested case may resort to binding arbitration to determine any issue in a contested case. The Office is not a party to the arbitration. The Board is not bound and may independently determine questions of patentability, jurisdiction, and Office practice.

(b) The Board will not authorize arbitration unless:

(1) It is to be conducted according to Title 9 of the United States Code.

(2) The parties notify the Board in writing of their intention to arbitrate.

(3) The agreement to arbitrate:

(i) Is in writing,

(ii) Specifies the issues to be arbitrated,

(iii) Names the arbitrator, or provides a date not more than 30 days after the execution of the agreement for the selection of the arbitrator, and

(iv) Provides that the arbitrator's award shall be binding on the parties and that judgment thereon can be entered by the Board.

(4) A copy of the agreement is filed within 20 days after its execution.

(5) The arbitration is completed within the time the Board sets.

(c) The parties are solely responsible for the selection of the arbitrator and the conduct of proceedings before the arbitrator.

(d) Issues not disposed of by the arbitration will be resolved in accordance with the procedures established in this subpart.

(e) The Board will not consider the arbitration award unless it:

(1) Is binding on the parties,

(2) Is in writing,

(3) States in a clear and definite manner each issue arbitrated and the disposition of each issue, and

(4) Is filed within 20 days of the date of the award.

(f) Once the award is filed, the parties to the award may not take actions inconsistent with the award. If the award is dispositive of the contested subject matter for a party, the Board may enter judgment as to that party.

§ 41.127 Judgment.

(a) *Effect within Office.*—(1) *Estoppel.* A judgment disposes of all issues that were, or by motion could have properly been, raised and decided. A losing party who could have properly moved for relief on an issue, but did not so move, may not take action in the Office after the judgment that is inconsistent with that party's failure to move, except that a losing party shall not be estopped with respect to any contested subject matter for which that party was awarded a favorable judgment.

(2) *Final disposal of claim.* Adverse judgment against a claim is a final action of the Office requiring no further action by the Office to dispose of the claim permanently.

(b) *Request for adverse judgment.* A party may at any time in the proceeding request judgment against itself. Actions construed to be a request for adverse judgment include:

(1) Abandonment of an involved application such that the party no longer has an application or patent involved in the proceeding,

(2) Cancellation or disclaiming of a claim such that the party no longer has a claim involved in the proceeding,

(3) Concession of priority or unpatentability of the contested subject matter, and

(4) Abandonment of the contest.

(c) *Recommendation.* The judgment may include a recommendation for further action by the examiner or by the Director. If the Board recommends rejection of a claim of an involved application, the examiner must enter and maintain the recommended rejection unless an amendment or showing of facts not previously of record is filed which, in the opinion of the examiner, overcomes the recommended rejection.

(d) *Rehearing.* A party dissatisfied with the judgment may request rehearing within 30 calendar days of the entry of the judgment. The request must specifically identify all matters the party believes to have been misapprehended or overlooked, and the place where the matter was previously addressed in a motion, opposition, or reply. The Board may toll the time for seeking judicial review (35 U.S.C. 142 and 146[1]) for the pendency of the rehearing.

§ 41.128 Termination.

A contested case is terminated after a final Board action, as soon as any of the following occur:

(a) A notice of appeal under 35 U.S.C. 141 is filed,

(b) A civil action under 35 U.S.C. 146 is commenced, or

(c) The time for seeking judicial review has expired.

§ 41.128 Sanctions.

(a) The Board may impose a sanction against a party for misconduct, including:

(1) Failure to comply with an applicable rule or order in the proceeding;

(2) Advancing a misleading or frivolous request for relief or argument; or

(3) Engaging in dilatory tactics.

(b) Sanctions include entry of:

(1) An order holding certain facts to have been established in the proceeding;

(2) An order expunging, or precluding a party from filing, a paper;

(3) An order precluding a party from presenting or contesting a particular issue;

(4) An order precluding a party from requesting, obtaining, or opposing discovery;

(5) An order excluding evidence;

(6) An order awarding compensatory expenses, including attorney fees;

(7) An order requiring terminal disclaimer of patent term; or

(8) Judgment in the contested case.

