



# Federal Register

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Title 3—

Proclamation 7740 of December 1, 2003

The President

World AIDS Day, 2003

By the President of the United States of America

**A Proclamation**

The HIV/AIDS pandemic presents one of the greatest medical and social challenges of our time. On World AIDS Day, members of the global community come together to demonstrate our shared commitment to turning the tide against the spread of HIV/AIDS, bringing hope and healing to those who are suffering, and finding a cure.

Over the last two decades, AIDS has claimed the lives of more than 20 million people. Three million have died in the last year alone. Today, more than 40 million people are living with HIV, including nearly 30 million in Africa. Behind these staggering numbers are the names and faces of orphaned and suffering children, devastated communities, and a continent in crisis.

In my State of the Union Message to the Congress in January of this year, I announced an “Emergency Plan for AIDS Relief,” with a goal of helping millions around the world affected by HIV/AIDS, particularly those in the most afflicted nations in Africa and the Caribbean. In May, the Congress responded by passing the “United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003,” which I signed into law. A life-saving initiative, the Act commits \$15 billion over the next 5 years to prevent 7 million new HIV infections, treat at least 2 million people with life-extending drugs, provide care for at least 10 million people affected by AIDS, continue bilateral programs in over 75 countries, and increase support for the Global Fund to Fight AIDS, Tuberculosis, and Malaria. This work of mercy will help overcome fear, stigma, and discrimination and create a cycle of hope and promise that will benefit millions.

Here at home, we will spend more than \$15 billion this year to combat AIDS in America. This money will support research activities, care and treatment services, and prevention programs, including the wide availability of rapid HIV testing.

Fighting HIV/AIDS is not only a great challenge but also a moral imperative for those who believe in the value and dignity of every human life. This World AIDS Day, the United States remains committed to taking action, showing compassion, and bringing hope to those affected by HIV/AIDS around the world.

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 December 1, 2003, as World AIDS Day. I urge the Governors of the States and the Commonwealth of Puerto Rico, officials of the other territories subject to the jurisdiction of the United States, and the American people to join me in reaffirming our commitment to combating HIV/AIDS. I encourage all Americans to participate in appropriate commemorative programs and ceremonies in houses of worship, workplaces, and other community centers to remember those who have lost their lives to this deadly disease and to comfort and support those living with and affected by HIV/AIDS.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of December, 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.

A handwritten signature in black ink, appearing to read "G. W. Bush". The signature is fluid and cursive, with a large initial "G" and a distinct "W" and "B".

[FR Doc. 03-30305  
Filed 12-3-03; 8:45 am]  
Billing code 3195-01-P

# Rules and Regulations

Federal Register

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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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## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Part 905

[No. 2003-09]

RIN 3069-AB25

#### Amendments to the Description of Organization and Functions Regulation; Correction

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Final rule; correction.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is correcting a final rule that appeared in the **Federal Register** of June 27, 2003. That document revised the Finance Board's Description of Organization and Functions regulation to reflect agency reorganizations that already have taken effect. The document was published with an inadvertent error, which referenced § 905.15 as being revised rather than removed. This document corrects that error.

**DATES:** The rule was effective June 27, 2003.

#### FOR FURTHER INFORMATION CONTACT:

Mary H. Gottlieb, Paralegal Specialist, Office of General Counsel, by telephone at 202/408-2826, by electronic mail at [gottlieb@fhfb.gov](mailto:gottlieb@fhfb.gov), or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 03-16317, appearing in the **Federal Register** of Friday, June 27, 2003 (68 FR 38169), the following correction is made:

■ On page 38170, in the first column, amendatory instruction No. 6 is corrected to read as follows:

#### Subpart B—[Corrected]

■ 6. Amend Subpart B of part 905 by revising §§ 905.10 through 905.14, and

removing §§ 905.15 through 905.19 to read as follows:

Dated: November 17, 2003.

By the Federal Housing Finance Board.

**Arnold Intrater,**  
*General Counsel.*

[FR Doc. 03-30180 Filed 12-3-03; 8:45 am]

**BILLING CODE 6725-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2003-CE-28-AD; Amendment 39-13382; AD 2003-24-13]

RIN 2120-AA64

#### Airworthiness Directives; Cessna Aircraft Company Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA adopts a new airworthiness directive (AD) for certain Cessna Aircraft Company (Cessna) Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes that are equipped with a Honeywell KAP 140 autopilot computer system installed on the center instrument control panel near the throttle. This AD requires you to install an update to the operating software of the KAP 140 autopilot computer system, change the unit's part number, and change the software modification identification tag. This AD is the result of reports of inadvertent and undetected engagement of the autopilot system. We are issuing this AD to prevent unintentionally engaging the KAP 140 autopilot computer system, which could cause the pilot to take inappropriate actions.

**DATES:** This AD becomes effective on January 20, 2004.

As of January 20, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

**ADDRESSES:** You may get the service information identified in this AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517-5800; facsimile: (316) 942-9006 and

Honeywell, Business, Regional, and General Aviation, 23500 W. 105th Street, Olathe, Kansas 66061.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-CE-28-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dan Withers, Aerospace Engineer, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946-4196; facsimile: (316) 946-4407.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

*What events have caused this AD? We have received reports of an unsafe condition on certain Cessna Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes that are equipped with a Honeywell KAP 140 autopilot computer system.*

The KAP 140 autopilot computer system is located on the lower portion of the center instrument control panel near the throttle on these Cessna airplanes. Because of this location on the instrument control panel of the affected Cessna airplanes, the Autopilot Engage (AP) button could unintentionally be depressed when the pilot pushes the throttle knob forward. The pilot could also unintentionally engage the autopilot system by inadvertently bumping the Heading (HDG) button, Altitude (ALT) mode-select button, or Autopilot Engage (AP) button on the KAP 140 computer. Unless intentionally engaged, the pilot does not know that the autopilot system is engaged.

The Honeywell KAP 140 autopilot computer system is also installed in the New Piper, Inc. Model PA-28-181 airplanes. This AD does not affect these airplanes because of the location of the equipment. The equipment is installed on the center instrument panel near the throttle on the affected airplanes, but is installed in the upper half of the instrument control panel on the Piper airplanes. The unsafe condition only exists on the Cessna airplanes.

Honeywell has updated the operating software for the KAP 140 autopilot computer system, which will now only allow the AP button on the instrument

control panel to engage the autopilot system. This update also adds two voice messages if auto trim operation is detected, lengthens the amount of time that the autopilot button must be depressed in order for it to engage, and changes how the flight control display shows that the AP has been engaged.

*What is the potential impact if FAA took no action?* If not corrected, inadvertent and undetected engagement of the autopilot system could cause the pilot to take inappropriate actions.

*Has FAA taken any action to this point?* We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Cessna Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes that are equipped with a Honeywell KAP 140 autopilot computer system installed on the center instrument control panel near the throttle. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 29, 2003 (68 FR 44497). The NPRM proposed to require you to:

- Install an update to the autopilot computer system operating software;
- Change the unit part number;
- Place an M tag on the unit serial number tag; and
- Change the unit's software modification tag.

**Comments**

*Was the public invited to comment?* We provided the public the opportunity to participate in the development of this AD. The following presents the comments received on the proposal and FAA's response to each comment:

**Comment Issue: AD Action Is Not Necessary**

*What is the commenter's concern?* Three commenters state that they do not think AD action is necessary to address

the proposed unsafe condition; however, one commenter agrees with the change to the KC 140 autopilot computer system operating software.

The other commenters state that appropriate pilot recognition and response could easily resolve the problem. One commenter states that an attentive pilot would know if the autopilot has been unintentionally engaged. The commenter gives examples of circumstances that should alert the pilot that the autopilot has been engaged:

- There is significant resistance in the controls;
- The mode of operation (*i.e.*, ROL, HDG, etc.) is immediately displayed on the face of the autopilot; and
- The pitch trim wheel never moves on its own; therefore, if the autopilot is engaged and the pilot is trying to make a change in pitch manually, the autopilot will resist this change and the pitch trim wheel will move.

The commenter states that because there are multiple indications that the KAP 140 autopilot is engaged, the proposed AD is not necessary.

We infer that the commenters want us to withdraw the NPRM.

*What is FAA's response to the concern?* We do not agree with that we should withdraw the NPRM. We agree that the autopilot computer system operating software should be updated. The changes to the KC 140 autopilot computer system operating software required by this AD will greatly limit the ability of the pilot to unintentionally engage the autopilot. The changes will also provide additional indications to the pilot that the autopilot has been engaged.

Because we continue to receive reports of related accidents involving pilots with experience ranging from novice to certified flight instructors, it is an indication that it is not obvious to all

pilots that the autopilot is engaged. We do not agree that we could resolve the problem through appropriate pilot recognition and response.

We are not changing the final rule AD based on these comments.

**Conclusion**

*What is FAA's final determination on this issue?* We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for the changes discussed above and minor editorial corrections. We have determined that these changes and minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

**Changes to 14 CFR Part 39—Effect on the AD**

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

**Costs of Compliance**

*How many airplanes does this AD impact?* We estimate that this AD affects 3,681 airplanes in the U.S. registry.

*What is the cost impact of this AD on owners/operators of the affected airplanes?* We estimate the following costs to accomplish the modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
7 workhours × \$65 per hour = \$455 .....	Not applicable .....	\$455	7 workhours × \$65 per hour = \$455

Not all Cessna Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes on the U.S. registry have a KAP 140 autopilot computer system installed.

Honeywell will provide warranty credit for labor and parts to the extent noted under WARRANTY INFORMATION in Honeywell Service Bulletin No: KC 140–M1, dated August 2002.

**Regulatory Findings**

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

*Will this AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this AD:

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003-CE-28-AD" in your request.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

Accordingly, under the authority delegated to me by the Administrator,

the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

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

**2003-24-13 Cessna Aircraft Company:** Amendment 39-13382; Docket No. 2003-CE-28-AD.

**When Does This AD Become Effective?**

(a) This AD becomes effective on January 20, 2004.

**What Other ADs Are Affected by This Action?**

(b) None.

**What Airplanes Are Affected by This AD?**

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

- (1) equipped with a KAP 140 autopilot computer system, part number (P/N) 065-00176-2602, P/N 065-00176-5402, or P/N 065-00176-7702; and
- (2) certificated in any category;

Model	Serial Nos.
172R .....	17280001 through 17281073, 17281075 through 17281127, and 17281130.
172S .....	172S8001 through 172S9195, 172S9197, 172S9198, and 172S9200 through 172S9203.
182S .....	18280001 through 18280944.
182T .....	18280945 through 18281064, 18281067 through 18281145, 18281147 through 18281163, 18281165 through 18281167, and 18281172.
T182T .....	T18208001 through T18208109, and T18208111 through T18208177.
206H .....	20608001 through 20608183, 20608185, 20608187, and 20608188.
T206H .....	T20608001 through T20608039, T20608041 through T20608367, T20608269 through T20608379, T20608381, T20608382, and T20608385.

**What Is the Unsafe Condition Presented in This AD?**

(d) This AD is the result of reports of inadvertent and undetected engagement of

the autopilot system. The actions specified in this AD are intended to prevent unintentionally engaging the KAP 140 autopilot computer system, which could cause the pilot to take inappropriate actions.

**What Must I Do To Address This Problem?**

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

Actions	Compliance	Procedures
(1) Install and update the KC 140 autopilot computer system operating software.	Within the next 100 hours time-in-service (TIS) after January 20, 2004 (the effective date of this AD), unless already done.	Follow Honeywell Service Bulletin No: KC 140-M1, dated August 2002, as specified in Cessna Service Bulletin SB02-22-01, dated November 25, 2002.
(2) Do the following: (i) Change the unit part number by attaching flavor sticker, part number (P/N) 057-02203-0003, on the unit's serial tag; (ii) Attach an M decal, P/N 057-02984-0501, in front of the unit serial number (this indicates that the unit's P/N has been changed); and (iii) Attach a software mod tag, P/N 057-05287-0301, in place of the old tag to indicate the software change to SW MOD 03/01.	Prior to further flight after installing the update to the KC 140 autopilot computer system operating software, unless already done.	Follow Honeywell Service Bulletin No: KC 140-M1, dated August 2002, as specified in Cessna Service Bulletin SB02-22-01, dated November 25, 2002.
(3) Only install KC 140 autopilot computer systems, P/Ns 065-00176-2602, 065-00176-5402, and 065-00176-7702, that have been modified as specified in paragraphs (d)(1) and (d)(2) of this AD).	As of January 20, 2004 (the effective date of this AD).	Not applicable.

(f) You may request a revised flight manual supplement from Cessna or Honeywell at the address specified in paragraph (h) of this AD.

**May I Request an Alternative Method of Compliance?**

(g) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already

approved alternative methods of compliance, contact Dan Withers, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946-4196; facsimile: (316) 946-4107.

**Does This AD Incorporate Any Material by Reference?**

(h) You must do the actions required by this AD per Honeywell Service Bulletin No: KC 140-M1, dated August 2002, as specified

in Cessna Service Bulletin SB02-22-01, dated November 25, 2002. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517-5800; facsimile: (316) 942-9006 and Honeywell, Business, Regional, and General Aviation, 23500 W. 105th Street, Olathe, Kansas 66061. You may review

copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Issued in Kansas City, Missouri, on November 25, 2003.

**Michael Gallagher,**

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

[FR Doc. 03-30075 Filed 12-3-03; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2003-NM-68-AD; Amendment 39-13380; AD 2003-24-11]

RIN 2120-AA64

#### Airworthiness Directives; McDonnell Douglas Model MD-11 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD-11 airplanes, that currently requires repetitive general visual inspections of the power feeder cables, terminal strip, fuseholder, and fuses of the galley load control unit (GLCU) within the No. 3 bay electrical power center (EPC) to detect damage; and corrective actions, if necessary. For certain airplanes, this amendment requires replacement of the electrical wiring of the galley in the EPC. For certain other airplanes, this amendment requires an inspection to detect damage of the electrical wiring of the galley in the EPC; corrective actions if necessary; modification of the wiring support; and removal of spare fuses; as applicable. These new actions terminate the repetitive inspection requirements. This amendment also limits the applicability of the existing AD. This amendment is prompted by the FAA's determination that additional rulemaking is necessary. The actions specified by this AD are

intended to prevent chafing damage to the wire assembly, and consequent arcing and smoke and fire in the EPC, and to prevent damage to the wire assembly terminal lugs and overheating of the power feeder cables on the No. 3 and No. 4 GLCU, which could result in smoke and fire in the center accessory compartment. This action is intended to address the identified unsafe condition.

**DATES:** Effective January 8, 2004.

The incorporation by reference of a certain publication, as listed in the regulations is approved by the Director of the Federal Register as of January 8, 2004.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 4, 2000 (64 FR 71001, December 20, 1999).

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane 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 Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5350; fax (562) 627-5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2002-17-06, amendment 39-12872 (67 FR 55716, August 30, 2002), which is applicable to certain McDonnell Douglas Model MD-11 airplanes, was published in the **Federal Register** on August 27, 2003 (68

FR 51523). The action proposed to continue to require repetitive general visual inspections of the power feeder cables, terminal strip, fuseholder, and fuses of the galley load control unit (GLCU) within the No. 3 bay electrical power center (EPC) to detect damage; and corrective actions, if necessary. For certain airplanes, that action proposed to require replacement of the electrical wiring of the galley in the EPC. For certain other airplanes, that action proposed to require an inspection to detect damage of the electrical wiring of the galley in the EPC; corrective actions if necessary; modification of the wiring support; and removal of spare fuses; as applicable. Those new actions would terminate the repetitive inspection requirements. That action also proposed to limit the applicability of the existing AD.

#### Comments

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

#### Conclusion

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

#### Cost Impact

There are approximately 112 airplanes of the affected design in the worldwide fleet. The FAA estimates that 32 airplanes of U.S. registry will be affected by this AD.

The inspection that is currently required by AD 2002-17-06 and retained in this AD 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 currently required inspection on U.S. operators is estimated to be \$2,080, or \$65 per airplane, per inspection cycle.

Table 1 of this AD shows the estimated cost impact of the new actions for airplanes affected by this AD. The average labor rate is \$65 per work hour. Table 1 is as follows:

TABLE 1.—COST ESTIMATE

Task	For group 1 airplanes			For group 2 airplanes		
	Work hours	Required parts	Cost per airplane	Work hours	Required parts	Cost per airplane
Replacement .....	18	\$15,276	\$16,446	19	\$17,261	\$18,496
Task	For group 3 airplanes			For group 4 airplanes		
	Work hours	Required parts	Cost per airplane	Work hours	Required parts	Cost per airplane
Inspection .....	1	None	\$65	1	None	\$65
Modification .....	2	\$190	\$320	1	\$9	\$74

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. The manufacturer may cover the cost of replacement parts associated with this AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this AD. As a result, the cost attributable to this AD may be less than stated above.

### 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 39-12872 (67 FR 55716, August 30, 2002), and by adding a new airworthiness directive (AD), amendment 39-13380, to read as follows:

#### 2003-24-11 McDonnell Douglas:

Amendment 39-13380. Docket 2003-NM-68-AD. Supersedes AD 2002-17-06, Amendment 39-12872.

**Applicability:** Model MD-11 airplanes, as listed in Boeing Service Bulletin MD11-24-184, Revision 02, dated January 7, 2003; certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent chafing damage to the wire assembly, and consequent arcing and smoke and fire in the electrical power center (EPC), and to prevent damage to the wire assembly terminal lugs and overheating of the power feeder cables on the No. 3 and No. 4 galley load control unit (GLCU), which could result in smoke and fire in the center accessory compartment; accomplish the following:

#### Certain Requirements of AD 2002-17-06, Amendment 39-12872

##### Initial Inspection

(a) Do a general visual inspection of the power feeder cables, terminal strip, fuseholder, and fuses of the GLCU within the

No. 3 bay EPC to detect damage (*i.e.*, discoloration of affected parts or loose attachments), per McDonnell Douglas Alert Service Bulletin MD11-24A160, dated August 30, 1999; or Revision 01, dated November 11, 1999; at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

(1) For airplanes on which the replacement required by paragraph (c) of AD 2002-14-05, amendment 39-12805, has been done: Inspect within 60 days after September 16, 2002 (the effective date AD 2002-17-06, amendment 39-12872).

(2) For airplanes on which the replacement required by paragraph (c) of AD 2002-14-05 has not been done: Inspect within 600 flight hours from the last inspection required by AD 2002-14-05, or within 60 days after September 16, 2002, whichever occurs later.

**Note:** 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."

#### No Damage Detected: Repetitive Inspections

(b) If no damage is detected during any inspection required by paragraph (a) of this AD, repeat the general visual inspection every 600 flight hours.

#### Damage Detected: Replacement and Repetitive Inspections

(c) If any damage is detected during any inspection required by paragraph (a) of this AD, before further flight, replace the power feeder cables, fuseholder, and/or fuses, as applicable, with new parts, per McDonnell Douglas Alert Service Bulletin MD11-24A160, dated August 30, 1999; or Revision 01, dated November 11, 1999. Repeat the general visual inspection every 600 flight hours.