§ 41.150 Discovery.

(a) *Limited discovery.* A party is not entitled to discovery except as authorized in this subpart. The parties may agree to discovery among themselves at any time.

(b) *Automatic discovery.*

(1) Within 21 days of a request by an opposing party, a party must:

(i) Serve a legible copy of every requested patent, literature reference, and test standard mentioned in the specification of the party's involved patent or application, or application upon which the party will rely for benefit, and, if the requested material is in a language other than English, a translation, if available, and

(ii) File with the Board a notice (without copies of the requested

materials) of service of the requested materials.

(2) Unless previously served, or the Board orders otherwise, any exhibit cited in a motion or in testimony must be served with the citing motion or testimony.

(c) *Additional discovery.* A party may request additional discovery. The requesting party must show that such additional discovery is in the interests of justice. The Board may specify conditions for such additional discovery.

§ 41.151 Admissibility.

Evidence that is not taken, sought, or filed in accordance with this subpart shall not be admissible.

§ 41.152 Applicability of the Federal Rules of Evidence.

(a) *Generally.* Except as otherwise provided in this subpart, the Federal Rules of Evidence shall apply to contested cases.

(b) *Exclusions.* Those portions of the Federal Rules of Evidence relating to criminal proceedings, juries, and other matters not relevant to proceedings under this subpart shall not apply.

(c) *Modifications in terminology.* Unless otherwise clear from context, the following terms of the Federal Rules of Evidence shall be construed as indicated:

Appellate court means United States Court of Appeals for the Federal Circuit or a United States district court when judicial review is under 35 U.S.C. 146.

Civil action, civil proceeding, action, and *trial* mean contested case.

Courts of the United States, U.S. Magistrate, court, trial court, and *trier of fact* mean *Board.*

Hearing means:

(i) In Federal Rule of Evidence 703, the time when the expert testifies.

(ii) In Federal Rule of Evidence 804(a)(5), the time for taking testimony.

Judge means the Board.

Judicial notice means official notice.

Trial or hearing means, in Federal Rule of Evidence 807, the time for taking testimony.

§ 41.153 Records of the United States Patent and Trademark Office.

Certification is not necessary as a condition to admissibility when the evidence to be submitted is a record of the Office to which all parties have access.

§ 41.154 Form of evidence.

(a) Evidence consists of affidavits, transcripts of depositions, documents, and objects. All evidence must be submitted in the form of an exhibit.

(b) *Translation required.* When a party relies on a document or is required to produce a document in a language other than English, a translation of the document into English and an affidavit attesting to the accuracy of the translation must be filed with the document.

(c) An exhibit must conform with the requirements for papers in § 41.106 of this subpart and the requirements of this paragraph.

(1) Each exhibit must have an exhibit label with a unique number in a range assigned by the Board, the names of the parties, and the proceeding number in the following format: JONES EXHIBIT 2001, Jones v. Smith, Interference 104,999

(2) When the exhibit is a paper:

(i) Each page must be uniquely numbered in sequence, and

(ii) The exhibit label must be affixed to the lower right corner of the first page of the exhibit without obscuring information on the first page or, if obscuring is unavoidable, affixed to a duplicate first page.

(d) *Exhibit list.* Each party must maintain an exhibit list with the exhibit number and a brief description of each exhibit. If the exhibit is not filed, the exhibit list should note that fact. The Board may require the filing of a current exhibit list prior to acting on a motion.

§ 1.155 Objection; motion to exclude; motion in limine.

(a) *Deposition.* Objections to deposition evidence must be made during the deposition. Evidence to cure the objection must be provided during the deposition unless the parties to the deposition stipulate otherwise on the deposition record.