**New Requirements of This AD***Group 1 and Group 2 Airplanes: Replacement of Electrical Wiring*

(d) For Group 1 and Group 2 airplanes identified in Boeing Service Bulletin MD11-24-184, Revision 02, dated January 7, 2003: Within 12 months after the effective date of this AD, replace the electrical wiring of the galley in the EPC in bays 1, 2, and 3, per the service bulletin. Accomplishment of the replacement terminates the requirements of paragraphs (a) through (c) of this AD.

*Group 3 and Group 4 Airplanes: Inspection for Damage, Modification of Wiring Support, Removal of Fuses; and Corrective Action; as Applicable*

(e) For Group 3 and Group 4 airplanes identified in Boeing Service Bulletin MD11-24-184, Revision 02, dated January 7, 2003: Within 12 months after the effective date of this AD, do the actions specified in paragraphs (e)(1), (e)(2), and (e)(3) of this AD per the service bulletin. Accomplishment of the applicable actions in those paragraphs terminates the requirements of paragraphs (a) through (c) of this AD.

(1) Do a general visual inspection to detect damage of the electrical wiring of the galley in the EPC in bays 1, 2, and 3. If any damage is detected, before further flight, repair or replace damaged wiring with new or serviceable wiring per the service bulletin.

(2) Modify wiring support in bay 1.

(3) Remove spare fuses and modify wiring support in bays 2 and 3.

*Alternative Methods of Compliance*

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

(2) Alternative methods of compliance, approved previously per AD 2002-17-06, amendment 39-12872, are approved as alternative methods of compliance with paragraphs (a) through (c) of this AD.

*Incorporation by Reference*

(g) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11-24A160, dated August 30, 1999; or McDonnell Douglas Alert Service Bulletin MD11-24A160, Revision 01, dated November 11, 1999; and Boeing Service Bulletin MD11-24-184, Revision 02, dated January 7, 2003; as applicable.

(1) The incorporation by reference of Boeing Service Bulletin MD11-24-184, Revision 02, dated January 7, 2003, is approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11-24A160, dated August 30, 1999; and McDonnell Douglas Alert Service Bulletin MD11-24A160, Revision 01, dated November 11, 1999; was approved previously by the Director of the Federal Register as of January 4, 2000 (64 FR 71001, December 20, 1999).

(3) Copies may be obtained from Boeing Commercial Airplane Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and

Service Management, Dept. C1-L5A (D800-0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

*Effective Date*

(h) This amendment becomes effective on January 8, 2004.

Issued in Renton, Washington, on November 26, 2003.

**Kalene C. Yanamura,**

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

[FR Doc. 03-30112 Filed 12-3-03; 8:45 am]

**BILLING CODE 4910-13-P**

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

**[Docket No. 2000-NM-150-AD; Amendment 39-13383; AD 2003-24-14]**

**RIN 2120-AA64**

**Airworthiness Directives; McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87), and MD-88 Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87), and MD-88 airplanes. This action requires one-time inspections to detect discrepancies of electrical wiring installations in various areas of the airplane, and corrective action if necessary. The actions specified by this AD are intended to prevent smoke and fire in various areas of the airplane due to heat damage and/or electrical arcing of improperly installed wiring. This action is intended to address the identified unsafe condition.

**DATES:** Effective January 8, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 8, 2004.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and

Service Management, Dept. C1-L5A (D800-0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

Elvin K. Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5344; fax (562) 627-5210.

**SUPPLEMENTARY INFORMATION:**

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87), and MD-88 airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the *Federal Register* on July 24, 2003 (68 FR 43690). That action proposed to require one-time inspections to detect discrepancies of electrical wiring installations in various areas of the airplane, and corrective action if necessary.

**Comments**

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

**Shorten Compliance Time**

One commenter requests that the proposed six-year compliance time for performing a detailed inspection to detect discrepancies of exposed electrical wiring installations be shortened to between six months and one year. This commenter suggests that the proposed compliance time may be too long to fly safely with a potential unsafe condition for passengers and for people living under the flight paths. The commenter also suggests that airplane operators will likely delay necessary repairs until the final part of the proposed compliance time.

The FAA does not agree with the need for a shorter compliance time. In developing the proposed compliance time, we found that the six-year compliance time accommodates operators' schedules while still maintaining an adequate level of safety.

We also considered that if discrepancies are found during the proposed inspections, corrective action must be taken before further flight. In consideration of these factors, we determined that the compliance time, as proposed, represents an appropriate interval. Operators are always permitted to accomplish the requirements of an AD at a time earlier than the specified compliance time. If additional data are presented that would justify a shorter compliance time, we may consider further rulemaking on this issue.

**Revise Costs Based on Operator Experience**

One commenter, on behalf of an airline operator, noted that the cost estimate of 46 work hours per airplane presented in the supplemental NPRM is too low and does not take into account operator experience in accomplishing the required detailed inspections. According to one commenter's

experience, 92 work hours per airplane better represents the amount of time needed to complete the detailed inspections required by the proposed AD.

We infer that the commenter is requesting that the Cost Impact section of the supplemental NPRM be revised. We partially agree with the commenter's rationale. We agree that the specified work hours may not always accurately reflect the amount of time necessary to complete the required work for every airplane or for every operator. We also recognize that material and labor costs to fix any discrepancy cannot be accurately estimated for each airplane. However, as explained in the Cost Impact section of the supplemental NPRM, the economic analysis of the AD is limited to the cost of actions that would actually be required by the AD. The economic analysis does not consider the costs of conditional actions, such as repairing discrepancies

found during a required inspection. Such conditional actions would be required to be accomplished—regardless of AD direction—to correct an unsafe condition identified in an airplane and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations. No change to this AD is necessary regarding this issue.

**Conclusion**

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

**Cost Impact**

There are approximately 1,191 airplanes of the affected design in the worldwide fleet. Estimates of the costs of the required actions are provided in the following table:

Service bulletin	Work hours per airplane	Labor rate/hour	Cost per airplane	U.S. airplanes	U.S. fleet cost
MD80-24-176 .....	8	\$65	\$520	732	\$380,640
MD80-24-177 .....	5	65	325	732	237,900
MD80-24-178 .....	8	65	520	732	380,640
MD80-24-179 .....	8	65	520	732	380,640
MD80-24-180 .....	8	65	520	732	380,640
MD80-24-181 .....	6	65	390	732	285,480
MD80-24-182 .....	3	65	195	732	142,740

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. Manufacturer warranty remedies may be available for labor costs associated with this AD. As a result, the costs attributable to the AD may be less than stated above.

**Regulatory Impact**

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

have federalism implications under Executive Order 13132.

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

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

**2003-24-14 McDonnell Douglas:**

Amendment 39-13383. Docket 2000-NM-150-AD.

*Applicability:* All Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87), and MD-88 airplanes; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

**Note 1:** The FAA recommends that the actions required by this AD be accomplished after replacing the metallized polyethyleneterephthalate (MPET) insulation blankets, as required by AD 2000-11-02, amendment 39-11750.

To prevent smoke and fire in various areas of the airplane due to heat damage and/or electrical arcing of improperly installed wiring, accomplish the following:

**Inspection**

(a) Within 6 years after the effective date of this AD: Perform a detailed inspection to

detect discrepancies of exposed electrical wiring installations as specified in Table 1 of this AD. Specific discrepancies are listed in paragraph 3.B.3. of each service bulletin.

Prior to further flight thereafter, perform corrective actions in accordance with the service bulletin, as applicable.

**TABLE 1.—INSPECTION REQUIREMENTS**

Inspect the electrical wiring installations in the—	In accordance with the following Boeing Service Bulletin—
(1) Flight compartment and forward drop ceiling .....	MD80–24–176, Revision 02, Excluding Appendix, dated January 21, 2003.
(2) Electrical/electronic compartment .....	MD80–24–177, Revision 02, Excluding Appendix, dated January 21, 2003.
(3) Forward passenger compartment from stations Y = 218.000 to Y = 846.000.	MD80–24–178, Revision 02, Excluding Appendix, dated January 21, 2003.
(4) Aft passenger compartment from stations Y = 846.000 to Y = 1338.000.	MD80–24–179, Revision 02, Excluding Appendix, dated January 21, 2003.
(5) Forward and mid cargo compartments from stations Y = 218.000 to Y = 811.000.	MD80–24–180, Revision 02, Excluding Appendix, dated January 21, 2003.
(6) Aft cargo compartment from stations Y = 1033.000 to Y = 1338.000	MD80–24–181, Revision 02, Excluding Appendix, dated January 21, 2003.
(7) Forward accessory compartment from stations Y = 41.000 to Y = 70.000.	MD80–24–182, Revision 02, Excluding Appendix, dated January 21, 2003.

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

(b) Although the service bulletins identified in Table 1 of this AD specify that operators provide a report of inspection findings, this AD does not require such information.

(c) An inspection done before the effective date of this AD is acceptable for compliance with the inspection requirements of this AD, if accomplished in accordance with the corresponding service bulletin identified in Table 1 of this AD, the original version, dated July 14, 2000, or July 14, 2000; or Revision 01, dated June 12, 2001.

**Alternative Methods of Compliance**

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

**Incorporation by Reference**

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with the Boeing Service Bulletins in Table 2 of this AD, as applicable:

**TABLE 2.—BOEING SERVICE BULLETINS**

Service bulletin	Revision level	Date
MD80–24–176, Excluding Appendix .....	02	January 21, 2003.
MD80–24–177, Excluding Appendix .....	02	January 21, 2003.
MD80–24–178, Excluding Appendix .....	02	January 21, 2003.
MD80–24–179, Excluding Appendix .....	02	January 21, 2003.
MD80–24–180, Excluding Appendix .....	02	January 21, 2003.
MD80–24–181, Excluding Appendix .....	02	January 21, 2003.
MD80–24–182, Excluding Appendix .....	02	January 21, 2003.

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

Issued in Renton, Washington, on November 26, 2003.  
**Kalene C. Yanamura,**  
*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
 [FR Doc. 03–30111 Filed 12–3–03; 8:45 am]  
**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION**  
**Federal Aviation Administration**  
**14 CFR Part 39**  
**[Docket No. 2003–NM–70–AD; Amendment 39–13378; AD 2003–24–09]**  
**RIN 2120–AA64**

**Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.  
**ACTION:** Final rule.

**Effective Date**

(f) This amendment becomes effective on January 8, 2004.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell

Douglas Model MD-11 series airplanes, that currently requires performing a general visual inspection to detect chafing or damage of the parallel power feeder cables of the number 2 integrated drive generator (IDG); repairing any chafed cable and damaged structure; and repositioning the parallel power feeder cables of the number 2 IDG. This amendment revises the applicability of the existing AD by adding certain airplanes and removing certain other airplanes. The actions specified by this AD are intended to prevent chafing and arcing of the parallel feeder cables of the number 2 IDG, which could result in smoke and/or fire in the right aft galley area. This action is intended to address the identified unsafe condition.

**DATES:** Effective January 8, 2004.

The incorporation by reference of Boeing Alert Service Bulletin MD11-24A157, Revision 01, dated March 11, 2003, as listed in the regulations, is approved by the Director of the Federal Register as of January 8, 2004.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11-24A157, dated August 10, 2000, as listed in the regulations, was approved previously by the Director of the Federal Register as of September 26, 2001 (66 FR 44043, August 22, 2001).

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

**FOR FURTHER INFORMATION CONTACT:** Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5350; fax (562) 627-5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001-17-08, amendment 39-12399 (66 FR 44043, August 22, 2001), which is applicable to certain McDonnell Douglas Model MD-11 series airplanes, was published in the

**Federal Register** on August 15, 2003 (68 FR 48835). The action proposed to continue to require performing a general visual inspection to detect chafing or damage of the parallel power feeder cables of the number 2 integrated drive generator (IDG); repairing any chafed cable and damaged structure; and repositioning the parallel power feeder cables of the number 2 IDG. That action also proposed to revise the applicability of the existing AD by adding certain airplanes and removing certain other airplanes.

#### Comments

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

The commenter supports the proposed rule.

#### Conclusion

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

#### Cost Impact

There are approximately 85 airplanes of the affected design in the worldwide fleet. The FAA estimates that 15 airplanes of U.S. registry will be affected by this AD.

For Group 1 airplanes listed in Boeing Alert Service Bulletin MD11-24A157, Revision 01, dated March 11, 2003: The actions that are currently required by AD 2001-17-08 take 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 actions on these U.S. operators is estimated to be \$260 per airplane.

For Group 2 airplanes listed in Boeing Alert Service Bulletin MD11-24A157, Revision 01, dated March 11, 2003: The new actions that are required by this AD will take approximately 5 work hours per airplane to accomplish, at an average labor rate of \$65 per work hour. Required parts will cost approximately \$673 per airplane. Based on these figures, the cost impact of the requirements of this AD on these U.S. operators is estimated to be \$998 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. The manufacturer may cover the cost of replacement parts associated with this AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this AD. As a result, the costs attributable to the AD may be less than stated above.

#### 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 39-12399 (66 FR 44043, August 22, 2001), and by adding a new airworthiness directive (AD),

amendment 39-13378, to read as follows:

**2003-24-09 McDonnell Douglas:**

Amendment 39-13378. Docket 2003-NM-70-AD. Supersedes AD 2001-17-08, Amendment 39-12399.

*Applicability:* Model MD-11 and -11F airplanes, as listed in Boeing Alert Service

Bulletin MD11-24A157, Revision 01, dated March 11, 2003; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent chafing and arcing of the parallel feeder cables of the number 2 integrated drive generator (IDG), which could result in smoke and/or fire in the right aft galley area, accomplish the following:

**Inspection**

(a) Do a general visual inspection to detect chafing or damage of the parallel power feeder cables of the number 2 IDG at the applicable time and per the applicable service bulletin specified in Table 1 of this AD. Table 1 is as follows:

TABLE 1.—COMPLIANCE TIME/SERVICE BULLETIN

Airplanes—	Compliance time—	Service bulletin—
(1) For Group 1 airplanes listed in Boeing Alert Service Bulletin MD11-24A157, Revision 01, dated March 11, 2003.	Within 6 months after September 26, 2001 (the effective date of AD 2001-17-08, amendment 39-12399).	McDonnell Douglas Alert Service Bulletin MD11-24A157, dated August 10, 2000.
(2) For Group 2 airplanes listed in Boeing Alert Service Bulletin MD11-24A157, Revision 01, dated March 11, 2003.	Within 6 months after the effective date of this AD.	Boeing Alert Service Bulletin MD11-24A157, Revision 01, dated March 11, 2003.

**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 under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, 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.”

**Condition 1 (No Chafing and No Structure Damage)**

(3) If no chafing and damage is detected, before further flight, reposition the parallel power feeder cables of the number 2 IDG, per the applicable service bulletin.

**Condition 2 (Chafing or Structure Damage)**

(4) If any chafing or damage is detected, before further flight, repair the chafed cable and damaged structure, as applicable, and reposition the parallel power feeder cables of the number 2 IDG, per the applicable service bulletin.

**Alternative Methods of Compliance**

(b)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

(2) Alternative methods of compliance, approved previously per AD 2001-17-08, amendment 39-12399, are approved as alternative methods of compliance with the requirements of this AD.

**Incorporation by Reference**

(c) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11-24A157, dated August 10, 2000; or Boeing Alert Service Bulletin MD11-24A157, Revision 01, dated March 11, 2003; as applicable.

(1) The incorporation by reference of Boeing Alert Service Bulletin MD11-24A157, Revision 01, dated March 11, 2003, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11-24A157, dated August 10, 2000, was approved previously by the Director of the Federal Register as of September 26, 2001 (66 FR 44043, August 22, 2001).

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

**Effective Date**

(d) This amendment becomes effective on January 8, 2004.

Issued in Renton, Washington, on November 26, 2003.

**Kalene C. Yanamura,**

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

[FR Doc. 03-30110 Filed 12-3-03; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 2001-NM-207-AD; Amendment 39-13379; AD 2003-24-10]

**RIN 2120-AA64**

**Airworthiness Directives; McDonnell Douglas Model DC-10-10, DC-10-10F, DC-10-15, DC-10-30, DC-10-30F, DC-10-30F (KC10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, MD-10-30F, MD-11, and MD-11F Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-10-10, DC-10-10F, DC-10-15, DC-10-30, DC-10-30F, DC-10-30F (KC10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, MD-10-30F, MD-11, and MD-11F airplanes, that requires a one-time inspection to determine the thickness of the walls of the rudder pedal arm assembly for the captain’s and first officer’s rudder pedals, and follow-on actions. This action is necessary to prevent failure of the rudder pedal arm assembly, which, under certain conditions, could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective January 8, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 8, 2004.

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

**FOR FURTHER INFORMATION CONTACT:** Ron Atmur, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Los Angeles

Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5224; fax (562) 627-5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-10-10, DC-10-10F, DC-10-15, DC-10-30, DC-10-30F, DC-10-30F (KC10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, MD-10-30F, MD-11, and MD-11F airplanes was published in the **Federal Register** on September 4, 2002 (67 FR 56503). That action proposed to require a one-time inspection to determine the thickness of the walls of the rudder pedal arm assembly for the captain's and first officer's rudder pedals, and follow-on actions.

#### Comments

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

#### No Objection to the Proposed AD

Two commenters have no objection to the technical content or compliance time of the proposed AD.

#### Request To Use High Frequency Eddy Current Inspection

Certain commenters request that the proposed AD be revised to allow the use of a high frequency eddy current inspection, developed by Boeing, as an optional alternative to the dye penetrant inspection in paragraphs (a)(1) and (b) of the proposed AD. The commenters contend that the eddy current inspection is more convenient, less labor intensive, and yields better results.

We do not agree with the request to allow the eddy current inspection as an optional alternative to the dye penetrant inspection in paragraphs (a)(1) and (b) of the AD. While we have determined that the eddy current inspection would allow operators to have flexibility in the inspection techniques without compromising safety, Boeing has not provided a copy of this inspection to the FAA for approval. However, under the provisions of paragraph (f) of the final rule, we may consider requests for approval of an alternative method of compliance if sufficient data are submitted to substantiate that such an eddy current inspection would provide an acceptable level of safety. No change to the final rule is necessary in this regard.

#### Request To Extend the Inspection Interval

Certain commenters request an extension of the repetitive inspection interval in paragraph (b)(1) of the proposed AD from 5,200 flight hours to 6,300 flight hours. The commenters contend that 6,300 flight hours would better suit their maintenance schedules.

We do not agree with the request to extend the repetitive inspection interval in paragraph (b)(1) of the AD to 6,300 flight hours. We have reviewed previous occurrences, considered the likelihood and severity of the unsafe condition, and determined that the proposed inspection threshold and repetitive intervals are appropriate. No change to the final rule is necessary in this regard.

#### Request To Allow Use of Certain Parts

Certain commenters request that the proposed AD be revised to allow parts that are in operators' stock that meet the thickness requirements of paragraph (b) of the proposed AD to be installed and inspected in accordance with paragraph (b)(1) or (b)(2), as applicable. These commenters point out that the proposed AD allows parts that meet these requirements to be inspected indefinitely. Therefore, it would be an unnecessary cost to purge an operator's stock or not be able to replace cracked or unacceptable parts with these parts.