(b) *Other than deposition.* For evidence other than deposition evidence:

(1) *Objection.* Any objection must be filed within five business days of service of evidence, other than deposition evidence, to which the objection is directed. The objection must identify the grounds for the objection with sufficient particularity to allow correction in the form of supplemental evidence.

(2) *Supplemental evidence.* The party relying on evidence to which an objection is timely filed may respond to the objection by filing supplemental evidence within ten business days of service of the objection.

(c) *Motion to exclude.* A miscellaneous motion to exclude evidence must be filed to preserve any objection. The motion must identify the objections in the record in order and must explain the objections.

(d) *Motion in limine.* A party may file a miscellaneous motion in limine for a ruling on the admissibility of evidence.

§ 41.156 Compelling testimony and production.

(a) *Authorization required.* A party seeking to compel testimony or production of documents or things must file a miscellaneous motion for authorization. The miscellaneous motion must describe the general relevance of the testimony, document, or thing and must:

(1) In the case of testimony, identify the witness by name or title, and

(2) In the case of a document or thing, the general nature of the document or thing.

(b) *Outside the United States.* For testimony or production sought outside the United States, the motion must also:

(1) *In the case of testimony.*

(i) Identify the foreign country and explain why the party believes the witness can be compelled to testify in the foreign country, including a description of the procedures that will be used to compel the testimony in the foreign country and an estimate of the time it is expected to take to obtain the testimony; and

(ii) Demonstrate that the party has made reasonable efforts to secure the agreement of the witness to testify in the United States but has been unsuccessful in obtaining the agreement, even though the party has offered to pay the expenses of the witness to travel to and testify in the United States.

(2) *In the case of production of a document or thing.* (i) Identify the foreign country and explain why the party believes production of the document or thing can be compelled in the foreign country, including a description of the procedures that will be used to compel production of the document or thing in the foreign country and an estimate of the time it is expected to take to obtain production of the document or thing; and

(ii) Demonstrate that the party has made reasonable efforts to obtain the agreement of the individual or entity having possession, custody, or control of the document to produce the document or thing in the United States but has been unsuccessful in obtaining that agreement, even though the party has offered to pay the expenses of producing the document or thing in the United States.

(c) The Board, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence.

§ 41.157 Taking testimony.

(a) *Form.* Direct testimony must be submitted in the form of an affidavit

except when the testimony is compelled under 35 U.S.C. 24, in which case it may be in the form of a deposition transcript.

(b) *Time and location.*—(1) *Uncompelled direct testimony* may be taken at any time; otherwise, testimony may only be taken during such time period as the Board may authorize.

(2) *Other testimony.* (i) Except as the Board otherwise orders, authorized testimony may be taken at any reasonable time and location within the United States before any disinterested official authorized to administer oaths at that location.

(ii) Testimony outside the United States may only be taken as the Board specifically directs.

(c) *Notice of deposition.* (1) Prior to the taking of testimony, all parties to the proceeding must agree on the time and place for taking testimony. If the parties cannot agree, the party seeking the testimony must initiate a conference with the Board to set a time and place.

(2) Cross-examination should ordinarily take place after any supplemental evidence relating to the direct testimony has been filed and more than a week before the filing date for any paper in which the cross-examination testimony is expected to be used. A party requesting cross-examination testimony of more than one witness may choose the order in which the witnesses are to be cross-examined.

(3) In the case of direct testimony, at least three business days prior to the conference in paragraph (c)(1) of this section, the party seeking the direct testimony must serve:

(i) A list and copy of each document under the party's control and on which the party intends to rely, and

(ii) A list of, and proffer of reasonable access to, any thing other than a document under the party's control and on which the party intends to rely.

(4) Notice of the deposition must be filed at least two business days before a deposition. The notice limits the scope of the testimony and must list:

(i) The time and place of the deposition,

(ii) The name and address of the witness,

(iii) A list of the exhibits to be relied upon during the deposition, and

(iv) A general description of the scope and nature of the testimony to be elicited.

(5) *Motion to quash.* Objection to a defect in the notice is waived unless a miscellaneous motion to quash is promptly filed.

(d) *Deposition in a foreign language.* If an interpreter will be used during the deposition, the party calling the witness must initiate a conference with the Board at least five business days before the deposition.

(e) *Manner of taking testimony.* (1) Each witness before giving a deposition shall be duly sworn according to law by the officer before whom the deposition is to be taken. The officer must be authorized to take testimony under 35 U.S.C. 23.

(2) The testimony shall be taken in answer to interrogatories with any questions and answers recorded in their regular order by the officer, or by some other disinterested person in the presence of the officer, unless the presence of the officer is waived on the record by agreement of all parties.

(3) Any exhibits relied upon must be numbered according to the numbering scheme assigned for the contested case and must, if not previously served, be served at the deposition.

(4) All objections made at the time of the deposition to the qualifications of the officer taking the deposition, the manner of taking it, the evidence presented, the conduct of any party, and any other objection to the proceeding shall be noted on the record by the officer. Evidence objected to shall be taken subject to a ruling on the objection.

(5) When the testimony has been transcribed, the witness shall read and sign (in the form of an affidavit) a transcript of the deposition unless:

(i) The parties otherwise agree in writing,

(ii) The parties waive reading and signature by the witness on the record at the deposition, or

(iii) The witness refuses to read or sign the transcript of the deposition.

(6) The officer shall prepare a certified transcript by attaching to the transcript of the deposition a certificate in the form of an affidavit signed and sealed by the officer. Unless the parties waive any of the following requirements, in which case the certificate shall so state, the certificate must state:

(i) The witness was duly sworn by the officer before commencement of testimony by the witness;

(ii) The transcript is a true record of the testimony given by the witness;

(iii) The name of the person who recorded the testimony and, if the officer did not record it, whether the testimony was recorded in the presence of the officer;

(iv) The presence or absence of any opponent;

(v) The place where the deposition was taken and the day and hour when the deposition began and ended;

(vi) The officer has no disqualifying interest, personal or financial, in a party; and

(vii) If a witness refuses to read or sign the transcript, the circumstances under which the witness refused.

(7) The officer must promptly provide a copy of the transcript to all parties. The proponent of the testimony must file the original as an exhibit.

(8) Any objection to the content, form, or manner of taking the deposition, including the qualifications of the officer, is waived unless made on the record during the deposition and preserved in a timely filed miscellaneous motion to exclude.

(f) *Costs.* Except as the Board may order or the parties may agree in writing, the proponent of the testimony shall bear all costs associated with the testimony, including the reasonable costs associated with making the witness available for the cross-examination.

§ 41.158 Expert testimony; tests and data.

(a) Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight. Testimony on United States patent law will not be admitted.

(b) If a party relies on a technical test or data from such a test, the party must provide an affidavit explaining:

(1) Why the test or data is being used,

(2) How the test was performed and the data was generated,

(3) How the data is used to determine a value,

(4) How the test is regarded in the relevant art, and

(5) Any other information necessary for the Board to evaluate the test and data.

Subpart E—Patent Interferences

§ 41.200 Procedure; pendency.

(a) A patent interference is a contested case subject to the procedures set forth in subpart C of this part.

(b) A claim shall be given its broadest reasonable construction in light of the specification of the application or patent in which it appears.

(c) Patent interferences shall be administered such that pendency before the Board is normally no more than two years.

§ 41.201 Definitions.

In addition to the definitions in §§ 41.2 and 41.100, the following definitions apply to proceedings under this subpart:

Accord benefit means Board recognition that a patent application provides a proper constructive

reduction to practice under 35 U.S.C. 102(g).

Constructive reduction to practice means description and enablement of an embodiment within the scope of the interfering subject matter in a patent application.