The FAA agrees with the request. We have revised paragraph (e) of the AD so that the crack-free parts with the dimensions defined in paragraph (b) of the AD are acceptable for continued service provided that the repetitive inspections required by paragraph (b) of the AD are accomplished.

#### Editorial Changes

In reviewing these comments, we noted that, while the service bulletin and the "Differences" section of the proposed AD both correctly state the proposed repetitive inspection interval in terms of flight hours, the proposed AD text erroneously states the interval in terms of flight cycles. We have corrected this error in the final rule. Since both the service bulletin and the preamble of the proposed AD used the correct term, and we did not indicate an intention to deviate from the service bulletin in this regard, we consider that the public has had a reasonable opportunity to comment on the compliance times for this AD.

#### Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes

previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

#### Changes to 14 CFR Part 39/Effect on the AD

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

#### Change to Labor Rate Estimate

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

#### Cost Impact

There are approximately 594 airplanes of the affected design in the worldwide fleet. We estimate that 366 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the inspection to determine wall thickness, and that the average labor rate is \$65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$95,160, or \$260 per airplane.

Should an operator be required to accomplish the follow-on inspection to detect cracking, the inspection will take approximately 1 work hour per airplane, at an average labor rate of \$65 per work hour. Based on these figures, the cost impact of this inspection will be approximately \$65 per airplane, per inspection cycle.

Should an operator be required to accomplish the replacement of a rudder pedal arm assembly, the replacement will take approximately 4 work hours per assembly, per airplane, at an average labor rate of \$65 per work hour. Parts will cost approximately \$2,943 per assembly. Based on these figures, the cost impact of this replacement will be approximately \$3,203 per rudder pedal arm assembly, 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.

For Model MD-11 and -11F airplanes within the period under the warranty agreement, we have been advised that the manufacturer has committed previously to its customers that it will bear the cost of replacement parts. We have also been advised that manufacturer warranty remedies may be available for labor costs associated with accomplishing the actions that would be required by this AD. Therefore, the future economic cost impact of this AD may be less than the cost impact figure indicated above.

### Regulatory Impact

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

#### 2003-24-10 McDonnell Douglas:

Amendment 39-13379. Docket 2001-NM-207-AD.

**Applicability:** Model DC-10-10, DC-10-10F, DC-10-15, DC-10-30, DC-10-30F, DC-10-30F (KC10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, and MD-10-30F airplanes; as listed in Boeing Alert Service Bulletin DC10-27A233, Revision 01, dated June 6, 2002; and Model MD-11 and MD-11F airplanes; as listed in Boeing Alert Service Bulletin MD11-27A080, Revision 01, June 6, 2002; certificated in any category.

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

**Compliance:** Required as indicated, unless accomplished previously.

To prevent failure of the rudder pedal arm assembly, which, under certain conditions, could result in reduced controllability of the airplane, accomplish the following:

#### One-Time Ultrasonic Inspection

(a) Within 6 months after the effective date of this AD, perform a one-time ultrasonic inspection to determine the thickness of the walls of the rudder pedal arm assembly for both the captain's and first officer's rudder pedals, per the Accomplishment Instructions of Boeing Alert Service Bulletin DC10-27A233, Revision 01, dated June 6, 2002 (for Model DC-10-10, DC-10-10F, DC-10-15, DC-10-30, DC-10-30F, DC-10-30F (KC10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, and MD-10-30F airplanes); or Boeing Alert Service Bulletin MD11-27A080, Revision 01, June 6, 2002 (for MD-11 and MD-11F airplanes); as applicable.

(1) If the wall thickness is within the design specifications or operational limits specified in the Accomplishment Instructions and Figure 1 of the applicable service bulletin: Before further flight, perform a dye penetrant inspection for cracking of the clevis of the rudder pedal arm assembly, per the Accomplishment Instructions of the service bulletin. If no cracking is found, do paragraph (b) or (c) of this AD, as applicable.

(2) If the wall thickness is outside the limits specified in the applicable service bulletin: Do paragraph (d) of this AD.

#### Condition 1: Wall Thickness Within Design Specifications; No Cracking

(b) During the inspections required by paragraphs (a) and (a)(1) of this AD, if the wall thickness of the rudder pedal assembly is within the design specifications as specified in the Accomplishment Instructions and Figure 1 of the applicable service bulletin, and no cracking of the clevis is found: Repeat the dye penetrant inspection specified in paragraph (a)(1) of this AD to find cracking of the clevis of the rudder pedal assembly at the applicable intervals specified in paragraph (b)(1) or (b)(2) of this AD; per the Accomplishment Instructions of Boeing Alert Service Bulletin DC10-27A233, Revision 01, dated June 6, 2002 (for Model DC-10-10, DC-10-10F, DC-10-15, DC-10-30, DC-10-30F, DC-10-30F (KC10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, and MD-10-30F airplanes); or Boeing Alert Service Bulletin MD11-27A080, Revision 01, June 6, 2002 (for MD-11 and MD-11F airplanes); as applicable. Replacement of the rudder pedal arm assembly with a new, improved assembly per the Accomplishment Instructions of the applicable service bulletin terminates the repetitive inspections.

(1) For Model DC-10-10, DC-10-10F, DC-10-15, DC-10-30, DC-10-30F, DC-10-30F (KC10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, and MD-10-30F airplanes: Repeat the inspection every 5,200 flight hours until the rudder pedal arm assembly is replaced with a new, improved assembly per the Accomplishment Instructions of the applicable service bulletin.

(2) For MD-11 and MD-11F airplanes: Repeat the inspection every 4,200 flight hours until the rudder pedal arm assembly is replaced with a new, improved assembly per the Accomplishment Instructions of the applicable service bulletin.

#### Condition 2: Wall Thickness Within Operational Limits; No Cracking

(c) During the inspections required by paragraphs (a) and (a)(1) of this AD, if the wall thickness of the rudder pedal arm assembly is within the operational limits specified in the Accomplishment Instructions and Figure 1 of the applicable service bulletin, and no cracking of the clevis is found: Do paragraphs (c)(1) and (c)(2) of this AD per the Accomplishment Instructions of Boeing Alert Service Bulletin DC10-27A233, Revision 01, dated June 6, 2002 (for Model DC-10-10, DC-10-10F, DC-10-15, DC-10-30, DC-10-30F, DC-10-30F (KC10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, and MD-10-30F airplanes); or Boeing Alert Service Bulletin MD11-27A080, Revision 01, June 6, 2002 (for MD-11 and MD-11F airplanes); as applicable.

(1) Condition 2, Phase 1: Before further flight, change the part number of the rudder pedal arm assembly to identify the assembly as a "temporary operation" part.

(2) Condition 2, Phase 2: At the applicable time specified in paragraph (c)(2)(i) or (c)(2)(ii) of this AD, replace the "temporary

operation" rudder pedal arm assembly with a new, improved rudder pedal arm assembly.

(i) For Model DC-10-10, DC-10-10F, DC-10-15, DC-10-30, DC-10-30F, DC-10-30F (KC10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, and MD-10-30F airplanes: Replace within 5,200 flight hours after the inspection in paragraph (a)(1) of this AD.

(ii) For MD-11 and MD-11F airplanes: Replace within 4,200 flight hours after the inspection in paragraph (a)(1) of this AD.

#### Conditions 3 and 4: Wall Thickness Not Within Limits; Clevis Cracked or Broken

(d) During the inspection per paragraph (a) of this AD, if the wall thickness of the rudder pedal arm assembly is not within the design specifications or the acceptable operational limits specified in the applicable service bulletin; or during any inspection per paragraph (a)(1) or (b) of this AD, if the clevis of the rudder pedal assembly is cracked or broken: Before further flight, replace the rudder pedal assembly with a new, improved rudder pedal assembly per Condition 3 or 4, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin DC10-27A233, Revision 01, dated June 6, 2002 (for Model DC-10-10, DC-10-10F, DC-10-15, DC-10-30, DC-10-30F, DC-10-30F (KC10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, MD-10-30F airplanes); or Boeing Alert Service Bulletin MD11-27A080, Revision 01, June 6, 2002 (for MD-11 and MD-11F airplanes); as applicable. Such replacement terminates any repetitive inspections required by this AD.

#### Parts Installation

(e) As of the effective date of this AD, no person shall install a rudder pedal arm assembly having part number ABH7239-1 or ABH7239-2 on any airplane unless the parts meet the dimensional and crack-free requirements of paragraph (b) of this AD and the repetitive inspections required by that paragraph are accomplished.

#### Alternative Methods of Compliance

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

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

#### Special Flight Permits

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

#### Incorporation by Reference

(h) The actions shall be done in accordance with Boeing Alert Service Bulletin DC10-27A233, Revision 01, dated June 6, 2002; or

Boeing Alert Service Bulletin MD11-27A080, Revision 01, June 6, 2002; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

#### Effective Date

(i) This amendment becomes effective on January 8, 2004.

Issued in Renton, Washington, on November 26, 2003.

**Kalene C. Yanamura,**

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

[FR Doc. 03-30109 Filed 12-3-03; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 934

[ND-044-FOR, Amendment No. XXXIII]

#### North Dakota Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are approving a proposed amendment to the North Dakota regulatory program (the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). North Dakota proposed revisions to and additions of rules about valid existing rights, the process for determining whether or not a mine operator has valid existing rights, lands prohibited from mining, changes in the format of permit applications, general requirements for mining plans, land descriptions for partial bond release requests, filing requirements for copies of reports required by the State Health Department, sediment control measures, and removal of sedimentation ponds. North Dakota intended to revise its program to be consistent with the corresponding Federal regulations and SMCRA, provide additional safeguards, clarify ambiguities, and improve operational efficiency.

**EFFECTIVE DATE:** December 4, 2003.

**FOR FURTHER INFORMATION CONTACT:** Guy Padgett, Telephone: 307/261-6550; Internet address: [GPadgett@osmre.gov](mailto:GPadgett@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background on the North Dakota Program
- II. Submission of the Proposed Amendment
- III. Office of Surface Mining Reclamation and Enforcement's (OSM) Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

#### I. Background on the North Dakota Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act"; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 15, 1980, **Federal Register** (45 FR 82214). You can also find later actions concerning North Dakota's program and program amendments at 30 CFR 934.15, 934.16, and 934.30.

#### II. Submission of the Proposed Amendment

By letter dated February 10, 2003, North Dakota sent us an amendment to its program (Amendment number XXXIII, Administrative Record No. ND-HH-01 under SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota sent the amendment in response to an April 2, 2001, letter (Administrative Record No. ND-HH-02) that we sent to North Dakota in accordance with 30 CFR 732.17(c), and to include changes made at its own initiative.

The provisions of the North Dakota Administrative Code (NDAC) that North Dakota proposed to revise or add are:

- (1) NDAC 69-05.2-01-02(120), Definition of Valid Existing Rights; (2) NDAC 69-05.2-04-01.1 through 01.7, Processing Requests for Valid Existing Rights and Exceptions from Areas Prohibited from Mining; (3) NDAC 69-05.2-05-01, Copies and format of permit applications; (4) NDAC 69-05.2-

09–01, General Requirements for Mining Plans; (5) NDAC 69–05.2–12–12, Bond release requirements; (6) NDAC 69–05.2–16–04, Sediment control measures under the general water management requirements; (7) NDAC 69–05.2–16–05, Water discharge reports; and (8) NDAC 69–05.2–16–09, Removal of water management structures.

We announced receipt of the proposed amendment in the June 3, 2003, **Federal Register** (68 FR 33035). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. ND–HH–08). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on July 3, 2003. We did not receive any comments.

### III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

#### A. Revisions to North Dakota's Rules or Statutes That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations and/or SMCRA

1. NDAC 69–05.2–01–02(120), Definition of Valid Existing Rights.(30 CFR 761.5)

2. NDAC 69–05.2–04–01.1 through 01.7, Processing Requests for Valid Existing Rights and Exceptions from Areas Prohibited from Mining.

a. NDAC 69–05.2–04–01.1, Areas Unsuitable for Mining—Areas where surface coal mining operations are prohibited or limited (30 CFR 761.11).

b. NDAC 69–05.2–04–01.2, Areas Unsuitable for Mining—Exception for existing operations from areas where mining is prohibited (30 CFR 761.12).

c. NDAC 69–05.2–04–01.3, Areas Unsuitable for mining—Procedures for relocating or closing a public road or waiving the buffer zone for a public road (30 CFR 761.14).

d. NDAC 69–05.2–04–01.4, Areas Unsuitable for Mining—Procedures for waiving the prohibition on mining within the buffer zone around an occupied dwelling (30 CFR 761.15).

e. NDAC 69–05.2–04–01.5, Areas Unsuitable for mining—Submission of requests for valid existing rights determinations (30 CFR 761.16).

f. NDAC 69–05.2–04–01.6, Areas Unsuitable for mining—Processing requests for valid existing rights determinations (30 CFR 761.16(c)–(g)).

g. NDAC 69–05.2–04–01.7, Areas Unsuitable for mining—Commission

obligations at time of permit application review (30 CFR 761.17).

Because these proposed rules contain language that is the same or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations.

#### B. Revisions to North Dakota's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. NDAC 69–05.2–05–01, Copies and Format of Permit Applications

This revision of North Dakota's rules would allow permit applications to be filed in an electronic format approved by the North Dakota Public Service Commission. In addition, it would require that the applicant send a complete copy of the permit application to the Bureau of Land Management (BLM) when Federal lands are located in the permit area.

The Federal regulations at 30 CFR 777.11(a)(3) state that an application shall "be filed in the format required by the regulatory authority." Therefore the State's revision concerning electronic filing is allowed and is no less effective than the Federal rules. There is no Federal counterpart to the North Dakota requirement that a copy of the application be sent to BLM and OSM when Federal lands are located in the permit area; it is therefore no less effective than the Federal rules.

2. NDAC 69–05.2–16–04, Sediment Control Measures Under the General Water Management Requirements

Under this proposed change, sediment ponds remain the primary structure for treating runoff from disturbed areas. However, the proposal allows the use of sediment ponds or "other sediment control measures" to control runoff from disturbed areas. The term, "other sediment control measures," is defined as the use of the best technology currently available to meet applicable effluent limitations and, to the extent possible, minimize erosion and prevent additional contributions of sediment to streamflow or to runoff outside the permit area. The term includes a number of different methods such as sumps, check dams, berms, silt fences, bale dikes, sediment filters, riprap, mulches, and other measures to reduce runoff, trap sediment or treat runoff water. The use of "other sediment control measures" is limited to small disturbed areas or reclaimed areas that have been properly stabilized against erosion and must be approved by the State Department of Health.

These changes are consistent with the new rules recently adopted by the U.S. Environmental Protection Agency (EPA) that allow the installation of best management practices as the standard for treating runoff from reclaimed lands in the western United States (January 23, 2002, at 67 FR 3370). Therefore they are no less effective than the Federal regulations at 30 CFR 816.42.

3. NDAC 69–05.2–16–05(1)(b)(3), Water Discharge Reports

Currently, copies of the North Dakota pollutant discharge elimination system (NDPDES) report must be submitted to the North Dakota Public Service Commission on the schedule required by the NDPDES permit. The rule states that reports have to be filed on a quarterly basis. However, the proposed revised rule would require mining companies to submit the report on the same schedule as required by the State Health Department. The State Health Department has modified some NDPDES permits for some mines to require reports on a semiannual basis. EPA gives this authority to State Health Departments. Other surface water monitoring reports must be submitted quarterly. Based on this, the proposed State rule is no less effective than the Federal regulations.

The Federal regulations at 30 CFR 816.41(e)(2) state that "The reporting requirements of this paragraph do not exempt the operator from meeting any National Pollutant Discharge Elimination System reporting requirements."

The proposed revision in the State rules are no less effective than the Federal regulations.

4. NDAC 69–05.2–16–09, Removal of Water Management Structures

The proposed revision concerns requirements for the removal of ponds and other sediment control structures. Added language requires "other sediment control structures" to remain in place for at least two years following the last seeding in the reclaimed watershed. This change is connected to the proposed change (at NDAC 69–05.2–04) to allow the substitution of other sediment control structures for sedimentation ponds once a reclaimed tract is topsoiled and stabilized against erosion. As in the Federal rule (30 CFR 816.46(b)(5)), these structures cannot be removed unless approved by the regulatory authority. The proposed State rule is no less effective than the Federal regulations.

### *C. Revisions to North Dakota's Rules That Have No Federal Counterpart*

#### 1. NDAC 69–05.2–12–12, Bond Release Requirements

This revision to North Dakota's rules specifies that when lands are proposed to undergo partial bond release, the release application must be accompanied by either a legal description of the area or by a map that clearly depicts and identifies the lands to be released. Allowing a map in place of a legal description will encourage the submission of more partial bond release applications. There is no Federal counterpart to the State's proposal. According to 30 CFR 730.11(b) of the Federal regulations, in these cases, the State rule shall not be construed to be inconsistent with (SMCRA). Therefore it is no less effective than the Federal regulations.

#### 2. NDAC 69–05.2–09–01, Permit Applications—Operation Plans—General Requirements

This North Dakota provision requires that if coal removal areas are proposed within 500 feet of any farm building, the applicant must provide documentation showing compliance with the State's surface owners protection act (North Dakota Century Code 38–18–07). There is no Federal counterpart to this North Dakota provision. According to 30 CFR 730.11(b) of the Federal regulations, in these cases, the State rule shall not be construed to be inconsistent with (SMCRA). Therefore it is no less effective than the Federal regulations.

### **IV. Summary and Disposition of Comments**

#### *Public Comments*

We asked for public comments on the amendment in the June 3, 2003, **Federal Register** (68 FR 33035), but received none (Administrative Record ND-HH–08).

#### *Federal Agency Comments*

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the North Dakota program (Administrative Record No. ND-HH–04).

On March 3, 2003, the State Conservationist with the Natural Resources Conservation Service (NRCS), replied that NRCS had no comments (Administrative Record No. ND-HH–06).

### *Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

On February 21, 2003, we asked for agreement on the amendment (Administrative Record No. ND-HH–04). On March 31, 2003, the Director of the Ecosystems Protection Program with the EPA sent us the following comment: "We believe the proposed program amendments to be consistent with 40 CFR Part 434 and, therefore, have no concerns." (Administrative Record No. ND-HH–07)

#### *State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On February 21, 2003, we requested comments on North Dakota's amendment (Administrative Record No. ND-HH–04), but neither responded to our request. North Dakota's SHPO responded on March 5, 2003, that "We have reviewed (the amendment) and have no comments." (Administrative Record No. ND-HH–05).

### **V. OSM's Decision**

Based on the above findings, we approve North Dakota's February 10, 2003, amendment, as follows: (1) NDAC 69–05.2–10–02 (120), Definition of Valid Existing Rights; (2) NDAC 69–05.2–04–01.1 through 01.7, Processing requests for valid existing rights and exceptions from areas prohibited from mining; (3) NDAC 69–05.2–05–01, Copies and format of permit applications; (4) NDAC 69–05.2–09–01, Permit applications—Operation plans—General requirements; (5) NDAC 69–05.2–12–12, Bond release requirement; (6) NDAC 69–05.2–16–04, Sediment control measures under the general water management requirements; (7) NDAC 69–05.2–16–05(1)(b)(3), Water discharge reports; (8) NDAC 69–05.2–16–09, Removal of water management structures.