Count means the Board's description of the interfering subject matter that sets the scope of admissible proofs on priority. Where there is more than one count, each count must describe a patentably distinct invention.

Earliest constructive reduction to practice means the first constructive reduction to practice that has been continuously disclosed through a chain of patent applications culminating in the involved application or patent. For the chain to be continuous, each subsequent application must have been co-pending under 35 U.S.C. 120 or 121, or timely filed under 35 U.S.C. 119 or 365(a).

Involved claim means, for the purposes of 35 U.S.C. 135(a), a claim that has been designated as corresponding to the count.

Senior party means the party entitled to the presumption under § 41.207(a)(1) that it is the prior inventor. Any other party is a *junior party.*

Threshold issue means an issue that, if resolved in favor of the movant, would deprive the opponent of standing in the interference. Threshold issues may include:

(1) No interference-in-fact, and

(2) In the case of an involved application claim first made after the publication of the movant's application or issuance of the movant's patent:

(i) Repose under 35 U.S.C. 135(b) in view of the movant's patent or published application, or

(ii) Unpatentability for lack of written description under 35 U.S.C. 112[1] of an involved application claim.

§ 41.202 Suggesting an interference.

(a) *Applicant.* An applicant, including a reissue applicant, may suggest an interference with another application or a patent. The suggestion must:

(1) Provide sufficient information to identify the application or patent with which the applicant seeks an interference,

(2) Identify all claims the applicant believes interfere and show how they should correspond to one or more counts,

(3) For each count, provide a claim chart comparing at least one claim of each party corresponding to the count and show why the claims interfere within the meaning of § 41.203(a),

(4) Explain in detail why the applicant will prevail on priority,

(5) If a claim has been added or amended to provoke an interference, provide a claim chart showing the written description for each claim in the applicant's specification, and

(6) For each constructive reduction to practice for which the applicant wishes to be accorded benefit, provide a chart showing where the disclosure provides enabling description of an embodiment within the scope of the interfering subject matter.

(b) *Patentee.* A patentee cannot suggest an interference under this section, but may file a protest to the extent permitted under § 1.291 of this title to draw the examiner's attention to a potential interference.

(c) *Examiner.* An examiner may require an applicant to add a claim to provoke an interference. Failure to satisfy the requirement within a period (not less than one month) the examiner sets will operate as a concession of priority for the subject matter of the claim. The claim the examiner proposes to have added must, apart from the question of priority under 35 U.S.C. 102(g):

(1) Be patentable to the applicant and

(2) Be drawn to patentable subject matter claimed by another applicant or patentee.

(d) *Requirement to show priority under 35 U.S.C. 102(g).* (1) When an applicant has an earliest constructive reduction to practice that is later than the apparent earliest constructive reduction to practice for a patent or published application claiming interfering subject matter, the applicant must show why it would prevail on priority.

(2) If an applicant fails to show priority under paragraph (d)(1) of this section, an administrative patent judge may nevertheless declare an interference to place the applicant under an order to show cause why judgment should not be entered against the applicant on priority. New evidence in support of priority will not be admitted except on a showing of good cause. The Board may authorize the filing of motions to redefine the interfering subject matter or to change the benefit accorded to the parties.

(e) *Sufficiency of showing.* A showing of priority under this section is not sufficient unless it would, if unrebutted, support with adequate evidence a determination of priority in favor of the party making the showing.

§ 41. 203 Declaration.

(a) *Interfering subject matter.* An interference exists if the subject matter of a claim of one party would, if prior art, have anticipated or rendered obvious the subject matter of a claim of the opposing party and vice versa.

(b) *Notice of declaration.* An administrative patent judge declares the patent interference on behalf of the Director. A notice declaring an interference identifies:

(1) The interfering subject matter;

(2) The involved applications, patents, and claims;

(3) The accorded benefit for each count; and

(4) The claims corresponding to each count.