We approve the rules as proposed by North Dakota with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30

CFR Part 934, which codify decisions concerning the North Dakota program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

### **VI. Procedural Determinations**

#### *Executive Order 12630—Takings*

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

#### *Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

#### *Executive Order 12988—Civil Justice Reform*

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

#### *Executive Order 13132—Federalism*

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and

reclamation operations be “in accordance with” the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

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

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

*National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute

major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

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

*Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is largely based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: a. does not have an annual effect on the economy of \$100 million; b. will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and c. does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is largely based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

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

**List of Subjects in 30 CFR Part 934**

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 29, 2003.

**Allen D. Klein,**  
*Regional Director, Western Regional Coordinating Center.*

■ For the reasons set out in the preamble, 30 CFR part 934 is amended as set forth below:

**PART 934—NORTH DAKOTA**

■ 1. The authority citation for part 934 continues to read as follows:

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

■ 2. Section 934.15 is amended in the table by adding a new entry in chronological order by “date of final publication” to read as follows:

**§ 934.15 Approval of North Dakota regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
Feb. 10, 2003	Dec. 4, 2003	NDAC 69–05.2–01–02(120) NDAC 69–05.2–04–01.1 through 01.7 NDAC 69–05.2–05–01 NDAC 69–05.2–09–01 NDAC 69–05.2–12–12 NDAC 69–05.2–16–04 NDAC 69–05.2–16–05(1)(b)(3) NDAC 69–05.2–16–09

**DEPARTMENT OF COMMERCE****United States Patent and Trademark Office****37 CFR Part 1**

RIN 0651-AB61

[Docket No.: 2003-P-021]

**January 2004 Revision of Patent Cooperation Treaty Application Procedure****AGENCY:** United States Patent and Trademark Office, Commerce.**ACTION:** Final rule and correction to final rule.

**SUMMARY:** The United States Patent and Trademark Office (Office) published a final rule in the **Federal Register** of October 20, 2003, revising the rules of practice in patent cases to conform them to certain amendments made to the Regulations under the Patent Cooperation Treaty (PCT) that will take effect on January 1, 2004. This document corrects three errors in that final rule, and also corrects an additional error in the rules of practice in patent cases relating to PCT procedure.

**EFFECTIVE DATE:** January 1, 2004.

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

**SUPPLEMENTARY INFORMATION:** During the September-October 2002 meeting of the Governing Bodies of the World Intellectual Property Organization (WIPO), the PCT Assembly adopted various amendments to the Regulations under the PCT that enter into force on January 1, 2004. The Office published a final rule in the **Federal Register** of October 20, 2003 (68 FR 59881), entitled "January 2004 Revision of Patent Cooperation Treaty Application Procedure," revising the rules of practice in patent cases in title 37 of the Code of Federal Regulations (CFR) to conform them to the amendments to the PCT Regulations that will take effect on January 1, 2004. This document corrects errors to §§ 1.14, 1.421, and 1.431 in that final rule. This document also corrects an additional error in § 1.14 relating to PCT procedure.

**Discussion of Specific Rules**

*Section 1.14:* Section 1.14(g)(1)(ii) is corrected to change "International Search Authority" to "International Searching Authority". Section 1.14(g)(5) is amended to change "paragraphs (a)(1)(i) through (a)(1)(vi) and (i)(3) of

this section" to "paragraphs (a)(1)(i) through (a)(1)(vi) and (g)(3) of this section" for consistency with the changes to § 1.14 in the rule making *Changes to Implement Electronic Maintenance of Official Patent Application Records*, 68 FR 38611 (June 30, 2003), 1272 *Off. Gaz. Pat. Office* 197 (July 29, 2003) (final rule).

*Section 1.421:* Section 1.421(a)(2) is amended to correct "a fee amount equivalent to that required by § 1.445(a)(5)" to "a fee amount equivalent to that required by § 1.445(a)(4)" for consistency with § 1.445 as amended in the final rule being corrected by this document.

*Section 1.431:* Section 1.431(c)(2) is corrected to change "the 25% of the international filing fee" to "fifty percent of the international filing fee" for consistency with the change to PCT Rule 16bis.2(b) that was adopted during the September-October 2003 meeting of the WIPO Governing Bodies and that enters into force on January 1, 2004.

■ In rule FR Doc. 03-26338, published on October 20, 2003, make the following corrections and 37 CFR part 1 is amended as follows:

**§ 1.14 [Corrected]**

■ 1. On page 59886, in the third column, § 1.14, paragraph (g)(1)(ii), line 8, correct "International Search Authority" to read "International Searching Authority".

**§ 1.431 [Corrected]**

■ 2. On page 59887, in the third column, § 1.431, paragraph (c)(2), line 2, correct "the 25%" to read "fifty percent".

**PART 1—RULES OF PRACTICE IN PATENT CASES**

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

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

■ 4. Section 1.14 is amended by revising paragraph (g)(5) to read as follows:

**§ 1.14 Patent applications preserved in confidence.**

\* \* \* \* \*

(g) \* \* \*

(5) Access to international application files under paragraphs (a)(1)(i) through (a)(1)(vi) and (g)(3) of this section will not be permitted with respect to the Examination Copy in accordance with PCT Article 38.

\* \* \* \* \*

■ 5. Section 1.421 is amended by revising paragraph (a)(2) to read as follows:

**§ 1.421 Applicant for international application.**

(a) \* \* \*

(2) Has no residence or nationality indicated, applicant will be so notified and, if the international application includes a fee amount equivalent to that required by § 1.445(a)(4), the international application will be forwarded for processing to the International Bureau acting as a Receiving Office (see also § 1.412(c)(6)).

\* \* \* \* \*

Dated: November 24, 2003.

**James E. Rogan,**

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

[FR Doc. 03-30150 Filed 12-3-03; 8:45 am]

**BILLING CODE 3510-16-P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[CA 291-0424a; FRL-7590-7]

**Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from adhesives and sealants. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on February 2, 2004, without further notice, unless EPA receives adverse comments by January 5, 2004. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Send comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, or e-mail to [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov), or submit comments at <http://www.regulations.gov>.

You can inspect copies of the submitted SIP revisions, EPA's technical support document (TSD), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the

submitted SIP revisions by appointment at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B-102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Ventura County Air Pollution Control District, 669 County Square Drive, 2nd Floor, Ventura, CA 93003.

A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbtxt.htm>.

Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

**FOR FURTHER INFORMATION CONTACT:** Yvonne Fong, EPA Region IX, (415) 947-4117, [fong.yvonnew@epa.gov](mailto:fong.yvonnew@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to EPA.

**Table of Contents**

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**I. The State's Submittal**

**A. What Rule Did the State Submit?**

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
VCAPCD .....	74.20	Adhesives and sealants .....	09/09/03	09/19/03

On October 15, 2003, a submittal of VCAPCD Rule 74.20 was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

**B. Are There Other Versions of This Rule?**

We approved a version of VCAPCD Rule 74.20 into the SIP on April 26, 2002 (67 FR 20645). The VCAPCD adopted revisions to the SIP-approved version of Rule 74.20 on September 9, 2003 and CARB submitted them to us on September 19, 2003.

**C. What Is the Purpose of the Rule Revisions?**

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. This rule limits emissions of VOCs resulting from the application of adhesives and sealants.

This rule was also submitted to correct deficiencies we cited in an April 26, 2002 (67 FR 20645) final rulemaking for a previous version of this rule and to stay the potential imposition of section 179 sanctions associated with that final rulemaking. The TSD has more information about this rule.

**II. EPA's Evaluation and Action**

**A. How Is EPA Evaluating the Rule?**

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). VCAPCD regulates an

ozone nonattainment area (see 40 CFR part 81), so VCAPCD Rule 74.20 must fulfill RACT.

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
4. "Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Adhesives and Sealants," CARB, December 1998.

We also evaluated this rule to determine whether it corrects the deficiencies cited in our April 26, 2002 (67 FR 20645) final rulemaking on a previous versions of this rule. Our limited disapproval of this earlier version noted that two provisions of VCAPCD Rule 74.20 conflicted with section 110 and part D of the Act. Rule 74.20 contained VOC content limits that did not meet RACT as well as an inappropriate test method. The TSD has more information on our evaluation.

**B. Does the Rule Meet the Evaluation Criteria?**

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. We also conclude that the problematic provisions which were

found in an earlier version of this rule and which was the basis for our April 26, 2002 final limited disapproval have been corrected. The TSD has more information on our evaluation.

**C. Public Comment and Final Action**

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by January 5, 2004, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on February 2, 2004. This will incorporate this rule into the federally enforceable SIP and will terminate all CAA section 179 and 110(c) sanction and FIP implications associated with our limited disapproval action on a previous version of this rule.

**III. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 2, 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 7, 2003.

**Keith Takata,**

*Acting Regional Administrator, Region IX.*

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

#### PART 52—[AMENDED]

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

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

#### Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(318) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \* \* \*  
(318) Amended regulation for the following APCD was submitted on September 19, 2003, by the Governor's designee.

(i) Incorporation by reference.  
(A) Ventura County Air Pollution Control District.

(1) Rule 74.20, adopted on September 9, 2003.

\* \* \* \* \*

[FR Doc. 03-30169 Filed 12-3-03; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 291-0424; FRL-7590-6]

### Interim Final Determination To Stay Sanctions, Ventura County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Interim final rule.

**SUMMARY:** EPA is making an interim final determination to stay imposition of sanctions based on a proposed approval of revisions to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP) published elsewhere in today's **Federal Register**. The revisions concern VCAPCD Rule 74.20.

**DATES:** This interim final determination is effective on December 4, 2003. However, comments will be accepted until January 5, 2004.

**ADDRESSES:** Send comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105 or e-mail to [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov), or submit comments at <http://www.regulations.gov>.

You can inspect copies of the submitted rule revisions, EPA's technical support document (TSD), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted rule revisions by appointment at the following locations: Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Ventura County Air Pollution Control District, 669 County Square Drive, 2nd Floor, Ventura, CA 93003.

A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbtxt.htm>. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

**FOR FURTHER INFORMATION CONTACT:** Yvonne Fong, EPA Region IX, (415) 947-4117, [fong.yvonne@epa.gov](mailto:fong.yvonne@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to EPA.

**I. Background**

On April 26, 2002 (67 FR 20645), we published a limited approval and

limited disapproval of VCAPCD Rule 74.20. Table 1 lists the rule addressed by our prior limited approval and disapproval with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—RULE PREVIOUSLY ACTED ON BY US

Local agency	Rule No.	Rule title	Adopted	Submitted
VCAPCD .....	74.20	Adhesives and Sealants .....	01/14/97	03/03/97

We based our limited disapproval action on certain deficiencies in the submittal. This disapproval action started a sanctions clock for imposition of offset sanctions 18 months after May 28, 2002 and highway sanctions 6

months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

VCAPCD adopted revisions to Rule 74.20 to correct the deficiencies identified in our limited disapproval

action. Table 2 lists the rule that was submitted to correct the deficiencies noted in the previous version with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 2.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
VCAPCD .....	74.20	Adhesives and Sealants .....	09/09/03	09/19/03

In the Proposed Rules section of today’s **Federal Register**, we have proposed approval of this submittal because we believe it corrects the deficiencies identified in our April 26, 2002 disapproval action. Based on today’s proposed approval, we are taking this final rulemaking action, effective on publication, to stay imposition of sanctions that would be triggered by our April 26, 2002 limited disapproval.

EPA is providing the public with an opportunity to comment on this stay of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed full approval of revised VCAPCD Rule 74.20, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

**II. EPA Action**

We are making an interim final determination to stay CAA section 179 sanctions associated with VCAPCD Rule 74.20 based on our concurrent proposal to approve the State’s SIP revision as correcting deficiencies that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected

the deficiencies identified in EPA’s limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA’s determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State’s submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State’s submittal. Therefore, EPA believes that it is necessary to use the interim final

rulemaking process to stay sanctions while EPA completes its rulemaking process on the approvability of the State’s submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

**III. Statutory and Executive Order Reviews**

This action stays federal sanctions and imposes no additional 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.

This action is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action.

The administrator certifies that this action 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.*).

This rule 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 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 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 rule 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.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

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 to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of December 4, 2003. 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 rule 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 February 2, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which 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, Intergovernmental regulations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 7, 2003.

**Keith Takata,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 03-30168 Filed 12-3-03; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### 49 CFR Part 1152

[STB Ex Parte No. 537 (Sub-No. 1)]

#### Public Participation in Railroad Abandonment Proceedings

**AGENCY:** Surface Transportation Board.

**ACTION:** Final rule.

**SUMMARY:** The Surface Transportation Board (Board) is amending its regulations concerning the service of a notice of intent to abandon or discontinue rail service by removing an obsolete reference to a labor organization and making technical changes.

**EFFECTIVE DATE:** This rule is effective January 3, 2004.

**FOR FURTHER INFORMATION CONTACT:** John Sado, (202) 565-1661 (Federal Information Relay Service for the hearing impaired: 1-800-877-8339).

**SUPPLEMENTARY INFORMATION:** On September 2, 2003 at 68 FR 52168, the Board published a notice of proposed rulemaking (NPR) in this proceeding seeking comments on the Board's proposed removal of an obsolete reference and technical changes.<sup>1</sup> As noted in the NPR, the regulations at 49 CFR 1152.20(a)(2) provide that applicants seeking to abandon or

discontinue rail service must serve their notices of intent on certain interested parties, including, under section 1152.20(a)(2)(xi), "[t]he headquarters of the Railroad Labor Executives' Association" (RLEA). Because it was the Board's understanding that RLEA no longer existed, it was proposed that section 1152.20(a)(2)(xi) be removed. The NPR noted that the regulations still provide labor interests with notice of proposed abandonments or discontinuances, because current section 1152.20(a)(2)(xiii) requires service on "[t]he headquarters of all duly certified labor organizations that represent employees on the affected rail line."<sup>2</sup>

The NPR also indicated that paragraph 1152.20(a)(2)(xiii) contains language that should be moved for clarity: "For the purposes of this subsection 'directly affected states' are those in which any part of the line sought to be abandoned is located." This language would be more appropriate in section 1152.20(a)(2)(ii), and the Board proposed to move the substance of that language there. Finally, NPR proposed to redesignate sections 1152.20(a)(2)(xii) and (xiii) as sections 1152.20(a)(2)(xi) and (xii), respectively.

No comments were filed in response to the NPR. Accordingly, the obsolete reference will be removed and the technical changes will be made.

The Board certifies that the proposed rule will not have a significant impact on a substantial number of small entities. This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

#### List of Subjects in 49 CFR Part 1152

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements, and Uniform System of Accounts.

Decided: November 24, 2003.  
By the Board, Chairman Nober.

**Vernon A. Williams,**  
*Secretary.*

■ For the reasons set forth in the preamble, the Surface Transportation Board amends part 1152, of title 49, chapter X, of the Code of Federal Regulations as follows:

<sup>2</sup> Similar language for giving notice to labor representatives is found at sections 1121.4(h), 1150.32(e), 1150.35(c)(3), 1150.42(e), 1150.45(c)(3) and 1151.2(a)(6) concerning acquisition or operation of rail lines or feeder line applications.

<sup>1</sup> Comment was also sought on the certification that the proposed rule would not have a significant impact on a substantial number of small entities.

**PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903**

■ 1. The authority citation for part 1152 continues to read as follows:

**Authority:** 11 U.S.C. 1170; 16 U.S.C. 1247(d) and 1248; 45 U.S.C. 744; and 49 U.S.C. 701 note (1995) (section 204 of the ICC Termination Act of 1995), 721(a), 10502, 10903–10905, and 11161.

■ 2. § 1152.20 is amended by removing paragraph (a)(2)(xi) and redesignating

paragraphs (a)(2)(xii) and (xiii) as paragraphs 1152.20(a)(2)(xi) and (xii), respectively.

■ 3. Revise § 1152.20(a)(2)(ii) and newly redesignated § 1152.20(a)(2)(xii) to read as follows:

**§ 1152.20 Notice of intent to abandon or discontinue service.**

(a) \* \* \*

(2) \* \* \*

(ii) The Governor (by certified mail) of each state directly affected by the abandonment or discontinuance. (For

the purposes of this section “states directly affected” are those in which any part of the line sought to be abandoned is located).

\* \* \* \* \*

(xii) The headquarters of all duly certified labor organizations that represent employees on the affected rail line.

\* \* \* \* \*

[FR Doc. 03–29810 Filed 12–3–03; 8:45 am]

**BILLING CODE 4915–00–P**

# Proposed Rules

Federal Register

Vol. 68, No. 233

Thursday, December 4, 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 50

[Docket No. PRM-50-74]

#### Nuclear Energy Institute; Denial of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking: denial.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM-50-74) submitted by the Nuclear Energy Institute (NEI or petitioner). The petitioner requested that the NRC amend its regulations regarding emergency core cooling systems to allow licensees the optional use of the 1994 American Nuclear Society (ANS) decay heat standard and to allow the use of any future NRC-approved revisions of the standard without additional rulemaking. The NRC is denying the petition primarily because an option to use best-estimate evaluation models is already available to its licensees, which would allow additional operational flexibility. Also, the requested rulemaking would reduce conservatism in an individual portion of NRC regulations without consideration of other potential overall non-conservatism within that portion of the regulations.

**ADDRESSES:** Publicly available documents related to this petition for 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. Documents may be copied by the PDR reproduction contractor for a fee.

These documents are also available electronically at NRC's Electronic Reading Room on the Internet 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. For further information contact the PDR reference staff at 1-(800) 387-4209 or (301) 415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking web site at <http://ruleforum.llnl.gov>.

**FOR FURTHER INFORMATION CONTACT:** Peter C. Wen, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-2832, e-mail [pxw@nrc.gov](mailto:pxw@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

#### Background

Section 50.46 specifies the performance criteria against which the emergency core cooling system (ECCS) must be evaluated. The criteria include the maximum peak cladding temperature, the maximum cladding oxidation thickness, the maximum total hydrogen generation, and requirements to assure a coolable core geometry and abundant long-term cooling. This regulation also states that the calculated ECCS cooling performance following postulated loss-of-coolant accidents (LOCAs) must be calculated in accordance with either a realistic (also called best-estimate) evaluation model that accounts for uncertainty or an evaluation model that conforms with the required conservative features of Appendix K evaluation models. The use of the 1971 ANS standard on decay heat calculation is one of the features required in the Appendix K ECCS evaluation models.

#### The Petition

On September 6, 2001, the Nuclear Energy Institute (NEI) submitted a petition for rulemaking (PRM), designated PRM-50-74. NEI proposed a rulemaking to amend Appendix K to 10 CFR part 50 to allow licensees the optional use of the 1994 ANS decay heat standard and to allow the use of any future NRC-approved revisions of the standard without additional rulemaking.

In PRM-50-74, the petitioner stated that the 1994 ANS decay heat standard incorporates more precise results and uses a statistical approach to address uncertainty. The petitioner proposed a rulemaking to amend Appendix K to 10

CFR part 50 to allow licensees the optional use of this most current consensus decay heat standard. The petitioner indicated that the amendment would (1) allow licensees to gain operating margin for ECCS equipment based on the more realistic decay heat assumptions in the 1994 ANS standard; (2) result in more effective utilization of resources in operating and maintaining the ECCS equipment; and (3) result in the potential for higher extended power uprates.

#### Public Comments on the Petition

The notice of receipt of the petition and request for public comment was published in the **Federal Register** (FR) on October 11, 2001 (66 FR 51884). The public comment period ended on December 26, 2001. Five letters of public comment were received in response to PRM-50-74. Four letters from industry (the Progress Energy Company, the Tennessee Valley Authority, Strategic Teaming and Resource Sharing, and the Nuclear Management Company) were in favor of the proposal, and one letter from an individual (Mr. Bob Leyse) was opposed. Mr. Leyse stated that "the entire body of ECCS evaluation models should be reviewed by the NRC rather than a piecemeal approach of selecting only those aspects that may be unduly restrictive."

#### Reasons for Denial

The NRC is denying PRM-50-74 primarily because § 50.46 already includes provisions for the use of best-estimate evaluation models by NRC licensees. In addition, the request would reduce conservatism in an individual portion of NRC regulations without consideration of other potential overall non-conservatism within that portion of the regulations.

The provisions of § 50.46 allow licensees use of "best-estimate" evaluation models to perform analysis of ECCS cooling performance during LOCAs. This approach provides licensees with a more accurate determination of their plants' response to a LOCA, while allowing additional operational flexibility. The best-estimate evaluation represents improved and modern techniques in analyzing LOCA behavior. Thus, the NRC prefers the use of best-estimate models, rather than the piecemeal approach to updating the Appendix K evaluation models.

A concomitant factor that influenced the NRC's position is the NRC's awareness of a number of phenomena that are known to contribute non-conservatism to the Appendix K evaluation models. These phenomena include boiling in the downcomer annulus during reflood, downcomer entrainment and inventory reduction due to steam bypass, and fuel relocation following cladding swelling during the temperature transient. The NRC believes that if changes are made in the decay heat standard, then changes would also have to be considered in other models to ensure that an appropriate level of overall conservatism is retained in the ECCS evaluation model package.

In addition, the NRC has evaluated the advantages and disadvantages of the rulemaking requested by the petitioner with respect to the four NRC Strategic Performance Goals as follows:

1. *Maintaining Safety:* The NRC believes that the requested rulemaking would not make a significant contribution to maintaining safety because the overall conservatism provided by the Appendix K evaluation models may not be appropriately accounted for if the conservatism of using the 1971 ANS decay heat standard is individually removed.

2. *Enhancing Public Confidence:* The proposed rulemaking would not enhance public confidence without an overall assessment of ECCS evaluation model conservatism. The NRC believes that if changes are made in the decay heat standard, then changes would also have to be considered in other models to ensure that an appropriate level of overall conservatism is retained in the ECCS evaluation model package.

3. *Improving Efficiency and Effectiveness:* The NRC staff believes that it would not be efficient and effective to modify the Appendix K evaluation model using a piecemeal approach when the "best-estimate" evaluation model is already available for licensees use.

4. *Reducing Unnecessary Regulatory Burden:* The NRC agrees that the proposed rule would reduce licensees' regulatory burden. However, the NRC does not agree that the associated burden is "unnecessary" in the absence of a demonstration that overall conservatism retained in the Appendix K evaluation models would remain adequate. For reasons cited in this document, the NRC denies the petition.

Dated at Rockville, Maryland, this 26th day of November, 2003.

For the Nuclear Regulatory Commission.  
**J. Samuel Walker,**  
*Acting Secretary of the Commission.*  
 [FR Doc. 03-30148 Filed 12-3-03; 8:45 am]  
**BILLING CODE 7590-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002-NM-327-AD]

RIN 2120-AA64

#### **Airworthiness Directives; Boeing Model 737-600, 737-700, 737-700C, 737-800, and 737-900 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 Model 737-600, 737-700, 737-700C, 737-800, and 737-900 series airplanes. This proposal would require measuring the electrical resistance of the support bracket for the fire extinguisher bottle located in the left main landing gear wheel well to ensure that it does not exceed the maximum allowed resistance; and corrective actions, if necessary. This action is necessary to prevent high electrical resistance in the squib firing circuit, which could result in insufficient electrical current to fire the fire extinguisher bottle squib and discharge the fire extinguishing agent, which could lead to an uncontrolled engine fire. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by January 20, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-327-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](mailto:9-anm-nprmcomment@faa.gov). Comments sent via fax or the Internet must contain "Docket No. 2002-NM-327-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, P.O. 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:** Doug Pegors, Aerospace Engineer; Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 917-6504; 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-327-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-327-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

### Discussion

The FAA has received a report indicating that, during a routine inspection in production at Boeing, the electrical resistance of the ground studs installed on the support bracket for the fire extinguisher bottles in the left main wheel well of certain Boeing Model 737 series airplanes was found to exceed the maximum allowed level. During manufacture, the anodize coating was not removed properly from the holes in the support bracket into which the ground studs are inserted, thereby increasing the electrical resistance between the studs and the bracket. Therefore, the electrical resistance between the bracket and the grounding studs may exceed the maximum allowed resistance. This condition, if not corrected, could result in insufficient electrical current to fire the fire extinguisher bottle squib and discharge the fire extinguishing agent, which could lead to an uncontrolled engine fire.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737-26A1118, dated October 17, 2002, which describes procedures for:

- Measuring the electrical resistance of the dual ground studs to ensure that the electrical resistance is no greater than 0.5 milliohms;
- Measuring the bond resistance from the top terminal lug of each ground stud to the adjacent structure; and
- Corrective actions, if necessary.

The corrective actions include replacing the affected ground stud with a new ground stud; reworking the ground stud; and relocating the support bracket hole; as applicable.

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.

### Difference Between Proposed Rule and Service Bulletin

Because the service bulletin does not specify a corrective action to take if the bond resistance measurement found in Figure 4 of the service bulletin is greater than 1.0 milliohms, this proposed AD would require operators to rework per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

### Cost Impact

There are approximately 133 airplanes of the affected design in the worldwide fleet. The FAA estimates that 28 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$3,640, or \$130 per airplane.

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.

### 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-327-AD.

**Applicability:** Model 737-600, 737-700, 737-700C, 737-800, and 737-900 series airplanes, as listed in Boeing Alert Service Bulletin 737-26A1118, dated October 17, 2002; certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent high electrical resistance in the squib firing circuit, which could result in insufficient electrical current to fire the fire extinguisher bottle squib and discharge the fire extinguishing agent, which could lead to an uncontrolled engine fire, accomplish the following:

#### Inspection, Rework, Replacement, Relocation and Installation

(a) Except as provided by paragraph (b) of this AD: Within 90 days after the effective date of this AD, measure the electrical resistance of the dual ground studs of the support brackets for the fire extinguisher bottle located in the left main landing gear wheel well (including the applicable corrective actions) by accomplishing all actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737-26A1118, dated October 17, 2002. Do the actions per the service bulletin. Any applicable corrective action must be accomplished prior to further flight.

#### Additional Rework

(b) If, when accomplishing the bond resistance measurement described in Figure 4 of the Boeing Alert Service Bulletin 737-26A1118, dated October 17, 2002, the resistance is found to be greater than 1.0 milliohms (0.001 ohms): Before further flight, rework per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

#### Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office,

FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Issued in Renton, Washington, on November 28, 2003.

**Kalene C. Yanamura,**

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

[FR Doc. 03-30192 Filed 12-3-03; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002-NM-183-AD]

RIN 2120-AA64

#### Airworthiness Directives; Airbus Model A319 and A320 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the superseding of an existing airworthiness directive (AD), applicable to all Airbus Model A320 series airplanes, that currently requires repetitive ultrasonic inspections to detect fatigue cracking in the wing/fuselage joint cruciform fittings, and corrective actions if necessary. This action would require repetitive ultrasonic inspections for fatigue cracking in the wing/fuselage joint cruciform fittings at a reduced inspection threshold and repetitive interval. This action also would add airplanes to the applicability of the existing AD. The actions specified by the proposed AD are intended to detect and correct fatigue cracks on the wing/fuselage joint cruciform fittings, which could result in reduced structural integrity of the wing/fuselage. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by January 5, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-183-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](mailto:9-anm-nprmcomment@faa.gov). Comments sent via fax or the Internet must contain

“Docket No. 2002-NM-183-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 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2125; fax (425) 227-1149.

#### 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-183-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-183-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

#### Discussion

On February 13, 1998, the FAA issued AD 98-04-49, amendment 39-10360 (63 FR 9934, February 27, 1998), applicable to all Airbus Model A320 series airplanes. That AD requires repetitive ultrasonic inspections to detect fatigue cracking in the wing/fuselage joint cruciform fittings, and corrective actions if necessary. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to detect and correct fatigue cracks on the wing/fuselage joint cruciform fittings, which could result in reduced structural integrity of the wing/fuselage.

#### Actions Since Issuance of Previous Rule

The inspection threshold and repetitive intervals specified in AD 98-04-49 were based on full-scale fatigue tests. Since the issuance of that AD, the airplane manufacturer has surveyed the Model A320 series airplane fleet and found that parameters such as the weight of fuel at landing and the mean flight duration are higher than those defined for the analysis of fatigue-related tasks. Thus, the manufacturer has adjusted the reference fatigue mission. This adjustment has resulted in a reduction in the threshold and repetitive inspection intervals required by the existing AD. In addition, it has been determined that Model A319 series airplanes should also be subject to these same inspections at the reduced threshold and interval.

#### Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320-57-1051, Revision 04, dated November 27, 2001. (The existing AD refers to Revision 01 of that service bulletin, dated March 21, 1996, as the acceptable source of service information for the actions required by that AD.) Revision 04 of the service bulletin describes procedures for repetitive ultrasonic inspections for cracking around fastener “a” on the rear section of the cruciform fitting at rib 1 on both wings. This inspection is similar to that described in Revision 01 of the service

bulletin. If a suspected crack is found, the service bulletin specifies to remove the fastener and perform a rotative probe inspection of the fastener hole. If no crack is found, the service bulletin specifies to install a new fastener of the same diameter as the one that was removed. If a crack is found that measures 2.5 mm or less, the service bulletin specifies to drill the hole to remove the crack, and perform a second rotative probe inspection of the drilled hole to detect any crack. If the crack has been removed, the service bulletin specifies to install bushings and a new bolt. If a crack is found that is more than 2.5 mm, or if the second rotative probe inspection reveals that the crack is still present, the service bulletin specifies to contact the manufacturer for repair instructions. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified this service bulletin as mandatory and issued French airworthiness directive 2002-340(B), dated June 26, 2002, to ensure the continued airworthiness of these airplanes in France.

#### FAA's Conclusions

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

#### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 98-04-49 to require repetitive ultrasonic inspections to detect fatigue cracking in the wing/fuselage joint cruciform fittings, and corrective actions if necessary. This action would require repetitive inspections on additional airplanes not included in the applicability of the existing AD. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

#### Differences Between Proposed AD and Service Bulletin

Although the service bulletin specifies that operators may contact the manufacturer for disposition of certain repair conditions, this proposal would require operators to repair those conditions per a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Operators also should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for reporting inspection results to Airbus, this proposed AD would not require that action.

#### Cost Impact

The actions that are currently required by AD 98-04-49 are applicable to 132 airplanes of U.S. registry and take approximately 2 work hours per airplane to accomplish (not including time for gaining access and closing up), at an average labor rate of \$65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be \$17,160, or \$130 per airplane.

This new proposed AD would affect approximately 475 airplanes of U.S. registry. The new actions that are proposed in this AD action would take approximately 2 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 proposed requirements of this AD on U.S. operators is estimated to be \$61,750, or \$130 per airplane.

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

#### Regulatory Impact

The regulations proposed herein would not have a substantial direct

effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

#### ADDRESSES.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-10360 (63 FR 9934, February 27, 1998), and by adding a new airworthiness directive (AD), to read as follows:

**Airbus:** Docket 2002-NM-183-AD.

Supersedes AD 98-04-49, Amendment 39-10360.

**Applicability:** All Model A319 and A320 series airplanes, certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To detect and correct fatigue cracks on the wing/fuselage joint cruciform fittings, which could result in reduced structural integrity of the wing/fuselage, accomplish the following:

#### Requirements of AD 98-04-49

*Ultrasonic Inspection (Model A320 Series Airplanes)*

(a) For Model A320 series airplanes: Prior to the accumulation of 28,000 total landings, or within 60 days after April 3, 1998 (the

effective date of AD 98-04-49, amendment 39-10360), whichever occurs later, perform an ultrasonic inspection to detect fatigue cracking in the wing/fuselage joint cruciform fittings, in accordance with Airbus Service Bulletin A320-57-1051, Revision 01, dated March 21, 1996.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 20,000 landings, until paragraph (c) of this AD is accomplished.

(2) If any crack is detected, prior to further flight, repair it in accordance with the service bulletin. Thereafter, repeat the inspection at the times specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

(i) If the crack that was detected and repaired was greater than 2.5 mm: Repeat the inspection prior to the accumulation of 32,000 landings since accomplishment of the repair; and thereafter at intervals not to exceed 32,000 landings.

(ii) If the crack that was detected and repaired was less than or equal to 2.5 mm: Repeat the inspection prior to the accumulation of 28,000 landings since accomplishment of the repair; and thereafter at intervals not to exceed 20,000 landings.

#### New Requirements of This AD

##### *Ultrasonic Inspection (Model A319 Series Airplanes)*

(b) For Model A319 series airplanes: Perform an ultrasonic inspection to detect fatigue cracking in the wing/fuselage joint cruciform fittings, in accordance with Airbus Service Bulletin A320-57-1051, Revision 04, dated November 27, 2001. Do the initial inspection at the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD. Repeat the inspection thereafter at intervals not to exceed the applicable interval specified in paragraph 1.E.(2) of the service bulletin.

(1) Prior to the accumulation of 20,000 total flight cycles or 42,000 total flight hours, whichever is first.

(2) Prior to the accumulation of 28,000 total flight cycles or within 3,500 flight cycles after the effective date of this AD, whichever is first.

##### *Ultrasonic Inspection (Model A320 Series Airplanes)*

(c) For Model A320 series airplanes: Perform an ultrasonic inspection to detect fatigue cracking in the wing/fuselage joint cruciform fittings, in accordance with Airbus Service Bulletin A320-57-1051, Revision 04, dated November 27, 2001, at the later of the times specified in paragraphs (c)(1) and (c)(2) of this AD, except as required by paragraph (f) of this AD. Accomplishment of the inspection required by this paragraph terminates the repetitive inspections required by paragraph (a) of this AD. Except as required by paragraph (e) of this AD, repeat the ultrasonic inspection at intervals not to exceed the applicable interval specified in paragraph 1.E.(2) of the service bulletin.

(1) Prior to the accumulation of 20,000 total flight cycles or 42,000 total flight hours, whichever is first.

(2) Prior to the accumulation of 28,000 total flight cycles or within 3,500 flight cycles after the effective date of this AD, whichever is first.

##### *Cracking: Corrective Action and Repeat Inspections*

(d) If any crack is found during any inspection required by paragraph (b) or (c) of this AD: Before further flight, do all applicable actions in paragraphs B.(1)(b), C.(1), D., and E. (including removing the fastener, performing a rotative probe inspection to confirm the crack or determine the size of the crack, and accomplishing applicable corrective actions) of the Accomplishment Instructions of Airbus Service Bulletin A320-57-1051, Revision 04, dated November 27, 2001, except as provided by paragraph (e) of this AD.

(e) If any crack is found during any inspection required by this AD, and the service bulletin recommends contacting Airbus for appropriate action: Before further flight, repair and perform repetitive inspections per a method and at a repetitive inspection interval approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

##### *Model A320 Series Airplanes Repaired Previously*

(f) For Model A320 series airplanes on which a crack measuring more than 2.5 mm was repaired prior to the effective date of this AD per Airbus Service Bulletin A320-57-1051, Revision 01, dated March 21, 1996: Perform repetitive inspections per a method and at an interval approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

##### *Reporting of Inspection Results Not Required*

(g) Where the Accomplishment Instructions of Airbus Service Bulletin A320-57-1051, Revision 04, dated November 27, 2001, describe procedures for reporting inspection results to Airbus, this AD does not require such reporting.

##### *Alternative Methods of Compliance*

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

**Note 1:** The subject of this AD is addressed in French airworthiness directive 2002-340(B), dated June 26, 2002.

Issued in Renton, Washington, on November 28, 2003.

**Kalene C. Yanamura,**

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

[FR Doc. 03-30191 Filed 12-3-03; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002-NM-233-AD]

RIN 2120-AA64

#### **Airworthiness Directives; Dassault Model Falcon 2000 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 Dassault Model Falcon 2000 series airplanes. This proposal would require modification of the forward ribs of the left and right engine pylons to plug holes left open during production. This action is necessary to prevent fuel leakage into a "hot" section of the engine, and consequent propagation of an uncontained engine fire. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by January 5, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-233-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](mailto:9-anm-nprmcomment@faa.gov). Comments sent via fax or the Internet must contain "Docket No. 2002-NM-233-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 Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington

98055-4056; telephone (425) 227-1137; fax (425) 227-1149.

#### 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-233-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-233-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

##### Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Dassault Model Falcon 2000 series airplanes. The DGAC advises that during production

two 4-millimeter holes in the forward ribs of the left and right engine pylons were not plugged, reducing their capability to operate as firewalls. If there is heavy fuel leakage at the fuselage-nacelle connections, fuel could drain through the holes into "hot" zones of the engines. This condition, if not corrected, could result in propagation of an uncontained engine fire.

##### Explanation of Relevant Service Information

Dassault has issued Service Bulletin F2000-248, dated August 12, 2002, which describes procedures for modifying the forward ribs of the left and right engine pylons by plugging the two holes in each pylon. The modification procedures include using rivets installed with an interlay of sealing compound to plug the holes. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2002-413(B), dated August 7, 2002, to ensure the continued airworthiness of these airplanes in France.

##### FAA's Conclusions

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

##### Explanation of Requirements of Proposed Rule

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

##### Difference Between the Proposed Rule and the Service Bulletin

Although the Accomplishment Instructions of the service bulletin specify to submit information to the manufacturer, this proposed AD would not include such a requirement.

##### Cost Impact

The FAA estimates that 119 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 actions, and that the average labor rate is \$65 per work hour. The cost of required parts would be minimal. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$7,735, or \$65 per airplane.

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 AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

##### Regulatory Impact

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

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

##### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

##### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part

39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**Dassault Aviation:** Docket 2002–NM–233–AD.

**Applicability:** Model Falcon 2000 series airplanes on which Dassault Modification M2111 has not been installed, certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent fuel leakage into a “hot” section of the engine, and consequent propagation of an uncontained engine fire, accomplish the following:

#### Modification of the Engine Pylons

(a) Within 7 months after the effective date of this AD, modify the forward ribs of the left and right engine pylons by plugging the two 4-millimeter holes in each rib in accordance with the Accomplishment Instructions of Dassault Service Bulletin F2000–248, dated August 12, 2002. Although the service bulletin specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

#### Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

**Note 1:** The subject of this AD is addressed in French airworthiness directive 2002–413(B), dated August 7, 2002.

Issued in Renton, Washington, on November 28, 2003.