(c) *Redeclaration.* An administrative patent judge may redeclare a patent interference on behalf of the Director to change the declaration made under paragraph (b) of this section.

(d) *Additional patent, application, or interference.* A party may suggest the addition of a patent or application to the interference or the declaration of an additional interference. The suggestion should make the showings required under § 41.202(a).

§ 41.204 Notice of basis for relief.

(a) *Priority statement.* Each party that will submit evidence of its priority apart from its accorded benefit must file a statement alleging with particularity facts that, if proved, would be sufficient for it to establish an earlier date of conception or an earlier actual reduction to practice. The statement must include all bases on which the party intends to establish its entitlement to a judgment on priority and must include documentary support for each basis when the documentary support is a unique record under the control of the party or its real party-in-interest. Failure of a junior party to file a sufficient priority statement will be treated as an abandonment of contest absent a showing of good cause.

(b) *Other substantive motions.* For each substantive motion that a party will file, the Board may require a statement of basis for the relief the party seeks.

(c) *Filing and service.* The Board will set the times for filing and serving statements required under this section.

§ 41.205 Settlement agreements.

(a) *Constructive notice; time for filing.* Pursuant to 35 U.S.C. 135(c), an agreement or understanding, including collateral agreements referred to therein, made in connection with or in contemplation of the termination of an interference must be filed prior to the termination (§ 41.128) of the interference between the parties to the agreement.

(b) *Untimely filing.* The Chief Administrative Patent Judge may permit

the filing of an agreement under paragraph (a) of this section up to six months after termination upon petition and a showing of good cause for the failure to file prior to termination.

(c) *Request to keep separate.* Any party to an agreement under paragraph (a) of this section may request that the agreement be kept separate from the interference file. The request must be filed with or promptly after the agreement is filed.

(d) *Access to agreement.* Any person, other than a representative of a Government agency, may have access to an agreement kept separate under paragraph (c) of this section only upon petition and on a showing of good cause. The agreement will be available to Government agencies on written request.

§ 41.206 Common interests in the invention.

An administrative patent judge may decline to declare, or if already declared the Board may terminate, an interference between an application and another application or patent that are commonly owned.

§ 41.207 Presumptions.

(a) *Priority.*—(1) *Order of invention.* Parties are presumed to have invented interfering subject matter in the order of the dates of their accorded benefit for each count. If two parties are accorded the benefit of the same earliest date of constructive reduction to practice, then neither party is entitled to a presumption of priority with respect to the other such party.

(2) *Evidentiary standard.* Priority may be proved by a preponderance of the evidence except a party must prove priority by clear and convincing evidence if the date of its earliest constructive reduction to practice is after the issue date of an involved patent or the publication date under 35 U.S.C. 122(b) of an involved application or patent.

(b) *Claim correspondence.* (1) For the purposes of determining priority and derivation, all claims of a party corresponding to the count are presumed to stand or fall together. To challenge this presumption, a party must file a timely substantive motion to have a corresponding claim designated as not corresponding to the count. No presumption based on claim correspondence regarding the grouping of claims exists for other grounds of unpatentability.

(2) A claim corresponds to a count if the subject matter of the count, treated as prior art to the claim, would have anticipated or rendered obvious the subject matter of the claim.

(c) *Cross-applicability of prior art.* When a motion for judgment of unpatentability against an opponent's claim on the basis of prior art is granted, each of the movant's claims corresponding to the same count as the opponent's claim will be presumed to be unpatentable in view of the same prior art unless the movant in its motion rebuts this presumption with supporting evidence.

(d) *Abandonment, suppression, or concealment.* A party is presumed to have abandoned, suppressed, or concealed the interfering subject matter if the accorded date of the party's earliest constructive reduction to practice is more than one year after the party's actual reduction to practice. A party subject to this presumption must show in its motion for priority that it did not abandon, suppress, or conceal its invention.

§ 41.208 Content of substantive and responsive motions.

The general requirements for motions in contested cases are stated at § 41.121(c).

(a) In an interference, substantive motions must:

(1) Raise a threshold issue,

(2) Seek to change the scope of the count or the correspondence of claims to the count,

(3) Seek to change the benefit accorded for the count, or

(4) Seek judgment on derivation or on priority.

(b) To be sufficient, a motion must provide a showing, supported with appropriate evidence, such that, if unrebutted, it would justify the relief sought. The burden of proof is on the movant.

(c) *Specific motions* that may be authorized, along with necessary content for each, include:

(1) *No interference-in-fact.* A party moving for judgment because the involved claims do not, in fact, claim interfering subject matter must, for each of its involved claims, show that the subject matter of the claim does not interfere within the meaning of § 41.203(a) with the subject matter of any involved claim of an opponent.

(2) *Repose under 35 U.S.C. 135(b).* A party moving for repose under 35 U.S.C. 135(b) must:

(i) Identify the claims of the movant's United States patent or published application claiming the same or substantially the same invention as is claimed in an opponent's involved claim, and

(ii) Show the opponent did not make such a claim prior to one year from the grant of the patent or the publication of the application.

(3) *Unpatentability of a claim.* A party moving for a decision that an opponent's claim is not patentable to the opponent must:

(i) Identify the legal basis for unpatentability,

(ii) Show why each claim alleged to be unpatentable fails to satisfy the substantive requirements of the legal basis identified, and

(iii) For arguments involving prior art, explain why the movant's claims corresponding to the same count as the opponent's claim are not unpatentable in view of the prior art.

(4) *Adding or substituting a count.* (i) The movant must show why the proposed count does not define the same invention within the meaning of § 41.203(a) as any other count, including the count it would replace.

(ii) *To broaden a count* to include subject matter not in the current count, the movant must:

(A) Show that the proposed count does not include prior art subject matter,

(B) Show that the additional subject matter interferes within the meaning of § 41.203(a) with subject matter in an opponent's involved claim, and

(C) Show why the change is necessary to a priority determination. If the change is necessary to include the movant's best proof of priority, the movant must proffer that proof with an explanation of why it does not fall within the scope of the current count.

(5) *Changing claim correspondence.*—(i) *To add a claim.* A party moving to add a claim to an involved patent or application must show that the subject matter of the count would have anticipated or rendered obvious the subject matter of the added claim and that the added claim would be patentable in the patent or application. The showing of patentability must include a showing of where the disclosure of the patent or application provides written description of the subject matter of the claim.

(ii) *To designate a claim as corresponding to a count.* A party moving to have a claim designated as corresponding to a count must show that the subject matter of the count would have anticipated or rendered obvious the subject matter of the claim.

(iii) *To designate a claim as not corresponding to a count.* A party moving to have a claim designated as not corresponding to a count must show that:

(A) The subject matter of the count would not have anticipated or rendered

obvious the subject matter of the claim, and

(B) The claim to be designated as not corresponding to the count does not interfere within the meaning of § 41.203(a) with any claim of an opponent's involved patent or application.

(6) *Changing the accorded benefit.* A party moving:

(i) *To be accorded the benefit* of another constructive reduction to practice date must show that the application for which benefit is sought provided a constructive reduction to practice of an embodiment within the scope of the count.

(ii) *To attack the accorded benefit* of a constructive reduction to practice date accorded to an opponent must show that the application for which benefit has been accorded does not provide a constructive reduction to practice of an embodiment within the scope of the count or that the disclosure of the embodiment has not been continuous.

(7) *Other requirements.* The Board may specify additional requirements for a motion.

(d) *Claim charts.* Claim charts must be used in support of any paper requiring the comparison of a claim to something else, such as another claim, prior art, or a specification. Claim charts must accompany the paper as an appendix. Claim charts are not a substitute for appropriate argument and explanation in the paper.

Dated: November 12, 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. 03–29154 Filed 11–25–03; 8:45 am]

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