**Kalene C. Yanamura,**

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

[FR Doc. 03–30190 Filed 12–3–03; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Part 1

[Docket No.: 2003–P–029]

RIN 0651–AB71

### Revision of Patent Term Extension and Patent Term Adjustment Provisions Related to Decisions by the Board of Patent Appeals and Interferences

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice of proposed rule making.

**SUMMARY:** The patent term extension provisions of the Uruguay Round Agreements Act (URAA) and the patent term adjustment provisions of the American Inventors Protection Act of 1999 (AIPA) each provide for the possibility of patent term extension or adjustment if the issuance of the patent was delayed due to review by the Board of Patent Appeals and Interferences (BPAI) or by a Federal court and the patent was issued pursuant to or under a decision in the review reversing an adverse determination of patentability. The United States Patent and Trademark Office (Office) is proposing to revise the rules of practice in patent cases to indicate that under certain circumstances a remand by the Board of Patent Appeals and Interferences shall be considered a decision in the review reversing an adverse determination of patentability for purposes of patent term extension or patent term adjustment.

**DATES:** *Comment deadline date:* To be ensured of consideration, written comments must be received on or before January 5, 2004. No public hearing will be held.

**ADDRESSES:** Comments should be sent by electronic mail message over the Internet addressed to [AB71.Comments@uspto.gov](mailto:AB71.Comments@uspto.gov). Comments may also be submitted by mail addressed to: Box Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, or by facsimile to (703) 746–3261, marked to the attention of Kery A. Fries. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office prefers that the comments be submitted on a DOS formatted 3½ inch disk accompanied by a paper copy.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Crystal Park 2, Suite 910, 2121 Crystal Drive, Arlington, Virginia, and will be

available through anonymous file transfer protocol (ftp) via the Internet (address: <http://www.uspto.gov>). Since comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

**FOR FURTHER INFORMATION CONTACT:** Kery A. Fries, Legal Advisor, Office of Patent Legal Administration, by telephone at (703) 305–1383, by mail addressed to: Box Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, or by facsimile to (703) 746–3240, marked to the attention of Kery A. Fries.

**SUPPLEMENTARY INFORMATION:** Section 532(a) of the URAA (Pub. L. 103–465, 108 Stat. 4809 (1994)) amended 35 U.S.C. 154 to provide that the term of a patent ends on the date that is twenty years from the filing date of the application, or the earliest filing date for which a benefit is claimed under 35 U.S.C. 120, 121, or 365(c). Public Law 103–465 also contained provisions, codified at 35 U.S.C. 154(b), for patent term extension due to certain examination delays. The Office implemented the patent term extension provisions of the URAA in a final rule published in April of 1995. *See Changes to Implement 20-Year Patent Term and Provisional Applications*, 60 FR 20195 (Apr. 25, 1995), 1174 *Off. Gaz. Pat. Office* 15 (May 2, 1995) (final rule).

The AIPA further amended 35 U.S.C. 154(b) to include additional bases for patent term extension (termed “patent term adjustment” in the AIPA). Original utility and plant patents issuing from applications filed on or after May 29, 2000, may be eligible for patent term adjustment if issuance of the patent is delayed due to one or more of the enumerated administrative delays listed in 35 U.S.C. 154(b)(1). The Office implemented the patent term adjustment provisions of the AIPA in a final rule published in September of 2000. *See Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term*, 65 FR 56365 (Sept. 18, 2000), 1239 *Off. Gaz. Pat. Office* 14 (Oct. 3, 2000) (final rule). The patent term adjustment provisions of the AIPA apply to original (*i.e.*, non-reissue) utility and plant applications filed on or after May 29, 2000. *See Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term*, 65 FR at 56367, 1239 *Off. Gaz. Pat. Office* at 14–15. The patent term extension provisions of the URAA (for delays due to secrecy order, interference or successful appellate review) continued to apply to utility and plant applications

filed on or after June 7, 1995, and before May 29, 2000. *See id.*

The Office is proposing to amend the rules of practice in patent cases to indicate that certain remands by the BPAI shall be considered "a decision in the review reversing an adverse determination of patentability" for patent term adjustment and patent term extension purposes. Specifically, if an application is remanded by a panel of the BPAI, and a notice of allowance under § 1.311 is mailed without further review by the BPAI, without further amendment of the application, and without other action by the applicant, the remand shall (if the proposed change is adopted) be considered a decision reversing an adverse determination of patentability for patent term adjustment and patent term extension purposes. The phrase "remanded by a panel" of the BPAI means that the application was remanded by a panel comprised of members of the BPAI as defined in 35 U.S.C. 6. The phrase "remanded by a panel" of the BPAI does not pertain to applications containing a remand or order returning an appeal to the examiner issued by a BPAI administrator. *See Revised Docketing Procedures for Appeals Arriving at the Board of Patent Appeals and Interferences*, 1260 *Off. Gaz. Pat. Office* 18 (July 2, 2002).

The Office initially took the position that a remand by a BPAI panel was not a "decision" within the meaning of 35 U.S.C. 154(b)(1)(A)(iii), much less "a decision reversing an adverse determination of patentability" as that phrase is used in 35 U.S.C. 154(b)(1)(C)(iii). *See Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term*, 65 FR at 56369, 1239 *Off. Gaz. Pat. Office* at 16. The Office has subsequently determined that there are a number of BPAI panel remands that convey the weakness in the examiner's adverse patentability determination in a manner tantamount to a decision reversing the adverse patentability determination. Such a BPAI panel remand generally results in the examiner *sua sponte* deciding to withdraw the rejections and allow the application without any intervening action by the applicant, rather than responding to the issues raised in the remand and returning the application to the BPAI for decisions reversing the adverse patentability determinations. The change being proposed in this notice addresses the situation in which an examiner responds to a remand by a BPAI panel by *sua sponte* withdrawing all the rejections and allowing the application,

rather than responding to the issues raised in the remand and returning the application to the BPAI for a decision on the appeal. In this situation, the BPAI panel remand shall (if the proposed change is adopted) be considered "a decision in the review reversing an adverse determination of patentability" for patent term extension and patent term adjustment purposes. If, however, the application is allowed as a result of a further amendment, or after any other action by the applicant (*e.g.*, the filing of a paper containing argument, an affidavit or declaration, or an information disclosure statement), without being returned to the BPAI for further review, then such remand shall not be considered "a decision in the review reversing an adverse determination of patentability" for patent term extension and patent term adjustment purposes.

If the patent issues after a remand that is considered "a decision in the review reversing an adverse determination of patentability," the BPAI panel remand is the "final decision in favor of the applicant" for purposes of a patent term extension or adjustment calculation under § 1.701(c)(3) or § 1.703(e) (as applicable). The period of extension or adjustment calculated under § 1.701(c)(3) or § 1.703(e) (as applicable) would equal the number of days in the period beginning on the date on which a notice of appeal to the BPAI was filed under 35 U.S.C. 134 and § 1.191 and ending on the mailing date of the BPAI panel remand.

#### Discussion of Specific Rules

*Section 1.701:* Section 1.701(a)(3) is proposed to be amended by adding the following sentence: If an application is remanded by a panel of the Board of Patent Appeals and Interferences, and a notice of allowance under § 1.311 is mailed without further review by the Board of Patent Appeals and Interferences, without further amendment of the application, and without other action by the applicant, the remand shall be considered a decision reversing an adverse determination of patentability as that phrase is used in 35 U.S.C. 154(b)(2) as amended by section 532(a) of the Uruguay Round Agreements Act, Public Law 103-465, 108 Stat. 4809, 4983-85 (1994). Section 1.701(a)(3) is also proposed to be amended to change "decision reversing an adverse determination of patentability" to "decision in the review reversing an adverse determination of patentability" for consistency with 35 U.S.C. 154(b)(2) as amended by section 532(a) of the URAA.

*Section 1.702:* Section 1.702(e) is proposed to be amended by adding the following sentence: If an application is remanded by a panel of the Board of Patent Appeals and Interferences, and a notice of allowance under § 1.311 is mailed without further review by the Board of Patent Appeals and Interferences, without further amendment of the application, and without other action by the applicant, the remand shall be considered a decision by the Board of Patent Appeals and Interferences as that phrase is used in 35 U.S.C. 154(b)(1)(A)(iii) and a decision in the review reversing an adverse determination of patentability as that phrase is used in 35 U.S.C. 154(b)(1)(C)(iii). Section 1.702(e) is also proposed to be amended to change "decision reversing an adverse determination of patentability" to "decision in the review reversing an adverse determination of patentability" for consistency with 35 U.S.C. 154(b)(1)(C)(iii).

#### Rule Making Considerations

*Regulatory Flexibility Act:* The Deputy General Counsel for General Law, United States Patent and Trademark Office, has certified to the Chief Counsel for Advocacy, Small Business Administration, that the changes proposed in this notice (if adopted) would not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The provisions of the Regulatory Flexibility Act relating to the preparation of a flexibility analysis are not applicable to this rule making because the changes proposed in this notice will not have a significant economic impact on a substantial number of small entities. The changes proposed in this notice would (if adopted) only change the manner in which the Office makes its patent term adjustment determination in applications that have been allowed under certain circumstances following a remand by the BPAI. The changes proposed in this notice would impose no additional fees or requirements on patent applicants.

*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 notice 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.*). The collection of information involved in this notice has been reviewed and previously approved by OMB under OMB control number 0651-0020. The United States Patent and Trademark Office is not resubmitting an information collection package to OMB for its review and approval because the changes in this notice do not affect the information collection requirements associated with the information collection under OMB control number 0651-0020.

The title, description and respondent description of this information collection is shown below with an estimate of the annual reporting burdens. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The changes in this notice merely set forth the circumstances under which the Office will consider a remand by the Board of Patent Appeals and Interferences to be a decision in the review reversing an adverse determination of patentability for purposes of patent term extension and patent term adjustment.

OMB Number: 0651-0020.

Title: Patent Term Extension.

Form Numbers: None.

Type of Review: Approved through October of 2004.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions, Farms, Federal Government and State, Local and Tribal Governments.

Estimated Number of Respondents: 26,858.

Estimated Time Per Response: Between 1 and 25 hours.

Estimated Total Annual Burden Hours: 30,903 hours.

Needs and Uses: The information supplied to the United States Patent and Trademark Office by an applicant requesting reconsideration of a patent term adjustment determination under 35 U.S.C. 154(b) (§ 1.702 *et seq.*) is used by the United States Patent and Trademark Office to determine whether its determination of patent term adjustment under 35 U.S.C. 154(b) is correct, and whether the applicant is entitled to reinstatement of reduced patent term adjustment. The information supplied to the United States Patent and Trademark Office by an applicant seeking a patent term extension under 35 U.S.C. 156 (§ 1.710 *et seq.*) is used by the United States Patent and Trademark Office, the

Department of Health and Human Services, and the Department of Agriculture to determine the eligibility of a patent for extension and to determine the period of any such extension. The applicant can apply for patent term and interim extensions, petition the Office to review final eligibility decisions, withdraw patent term applications, and declare his or her eligibility to apply for a patent term extension.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

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

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

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small Businesses.

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

PART 1—RULES OF PRACTICE IN PATENT CASES

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

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

2. Section 1.701 is amended by revising paragraph (a)(3) 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).

(a) \* \* \*

(3) Appellate review by the Board of Patent Appeals and Interferences or by a Federal court under 35 U.S.C. 141 or 145, if the patent was issued pursuant to a decision in the review reversing an adverse determination of patentability and if the patent is not subject to a terminal disclaimer due to the issuance of another patent claiming subject matter that is not patentably distinct from that under appellate review. If an application is remanded by a panel of the Board of Patent Appeals and Interferences, and a notice of allowance under § 1.311 is mailed without further review by the Board of Patent Appeals and Interferences, without further amendment of the application, and without other action by the applicant, the remand shall be considered a decision in the review reversing an adverse determination of patentability as that phrase is used in 35 U.S.C. 154(b)(2) as amended by section 532(a) of the Uruguay Round Agreements Act, Public Law 103-465, 108 Stat. 4809, 4983-85 (1994).

\* \* \* \* \*

3. Section 1.702 is amended by revising paragraph (e) to read as follows:

§ 1.702 Grounds for adjustment of patent term due to examination delay under the Patent Term Guarantee Act of 1999 (original applications, other than designs, filed on or after May 29, 2000).

\* \* \* \* \*

(e) Delays caused by successful appellate review. Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to review by the Board of Patent Appeals and Interferences under 35 U.S.C. 134 or by a Federal court under 35 U.S.C. 141 or 145, if the patent was issued under a decision in the review reversing an adverse determination of patentability. If an application is remanded by a panel of the Board of Patent Appeals and Interferences, and a notice of allowance under § 1.311 is mailed without further review by the Board of Patent Appeals and Interferences, without further amendment of the application, and without other action by the applicant, the remand shall be considered a decision by the Board of Patent Appeals and Interferences as that phrase is used in 35 U.S.C. 154(b)(1)(A)(iii) and a decision in the review reversing an

adverse determination of patentability as that phrase is used in 35 U.S.C. 154(b)(1)(C)(iii).

\* \* \* \* \*

Dated: November 24, 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. 03-30151 Filed 12-3-03; 8:45 am]

**BILLING CODE 3510-16-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 291-0424b; FRL-7590-5]

#### Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from adhesives and sealants. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by January 5, 2004.

**ADDRESSES:** Send comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901 or e-mail to [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov), or submit comments at <http://www.regulations.gov>.

You can inspect copies of the submitted SIP revisions, EPA's technical support document (TSD), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Ventura County Air Pollution Control District, 669 County Square Drive, 2nd Floor, Ventura, CA 93003.

A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbtxt.htm>.

Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

**FOR FURTHER INFORMATION CONTACT:** Yvonne Fong, EPA Region IX, (415) 947-4117, [fong.yvonne@epa.gov](mailto:fong.yvonne@epa.gov).

**SUPPLEMENTARY INFORMATION:** This proposal addresses the following local rule: VCAPCD 74.20. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: November 7, 2003.

**Keith Takata,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 03-30167 Filed 12-3-03; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Parts 171, 173, 174, 176, and 177

[Docket No. RSPA-03-16370 (HM-233)]

RIN 2137-AD84

#### Hazardous Materials; Incorporation of Exemptions Into Regulations

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** RSPA proposes to amend the Hazardous Materials Regulations to incorporate into the regulations the provisions of certain widely used exemptions which have established a history of safety and which may be converted into regulations for general use. We are also making minor revisions to the requirements for use of packagings authorized under exemptions. The proposed changes would provide wider access to the benefits of the provisions granted in these exemptions and eliminate the need for the current exemption holders

to reapply for renewal of the exemption, thus reducing paperwork burdens and facilitating commerce while maintaining an acceptable level of safety.

**DATES:** Comments must be received by February 6, 2004.

**ADDRESSES:** You may submit comments [identified by DOT DMS Docket Number RSPA-03-16370 (HM-233)] by any of the following methods:

- Web Site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 202-493-2251.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL-401, Washington, DC 20590-0001.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted, without change, to <http://dms.dot.gov> including any personal information provided. Please see the Privacy Act heading under Regulatory Analyses and Notices.

*Docket:* For access to the docket to read background documents and comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Gigi Corbin, Office of Hazardous Materials Standards, (202) 366-8553 or Diane LaValle, Office of Hazardous Materials Exemptions and Approvals, (202) 366-4535, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The Research and Special Programs Administration (RSPA) (hereafter, "we" or "us") is proposing amendments to the Hazardous Materials Regulations

(HMR; 49 CFR parts 171–180) to incorporate a number of changes based on existing exemptions. This rulemaking is part of an ongoing effort to identify commonly used exemptions that have an established history of safety and may be converted into regulations. Adoption of these exemptions as rules of general applicability will provide wider access to benefits of the provisions granted in these exemptions. Additionally, these proposed changes will eliminate the need for the current holders to reapply for extension of the exemptions every two years and for us to process these renewal requests. In addition, we are proposing minor revisions to the requirements for use of packagings authorized under exemptions. We have identified the following subjects as suitable for incorporation into this notice of proposed rulemaking:

**Salvage cylinders:** The use of non-DOT specification salvage cylinders for the overpacking and transportation in commerce of damaged or leaking cylinders of certain pressurized and non-pressurized hazardous materials has been authorized under various exemptions for several years. The exemptions affected are DOT–E 9507, 9781, 9991, 10022, 10110, 10151, 10323, 10372, 10504, 10519, 10789, 10987, 11257, 11459, 12676, 12698, 12790, and 12898. This proposal also responds to a petition for rulemaking (P–1168) submitted by the Chlorine Institute, Inc.

**Meter provers:** A mechanical displacement meter prover is a mechanical device, permanently mounted on a truck or trailer, consisting of a piping system that is used to calibrate the accuracy and performance of meters that measure the quantity of product being pumped or transferred at facilities such as drilling locations, refineries, tank farms and loading racks. Exemptions provide relief from both bulk and non-bulk specification packaging requirements for mechanical displacement meter provers that are either truck or trailer mounted. The hazardous materials provided for are in Class 3 and Division 2.1. The exemptions affected are DOT–E 8278, 9004, 9048, 9162, 9287, 9305, 9352, 10228, 10596, 10765, 12047, and 12808.

**Segregation:** Exemptions provide relief from the segregation requirements in § 177.848 which prohibit storage, loading, and transportation of (1) cyanides, cyanide mixtures or solutions with acids; and (2) Division 4.2 materials with Class 8 liquids, on the same transport vehicle. The exemptions affected are DOT–E 9723, 9769, 10441, 10933, 11153, and 11294.

## II. Public Participation

Comments should identify the docket number (RSPA–03–16370) and, if sent by mail, comments are to be submitted in duplicate. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard. Internet users may access all comments received by the Department of Transportation at <http://dms.dot.gov>.

The following is a section-by-section summary of the proposed changes.

### Section-by-Section Review

#### Part 171

##### Section 171.7

We are proposing to incorporate by reference Chapters II, III, IV, V and VI of the American Society of Mechanical Engineers (ASME) “Pipeline Transportation Systems for Liquid Hydrocarbons and other Liquids,” ASME B31.4–1998 Edition. See the § 173.3 preamble discussion.

#### Part 173

##### Section 173.3

We are proposing to authorize the use of salvage cylinders for overpacking a damaged or leaking cylinder containing materials other than Class 1 or 7 or acetylene. Salvage cylinders must be designed, constructed and marked in accordance with Section VIII, Division I of the ASME Code. Salvage cylinders are limited to a maximum capacity of 450 L (119 gallons), and must be limited in pressure and volume so that they do not exceed the maximum allowable working pressure if the damaged cylinder contained within totally discharges. We have authorized the use of salvage cylinders under exemptions for several years with a safe and satisfactory transportation experience. Materials in Classes 1 and 7 and acetylene are not authorized under the terms of these exemptions; therefore, we have no transportation experience and are not including them in the proposal. Salvage cylinders must be retested in accordance with the Compressed Gas Association’s (CGA) Pamphlet C–6; however, because a salvage cylinder is not a DOT specification cylinder, the requirement for a Requalification Identification Number (RIN) does not apply.

##### Section 173.5a

We are proposing to editorially revise the requirements in § 173.5a and redesignate the current requirements as paragraph (a). We are also proposing to add a new paragraph (b) to include provisions for the transportation of

mechanical displacement meter provers. We have authorized the transportation of mechanical displacement meter provers under exemptions for several years with a safe and satisfactory transportation experience. We are proposing to except mechanical displacement meter provers from the specification packaging requirements when: (1) They have a capacity not over 1,000 gallons; (2) they are permanently mounted on a truck chassis or a trailer; and (3) they contain only the residue of a Class 3 or Division 2.1 material. A mechanical displacement meter prover must be designed and constructed in accordance with certain provisions specified in the ASME Standard B31.4, and is subject to periodic visual inspection and hydrostatic retesting.

##### Section 173.12

Currently, § 173.12 authorizes the transportation of lab packs for disposal and recovery by highway only. However, under certain exemptions lab packs have been authorized to be transported by rail and cargo vessel. Lab packs are combination packagings used for the transportation of waste materials in Class or Division 3, 4.1, 4.2, 4.3, 5.1, 6.1, 8 or 9. Lab packs are excepted from the specification packaging requirements for combination packagings if packaged in accordance with § 173.12(b). We are proposing to amend paragraph (b) to allow lab packs to also be transported for disposal and recovery by rail and cargo vessel.

We are proposing to add a new paragraph (e) in § 173.12 to authorize the transportation of waste cyanides and waste cyanide mixtures or solutions with acids under certain conditions. Currently, the HMR prohibit the loading, storage and transportation of cyanides and cyanide mixtures or solutions on the same transport vehicle with acids, if a mixture of the materials would generate hydrogen cyanide (see § 177.848(c)). Transportation of these materials on the same transport vehicle has been authorized under the terms of numerous exemptions with certain packaging and segregation requirements with a satisfactory and safe transportation experience. The exemptions affected are DOT–E 9723, 9769, 10441, and 10933.

We are also proposing to authorize the transportation of waste Division 4.2 materials with Class 8 liquids under certain conditions. Storage, loading and transportation of Division 4.2 materials with Class 8 liquids on the same transport vehicle or storage facility is currently prohibited by the HMR. However, we have authorized the transportation of these materials on the

same transport vehicle under the exemption program under certain conditions with a safe and satisfactory transportation experience. The exemptions affected are DOT-E 11153 and 11294.

#### Section 173.13

Section 173.13 excepts Class or Division 3, 4.1, 4.2, 4.3, 5.1, 6.1, 8 or 9 materials from labeling and placarding requirements of the HMR if the material is packaged in accordance with the provisions of this section. The current exception applies to hazardous materials being transported by motor vehicle, rail car, or cargo aircraft. For transportation by cargo aircraft, the hazardous material must also be permitted to be transported on cargo aircraft in column (9B) of the Hazardous Materials Table (HMT). Section 173.13 restricts the net quantity per inner packaging to 1 L (0.3 gallon) for liquids and 2.85 kg (6.25 lbs.) for solids and requires triple packaging which exceeds the packaging standard currently authorized. For many years, we have also authorized transportation by passenger aircraft with certain limitations with a safe and satisfactory transportation experience. The affected exemptions are DOT E-7891, 8249, 9168, 10672, 10962, 10977, 11248, 12177, 12230, and 12401. Therefore, we are proposing to expand the exception to include transportation by passenger aircraft with certain limitations for materials that are permitted to be transported on passenger aircraft in Column (9A) of the HMT. The proposed exception provides the same level of safety as was previously provided under the exemption program.

#### Section 173.22a

We are proposing to revise paragraph (b) of § 173.22a by removing the requirement that a copy of each exemption that authorizes use of a packaging must be maintained at each facility where the package is being used in connection with the transportation of a hazardous material. Currently, the "Special Provisions" section of each exemption states where the exemption must be maintained, if we believe it is necessary. We believe that such a requirement should be handled on a case-by-case basis and see no need for an across-the-board requirement in the HMR. This proposal also responds to a petition for rulemaking (P-1293) submitted by W.W. Grainger, Inc. We are also proposing to revise paragraph (c) of § 173.22a to clarify that a "current" copy of an exemption must be provided to the carrier by each person offering hazardous materials under the

terms of an exemption when the exemption contains requirements that apply to the carrier. Additionally, we are proposing to add the website address where a copy of an exemption can be obtained.

#### Part 174

##### Section 174.81

We are proposing to revise paragraph (c) by adding a cross-reference to § 173.12(e) for cyanides, cyanide mixtures or solutions as well as Division 4.2 materials. See § 173.12 preamble discussion. We are also proposing to editorially revise paragraph (d) for clarity.

#### Part 176

##### Section 176.83

We are proposing to add a new paragraph (a)(11) to reference a segregation exception in § 173.12(e) for lab packs containing cyanides and cyanide mixtures or solutions transported with acids, and for Division 4.2 materials in lab packs transported with Class 8 liquids. See § 173.12 preamble discussion.

##### Section 176.84

We are proposing to add a Note to paragraph (b), Code "52" cross-referencing § 173.12(e) for cyanides and cyanide mixtures or solutions in lab packs. See § 173.12 preamble discussion.

#### Part 177

##### Section 177.848

We are proposing to revise paragraph (c) by adding a cross-reference to § 173.12(e) for cyanides, cyanide mixtures or solutions as well as Division 4.2 materials. See § 173.12 preamble discussion. We are also proposing to editorially revise paragraph (d) for clarity.

### III. Regulatory Analyses and Notices

#### A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) and was not reviewed by the Office of Management and Budget (OMB). The proposed rule is not considered a significant rule under the Regulatory Policies and Procedures order issued by the Department of Transportation [44 FR 11034]. The costs and benefits of this proposed rule are considered to be so minimal as to not warrant preparation of a regulatory impact analysis or a regulatory evaluation. The provisions of this proposed rule provide a relaxation of

the regulations and, as such, would impose little or no additional costs to affected industry.

#### B. Executive Order 13132

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed rule would preempt state, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Federal hazardous material transportation law, 49 U.S.C. 5101-5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting state, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

- (1) The designation, description, and classification of hazardous materials;
- (2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;
- (3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;
- (4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous; or
- (5) The design, manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule concerns classification, packaging, marking, labeling, and handling of hazardous materials, among other covered subjects. If adopted as final, this rule would preempt any state, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are "substantively the same" (see 49 CFR 107.202(d)) as the Federal requirements.

Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that if RSPA issues a regulation concerning any of the covered subjects, RSPA must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance.

RSPA proposes the effective date of federal preemption be 90 days from publication of a final rule in this matter in the **Federal Register**.

#### C. Executive Order 13175

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule does not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

#### D. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. This proposed rule incorporates into the Hazardous Materials Regulations certain widely used exemptions. It would relax certain requirements, while maintaining safety. It would result in modest cost savings and would not impose significant impacts on any of the entities, small or otherwise, potentially affected by the rule. Therefore, I certify this rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

#### E. Paperwork Reduction Act

RSPA has current information collection approvals under: OMB No. 2137-0051, "Rulemaking, Exemption, and Preemption Requirements" with 4,219 burden hours and an expiration date of May 31, 2006; and OMB No. 2137-0022, "Testing, Inspection, and Marking of Cylinders", with 168,431 burden hours and an expiration date of September 30, 2005. We do not anticipate any significant change in burden of these current information

collections as a result of this proposed rulemaking.

Section 1320.8(d), Title 5, Code of Federal Regulations requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies a new information collection request under OMB No. 2137-xxxx, "Inspection and Testing of Meter Provers" as proposed under this rule requiring annual visual inspections and 5-year pressure tests for meter provers. RSPA will submit this new information collection request to the Office of Management and Budget (OMB) for approval based on the requirements in this proposed rule. If these proposed requirements are adopted in a final rule with any revisions, RSPA will resubmit any revised information collection and recordkeeping requirements to the Office of Management and Budget for re-approval. We estimate that this proposed new information collection burden will be as follows: OMB No. 2137-xxxx, "Inspection and Testing of Meter Provers":

*Annual Number of Respondents:* 50.

*Annual Responses:* 250.

*Annual Burden Hours:* 175.

*Annual Burden Cost:* \$9,500.00.

RSPA specifically requests comments on the information collection and recordkeeping burden associated with developing, implementing, and maintaining these requirements for approval under this proposed rule.

Address written comments to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. We must receive your comments prior to the close of the comment period identified in the **DATES** section of this rulemaking. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number.

Please direct your requests for a copy of this proposed new information collection to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (DHM-10), Research and Special Programs Administration, Room 8430, 400 Seventh Street, SW., Washington, DC 20590-0001, Telephone (202) 366-8553.

#### F. Regulation Identifier Number (RIN)

A regulation identifier 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 number contained in the

heading of this document can be used to cross-reference this action with the Unified Agenda.

#### G. Unfunded Mandates Reform Act

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

#### H. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321-4347), requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. We developed an assessment to determine the effects of these proposed revisions on the environment and whether a more comprehensive environmental impact statement may be required. We have tentatively concluded that there are no significant environmental impacts associated with this proposed rule. Interested parties, however, are invited to review the Environmental Assessment available in the docket and to comment on what environmental impact, if any, the proposed regulatory changes would have.

#### I. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://dms.dot.gov>.

#### List of Subjects

##### 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

##### 49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is proposed to be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.7, in the paragraph (a)(3) table, under the entry “American Society of Mechanical Engineers”, a new entry is added in appropriate alphabetical order.

The new entry reads as follows:

§ 171.7 Reference material.

(a) \* \* \*

(3) Table of material incorporated by reference. \* \* \*

Table with 2 columns: Source and name of material, 49 CFR reference. Row 1: American Society of Mechanical Engineers, 173.3. Row 2: Pipeline Transportation Systems for Liquid Hydrocarbons and other Liquids, Chapters II, III, IV, V and VI, ASME B31.4–1998 Edition, 173.3.

PART 173—SHIPPER—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 44701; 49 CFR 1.45, 1.53.

4. In § 173.3, paragraph (d) is redesignated as paragraph (e) and a new paragraph (d) is added to read as follows:

§ 173.3 Packaging and exceptions.

\* \* \* \* \*

(d) Salvage cylinders. Cylinders of hazardous materials that are damaged or leaking may be overpacked in a non-specification full opening hinged head or fully removable head steel salvage cylinder under the following conditions:

(1) Only a cylinder containing a Division 2.1, 2.2, 2.3, 3, 6.1, or a Class 8 material may be overpacked in a salvage cylinder. A cylinder containing acetylene may not be overpacked in a salvage cylinder.

(2) Each salvage cylinder must be designed, constructed and marked in accordance with Section VIII, Division I of the ASME Code (IBR, see § 171.7 of this subchapter) with a minimum design margin of 4 to 1. Salvage cylinders may not be equipped with a pressure relief device. Salvage cylinders must have provisions for securely positioning the damaged cylinder contained therein.

(3) The maximum water capacity for a salvage cylinder may not exceed 450 L (119 gallons).

(4) Contents must be limited in pressure and volume so that if totally discharged into the salvage cylinder, the pressure in the salvage cylinder will not exceed the MAWP at:

- (i) 21 °C (70 °F) for non-liquefied gases, or
(ii) 55 °C (131 °F) for liquefied gases.

(5) Each salvage cylinder must be cleaned and purged after each use.

(6) Each salvage cylinder must be plainly marked with:

- (i) The proper shipping name of the hazardous material contained inside the packaging;
(ii) The name and address of the consignee or consignor;
(iii) The words “SALVAGE CYLINDER” in letters at least 50 mm (2.0 inches) high in a permanent manner; and
(iv) The name and address or registered symbol of the manufacturer in a permanent manner.

(7) Each salvage cylinder must be labeled for the hazardous material contained inside the packaging.

(8) The shipper must prepare shipping papers in accordance with subpart C of part 172 of this subchapter.

(9) The overpack requirements of § 173.25 of this part do not apply to salvage cylinders used in accordance with this section.

(10) Transportation is authorized by motor vehicle only.

(11) At least once every 2 years, each cylinder must be visually inspected (internally and externally) in accordance with CGA Pamphlet C–6 (IBR, see § 171.7 of this subchapter) and pressure tested. A minimum test pressure of at least 1½ times MAWP must be maintained for at least 30

seconds. The cylinder must be examined under test pressure and removed from service if a leak or a defect is found.

(12) The retest and inspection must be performed by a person familiar with salvage cylinders and trained and experienced in the use of the inspection and testing equipment.

(13) Each salvage cylinder that is requalified in accordance with paragraph (d)(11) of this section must be durably and legibly marked on the sidewall with the word “Tested” followed by the requalification date (month/year), e.g., “Tested 9/04.” The marking must be in letters and numbers at least 12 mm (0.5 inches) high.

(14) Record retention. The owner of each salvage cylinder or his authorized agent shall retain a record of the most recent visual inspection and pressure test until the salvage cylinder is requalified. The records must be made available to a DOT representative upon request.

(15) In addition to the training requirements of §§ 172.700 through 172.704 of this subchapter, a person who loads, unloads or transports a salvage cylinder must be trained in handling, loading and unloading the salvage cylinder.

\* \* \* \* \*

5. Section 173.5a is revised to read as follows:

§ 173.5a Oilfield service vehicles and mechanical displacement meter provers.

(a) Oilfield service vehicles. Notwithstanding § 173.29 of this subchapter, a cargo tank motor vehicle used in oilfield servicing operations is not subject to the specification requirements of this subchapter provided—

(1) The cargo tank and equipment contains only residual amounts (i.e., it is emptied so far as practicable) of a flammable liquid alone or in combination with water,

(2) No flame producing device is operated during transportation, and

(3) The proper shipping name is preceded by “RESIDUE: LAST CONTAINED \* \* \* ” on the shipping paper for each movement on a public highway.

(b) Mechanical displacement meter provers. (1) For purposes of this section, a mechanical displacement meter prover is a mechanical device, permanently mounted on a truck chassis or trailer and transported by motor vehicle, consisting of a pipe assembly that is used to calibrate the accuracy and performance of meters that measure the quantity of a product being pumped or transferred at facilities such as drilling

locations, refineries, tank farms and loading racks.

(2) A mechanical displacement meter prover is excepted from the specification packaging requirements in part 178 of this subchapter provided it—

(i) Contains only the residue of a Class 3 or Division 2.1 material. For liquids, the meter prover must be drained to the maximum extent practicable and may not exceed 10% of its capacity; for gases, the meter prover must not exceed 25% of the marked pressure rating;

(ii) Has a water capacity of 3,785 L (1,000 gallons) or less;

(iii) Is designed and constructed in accordance with Chapters II, III, IV, V and VI of the ASME Standard B31.4 (IBR, see § 171.7 of this subchapter);

(iv) Is marked with the maximum service pressure determined from the pipe component with the lowest pressure rating; and

(v) Is equipped with rear-end protection as prescribed in § 178.337–10(d) or § 178.345–8(d) of this subchapter and with 49 CFR 393.86 of the Federal Motor Carrier Safety Regulations.

(3) The description on the shipping paper for a meter prover containing the residue of a hazardous material must include the phrase “RESIDUE: LAST CONTAINED \* \* \*” before the basic description.

(4) A meter prover must be visually inspected once a year; and pressure tested once every 5 years at not less than 75% of design pressure.

(5) Each meter prover successfully completing the test and inspection must be marked in accordance with § 180.415(b) of this subchapter. The marking must be on the side of a tank or the largest piping component in letters 50 mm (2.0 inches) high on a contrasting background.

(6) The owner must retain a record of the most recent visual inspection and pressure test until the meter prover is requalified. The test or inspection report must include the following:

(i) Serial number or other meter prover identifier;

(ii) Type of test or inspection performed;

(iii) Test date (month/year);

(iv) Location of defects found, if any, and method used to repair each defect;

(v) Name and address of person performing the test or inspection;

(vi) Disposition statement, such as “Meter Prover returned to service” or “Meter Prover removed from service”.

(7) Prior to any repair work, the meter prover must be emptied of any hazardous material. Meter provers containing flammable lading must be purged.

6. In § 173.12, paragraph (b)(1), the first sentence is revised and a new paragraph (e) is added to read as follows:

**§ 173.12 Exceptions for shipment of waste materials.**

\* \* \* \* \*

(b) \* \* \*

(1) Waste materials classed as Class or Division 3, 4.1, 4.2, 4.3, 5.1, 6.1, 8, or 9 are excepted from the specification packaging requirements of this subchapter for combinations packagings if packaged in accordance with this paragraph and transported for disposal or recovery by highway, rail or cargo vessel only. \* \* \*

\* \* \* \* \*

(e) *Exceptions from segregation requirements.* (1) The provisions of §§ 174.81(c), 176.84(b) and 177.848(c) of this subchapter do not apply to waste cyanides or waste cyanide mixtures or solutions stored, loaded, or transported with acids in accordance with the following:

(i) The waste cyanides or waste cyanide mixtures or solutions must be packaged in lab packs in accordance with paragraph (b) of this section;

(ii) The Class 8 acids must be packaged in lab packs in accordance with paragraph (b) of this section or in authorized single packagings not exceeding 208 L (55 gallons) capacity;

(iii) Waste cyanides or waste cyanide mixtures may not exceed 1 kg (2.2 pounds) per inner receptacle and may not exceed 10 kg (22 pounds) per outer packaging; waste cyanide solutions may not exceed 1 L (0.3 gallon) per inner receptacle and may not exceed 10 L (3.0 gallons) per outer packaging.

(iv) The waste cyanides or waste cyanide mixtures or solutions must be—

(A) Separated from the acids by a minimum horizontal distance of 1.2 m (4 feet); and

(B) Secured on pallets not less than 100 mm (4 inches) high.

(2) The provisions of §§ 174.81(d), 176.83(b) and 177.848(d) of this subchapter do not apply to waste

Division 4.2 materials stored, loaded or transported with Class 8 liquids in accordance with the following:

(i) The waste Division 4.2 materials are packaged in lab packs in accordance with paragraph (b) of this section;

(ii) The Class 8 liquids are packaged in lab packs in accordance with paragraph (b) of this section or in authorized single packagings not exceeding 208 L (55 gallons) capacity;

(iii) The waste Division 4.2 materials may not exceed 1 kg (2.2 pounds) per inner receptacle and may not exceed 10 kg (22 pounds) per outer packaging;

(iv) The waste Division 4.2 materials must be separated from the Class 8 liquids by a minimum horizontal distance of 1.2 m (4 feet);

(v) The waste Division 4.2 materials and the Class 8 liquids are secured on pallets of not less than 100 mm (4 inches) in height.

\* \* \* \* \*

7. In § 173.13, paragraph (b) is revised to read as follows:

**§ 173.13 Exceptions for Class 3, Divisions 4.1, 4.2, 4.3, 5.1, 6.1, and Classes 8 and 9 materials.**

\* \* \* \* \*

(b) A hazardous material conforming to the requirements of this section may be transported by motor vehicle, rail car, or passenger vessel. In addition, packages prepared in accordance with this section may be transported by aircraft under the following conditions:

(1) *Cargo-only aircraft.* Only hazardous materials permitted to be transported aboard either a passenger or cargo-only aircraft by column (9A) or (9B) of the Hazardous Materials Table in § 172.101 of this subchapter are authorized aboard cargo-only aircraft.

(2) *Passenger carrying aircraft.* Only hazardous materials permitted to be transported aboard a passenger aircraft by column (9A) of the Hazardous Materials Table in § 172.101 of this subchapter are authorized aboard passenger aircraft. The completed package, assembled as for transportation, must be successfully tested in accordance with part 178 of this subchapter at the Packing Group I level. A hazardous material which meets the definition of a Division 5.1 (oxidizer) at the Packing Group I level in accordance with § 173.127(b)(1)(i) of this subchapter may not be transported aboard a passenger aircraft.

(3) Packages offered for transportation aboard either passenger or cargo-only aircraft must meet the requirements for transportation by aircraft specified in § 173.27 of this subchapter.

\* \* \* \* \*

**§ 173.22a [Amended]**

8. Amend § 173.22a:

a. In paragraph (c), by adding the word “current” between the words “the” and “exemption” the last time it appears.

b. In paragraph (b), by removing the second sentence; and revising the last sentence to read as follows:

**§ 173.22a Use of packagings authorized under exemptions.**

\* \* \* \* \*

(b) \* \* \* Copies of exemptions may be obtained by accessing the Hazardous

Materials Safety Web site at *http://hazmat.dot.gov/exemptions\_index.htm* or by writing to the Associate Administrator for Hazardous Materials Safety, U.S. Department of Transportation, Washington, DC 20590-0001, Attention: Records Center.  
\* \* \* \* \*

**PART 174—CARRIAGE BY RAIL**

9. The authority citation for part 174 continues to read as follows:

**Authority:** 49 U.S.C. 5101-5127; 49 CFR 1.53.

10. In § 174.81, paragraphs (c) and (d) are revised to read as follows:

**§ 174.81 Segregation of hazardous materials.**

\* \* \* \* \*

(c) Except as provided in § 173.12(e) of this subchapter, cyanides, cyanide mixtures or solutions and Division 4.2 materials may not be stored, loaded and transported with acids.

(d) Except as otherwise provided in this subchapter, hazardous materials must be stored, loaded or transported in accordance with the following table and other provisions of this section:

\* \* \* \* \*

**PART 176—CARRIAGE BY VESSEL**

11. The authority citation for part 176 continues to read as follows:

**Authority:** 49 U.S.C. 5101-5127; 49 CFR 1.53.

12. In § 176.83, new paragraph (a)(11) is added to read as follows:

**§ 176.83 Segregation.**

(a) \* \* \*

(11) Certain exceptions from segregation for waste cyanides or waste cyanide mixtures or solutions transported with acids and waste Division 4.2 materials transported with Class 8 liquids are set forth in § 173.12(e) of this subchapter.

13. In § 176.84, in the paragraph (b) Table, following Code “52”, a footnote is added to read as follows:

**§ 176.84 Other requirements for stowage and segregation for cargo vessels and passenger vessels.**

\* \* \* \* \*

(b) \* \* \*

Code	Provisions
* * * * *	
52 .....	Stow “separated from” acids. <sup>1</sup>
* * * * *	

<sup>1</sup> For waste cyanides or waste cyanide mixtures or solutions, refer to § 173.12(e) of this subchapter.

**PART 177—CARRIAGE BY PUBLIC HIGHWAY**

14. The authority citation for part 177 continues to read as follows:

**Authority:** 49 U.S.C. 5101-5127; 49 CFR 1.53.

15. In § 177.848, paragraphs (c) and (d) are revised to read as follows:

**§ 177.848 Segregation of hazardous materials.**

\* \* \* \* \*

(c) Except as provided in § 173.12(e) of this subchapter, cyanides, cyanide mixtures or solutions and Division 4.2 materials may not be stored, loaded and transported with acids.

(d) Except as otherwise provided in this subchapter, hazardous materials must be stored, loaded or transported in accordance with the following table and other provisions of this section:

\* \* \* \* \*

Issued in Washington, DC on November 24, 2003 under authority delegated in 49 CFR part 106.

**Robert A. McGuire,**

*Administrator for Hazardous Materials Safety.*

[FR Doc. 03-29852 Filed 12-3-03; 8:45 am]

**BILLING CODE 4910-60-P**

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

December 1, 2003.

The Department of Agriculture has submitted the following information collection requirement (s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela Beverly OIRA*, *Submission @OMB.EOP.GOV* or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

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

### Farm Service Agency

*Title:* 7 CFR 1941, Operating Loan Policies, Procedures and Authorizations.

*OMB Control Number:* 0560-0162.

*Summary of Collection:* The Consolidated Farm and Rural Development Act (7 U.S.C. 1922) (CONACT) authorizes the Secretary of Agriculture and the Farm Service Agency (FSA) to make and insure loans to farmers and ranchers and to administer the provisions of the CONACT applicable to the Farm Loan Program. The information is required to ensure that the agency provides assistance to applicants who have reasonable prospects of repaying the government and meet statutory eligibility requirements. This assistance enables family farm operators to use their land, labor, and other resources to improve their living and financial conditions so that they can eventually obtain credit elsewhere.

*Need and Use of the Information:* The information is needed for FSA loan approval officials to evaluate an applicant's eligibility, and to determine if the operation is economically feasible and the security offered in support of the loan is adequate. FSA relies on current information to carry out the business of the program as intended and to protect the government's interest. A variety of forms will be used to collect the information. If the information were not collected, or collected less frequently, the Agency would be: (1) Unable to make an accurate eligibility and financial feasibility determination on respondents' request for new loans as required by the CONACT; and (2) unable to meet the congressionally mandated mission of loan programs.

*Description of Respondents:* Farms; Business or other for-profit; Federal government; Individuals or households.

*Number of Respondents:* 26,146.

*Frequency of Responses:* Reporting: Other.

*Total Burden Hours:* 7,019.

### Food and Nutrition Service

*Title:* National School Lunch Program Sample Frame Development.

*OMB Control Number:* 0584-NEW.

*Summary of Collection:* The Food and Nutrition Service (FNS), U.S.

Department of Agriculture (USDA) conducts periodic evaluation of the school meal programs to provide updated information on program operations, meal characteristic, and students' diets as well as costs and revenues of school meals. The Economic Research Service has contracted with the team of Abt Associates Inc. and Mathematica Policy Research Inc., to design an integrated study of USDA school meal program and to assess the cost and feasibility of such a study. The integrated study will collect data on five domains: (1) Policies and practices of schools and School Food Authorities (SFAs) that affect school meal programs; (2) characteristics of meals as offered and served; (3) costs and revenues of providing schools meals; (4) student participation, satisfaction, and related attitudes toward the school lunch and breakfast programs; and (5) students' dietary intakes and other student/family characteristics that may influenced program participation. The integrated study would have a multi-level design featuring cross-sectional data and nationally representative samples of SFAs, schools, and students.

*Need and Use of the Information:* The National School Lunch Program Sample Frame Development is designed to provide a nationally representative sample frame of Public SFAs that are participating in the National School Lunch Program and/or School Breakfast Program. The information collected from the sample frame will include: current enrollment by school level, number of students approved for free and reduced-price meals, poverty rates, the type of school meal programs offered, type of menu-planning system in use, type of food production system used, whether the school district uses a food service management company to manage the food service operation, and the start and ending date of the school year. The information will be used to provide federal, state, and local policy makers as well as program administrators with much needed information on how the school meal programs have changed, since the implementation of the School Meal Initiative.

*Description of Respondents:* Not-for-profit institutions; Individual or households; State, Local or Tribal Government.

*Number of Respondents:* 2,079.

*Frequency of Responses:* Reporting:  
Other (One-time only).  
*Total Burden Hours:* 3,119.

### Forest Service

*Title:* Visitor Permit and Visitor Registration Card.

*OMB Control Number:* 0596-0019.

*Summary of Collection:* The Organic Administration Act (30 stat. 11), the Wilderness Act (78 stat. 890), the Wild and Scenic River Act (82 stat. 906) and Executive Order 11644, all authorize the Forest Service (FS) to manage the forests to benefit both land and people. Every year millions of people visit the National Forest System. As FS heads into the next millennium, their challenge is to meet the increasing demand for higher quality recreation experiences while safeguarding the health of the land. One way FS will care for the land and serve people is to determine where people are going when they visit the national forest, and give them information, which provides for a safe and enjoyable visit, and at the same time protects the resource. The Visitors Permit and Visitor Registration Card are tools that will help meet this objective. At the majority of locations visited, a permit for use is required. The FS uses the Visitor's Permit (Form 2300-30) and the Visitor Registration Card (Form 2300-32) to permit and monitor use in these areas.

*Need and Use of the Information:* The visitor permit provides FS with information about the visitor's name, address, area to be visited, date of visit, length of stay, method of travel, number of people, and number of pack and saddle stock. The permit and registration card allows managers to identify areas, which are being heavily used and is also used to locate forest visitors if they do not return from their trip as planned. If the information were not collected from visitors it could cause overuse and site deterioration in some environmentally sensitive areas.

*Description of Respondents:* Individuals or households; Business or other for-profit; Not-for profit institutions.

*Number of Respondents:* 368,000.

*Frequency of Responses:* Reporting:  
Other (per visit).

*Total Burden Hours:* 18,400.

### Forest Service

*Title:* Economic, Social, and Cultural Aspects of Livestock Ranching on the Santa Fe and Carson National Forests.

*OMB Control Number:* 0596-NEW.

*Summary of Collection:* Management of federal lands is hampered in many cases because land managing agencies lack sufficient information to

understand and monitor socio-cultural values and changing attitude toward land and resource use. The lack of up-to-date information impedes efforts of the Forest Service (FS) to work with livestock ranchers who graze their cattle under permit on FS managed land (permittees). Cultural differences and historic problems over land use contribute to disagreements and misunderstanding between the permittees and federal land managers. Information on the economic, social, and cultural contributions of livestock ownership to federal permittees is of interest to land managers, policy makers, social scientists, the general public, and the permittees themselves. FS will use a questionnaire to collect information from livestock permittees from the Santa Fe and Carson National Forest.

*Need and use of the Information:* FS will collect data on economic, social, and cultural contributions of livestock ownership will help FS personnel manage the land more effectively and work more cooperatively with the permittees by increasing understanding of the local culture and the role of livestock ownership in that culture. If the data is not collected, grazing allotment plans and forest plan revisions will not be based on the most current and appropriate socio-cultural and economic information.

*Description of Respondents:* Individuals or households; Farms; Business or other for-profit.

*Number of Respondents:* 600.

*Frequency of Responses:* Reporting:  
On occasion.

*Total Burden Hours:* 900.

### Rural Business Cooperative Service

*Title:* 7 CFR 4284-F, Rural Cooperative Development Grant.

*OMB Control Number:* 0570-0006.

*Summary of Collection:* The Rural Cooperative Development Grants (RCDG) program is administered through the State Rural Development Offices on behalf of the Rural Business Cooperative Service (RBS). The primary objective of the program is to improve the economic condition of rural areas through cooperative development. Grant funds are awarded on a competitive basis using a scoring system that gives preference to applications that demonstrate a proven track record. The applicants, who are non-profit corporations or institutions of higher education, will provide information using various forms and supporting documentation.

*Need and Use of the Information:* RBS will use the information collected to evaluate the applicant's ability to carry

out the purposes of the program. If this information were not collected, RBS would have no basis on which to evaluate the relative merit of each application.

*Description of Respondents:* Individuals or households; Not for profit institutions; State, Local or Tribal Government.

*Number of Respondents:* 75.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion.

*Total Burden Hours:* 2,675.

### National Agricultural Statistics Service

*Title:* Agricultural Resource Management, Chemical Use, and Post-Harvest Chemical Use Surveys.

*OMB Control Number:* 0535-0218.

*Summary of Collection:* The primary objectives of the National Agricultural Statistics Service (NASS) are to provide the public with timely and reliable agricultural production and economic statistics, as well as environmental and specialty agricultural related statistics. Three surveys—the Agricultural Resource Management Study, the Fruit and Vegetable Chemical Use Surveys, and the Post-harvest Chemical Use Survey—are critical to NASS' ability to fulfill these objectives and to build the Congressionally mandated database on agricultural chemical use and related farm practices. NASS uses a variety of survey instruments to collect the information in conjunction with these studies.

*Need and Use of the Information:* The Agricultural Resource Management Study provides a robust database of information to address varied needs of policy makers. There are many uses for the information from this study including an evaluation of the safety of the Nation's food supply; input to the farm sector portion of the gross domestic product; and to provide a barometer on the financial condition of farm businesses. Data from the Fruit and Vegetable Chemical Use Surveys is used to assess the environmental and economic implications of various program and policies and the impact on agricultural producers and consumers.

The results of the Post-harvest Chemical Use Survey are used by the Environmental Protection Agency to develop Food Quality Protection Act risk assessments. Other organizations use this data to make sound regulatory decisions.

*Description of Respondents:* Farms

*Number of Respondents:* 80,650.

*Frequency of Responses:* Reporting:  
Annually.

*Total Burden Hours:* 57,209.

**Rural Utility Service**

*Title:* 7 CFR 1792, Subpart C—Seismic Safety of New Building Construction.

*OMB Control Number:* 0572-0099.

*Summary of Collection:* Seismic hazards present a serious threat to people and their surroundings. These hazards exist in most of the United States, not just on the West Coast. Unlike hurricanes, times and location of earthquakes cannot be predicted; most earthquakes strike without warning and, if of substantial strength, strike with great destructive forces. To reduce risks to life and property from earthquakes, Congress enacted the Earthquake Hazards Reduction Act of 1977 (Pub. L. 95-124, 42 U.S.C. 7702 *et seq.*) and directed the establishment and maintenance of an effective earthquake reduction program. As a result, the National Earthquake Hazards Reduction Program (NEHRP) was established. The objectives of the NEHRP include the development of technologically and economically feasible design and construction methods to make both new and existing structures earthquake resistant, and the development and promotion of model building codes. 7 CFR part 1792, subpart C, identifies acceptable seismic standards which must be employed in new building construction funded by loans, grants, or guarantees made by the Rural Utility Service (RUS) or the Rural Telephone Bank (RTB) or through lien accommodations or subordinations approved by RUS or RTB.

*Need and Use of the Information:* Borrowers and grant recipients must provide to RUS a written acknowledgment from a registered architect or engineer responsible for the design of each applicable building stating that the seismic provisions to 7 CFR part 1792, subpart C will be used in the design of the building. RUS will sue this information to: (1) Clarify and inform the applicable borrowers and grant recipients about seismic safety requirements; (2) improve the effectiveness of all RUS programs; and (3) reduce the risk to life and property through the use of approved building codes aimed at providing seismic safety.

*Description of Respondents:* Not-for-profit institutions; Business or other for-profit.

*Number of Respondents:* 1,000

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 750.

**Agricultural Marketing Service**

*Title:* Federal Seed Act Program.

*OMB Control Number:* 0581-0026.

*Summary of Collection:* The Federal Seed Act (FSA) (7 U.S.C. 1551-1611)

regulates agricultural and vegetable seeds in interstate commerce. Agricultural and vegetable seeds shipped in interstate commerce are required to be labeled with certain quality information such as the name of the seed, the purity, the germination, and the noxious-weed seeds of the state into which the seed is shipped. State seed regulatory agencies refer to the Agricultural Marketing Service (AMS) complaints that involve seed found to be mislabeled and to have moved in interstate commerce. AMS investigates the alleged violations and if the violation is substantiated, takes regulatory action ranging from letters of warning to monetary penalties.

*Need and Use of the Information:* AMS will collect information from records of each lot of seed and make them available for inspection by agents of the Secretary. The information collected consists of records pertaining to interstate shipments of seed that have been alleged to be in violation of the FSA. The shipper's records pertaining to a complaint are examined by FSA program specialists and are used to determine if a violation of the FSA occurred. The records are used to determine the precautions taken by the shipper to assure that the seed was accurately labeled. If this information were not collected, it would be impossible to examine pertinent records to resolve complaints of violations.

*Description of Respondents:* Business or other for-profit; State, Local or Tribal Government; Farms.

*Number of Respondents:* 2,679.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion.

*Total Burden Hours:* 36,602.

**Food and Nutrition Service**

*Title:* Form FNS-388, State Issuance and Participation Estimates.

*OMB Control Number:* 0584-0081.

*Summary of Collection:* Section 18(b) of the Food Stamp Act of 1977, as amended, requires that "In any fiscal year, the Secretary shall limit the value of those allotments issued (under the Food Stamp Program) to an amount not in excess of the appropriation for such fiscal year.;" Timely State monthly issuance estimates are necessary for the Food and Nutrition Service (FNS) to ensure that it remains within the appropriation and will have a direct effect upon the manner in which allotments would be reduced when necessary. FNS uses the FNS-388 report to obtain monthly Statewide estimated or actual issuance and participation data for the current and previous months, and the actual participation data for the second preceding month.

*Need and Use of the Information:* The FNS-388 report provides the necessary data for an early warning system to enable the Department to fulfill the requirements of section 18(b) of the Food Stamp Act. In addition, the data is used to (1) validate the Annual Food Stamp Household characteristic Survey; (2) to compile a Statistical Summary Report which is used for special studies and in response to Congressional and other inquiries; and (3) to compare against the coupon issuance points' FNS-250 (which reports issuances from inventory) and reconciliation points' FNS-46 issuance data (which reports issuances for coupons, electronic benefit transfers, and cash-out) for indications of accountability problems.

*Description of Respondents:* State, Local or Tribal Government.

*Number of Respondents:* 53.

*Frequency of Responses:* Recordkeeping; Reporting: Monthly.

*Total Burden Hours:* 4,542.

**Food and Nutrition Service**

*Title:* Food Stamp Program Identification Cards.

*OMB Control Number:* 0584-0124.

*Summary of Collection:* Section 11(e)(15) of the Food Stamp Act of 1977 requires that State agencies issue photographic identification cards to recipients in certain project areas, if the Secretary and the Department's Inspector General find it useful and cost effective to protect the integrity of the Food Stamp Program (FSP). The ID cards are required by the Food and Nutrition Service (FNS) to reduce the number of unauthorized food stamp issuances.

*Need and Use of the Information:* Photo IDs are used by issuance agents to identify households for monthly issuance; by retailers to identify households when benefits are redeemed; and by households to provide as proof when picking up monthly allotments. The use of the photo ID cards and the requirement to show it to obtain benefits is crucial to the agency's ability to protect the integrity of the Food Stamp Program.

*Description of Respondents:* State, Local or Tribal Government; Individuals or households.

*Number of Respondents:* 44,134.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion.

*Total Burden Hours:* 1,471.

**National Agricultural Statistics Service**

*Title:* Equine Survey.

*OMB Control Number:* 0535-0227.

*Summary of Collection:* The primary objective of the National Agricultural Statistics Service (NASS) is to prepare

and issue current official State and national estimates of crop and livestock production, disposition, and prices. Services such as statistical consultation, data collection, summary tabulation, and analysis are performed for other Federal and State agencies on a reimbursable basis as the need arises. In the past, equine surveys have been conducted in twelve States where equine is a significant portion of their agriculture. The results are used to provide an assessment of the equine industry's contribution to the State's economy in terms of infrastructure and value.

**Need and Use of the Information:** NASS will collect information on equine inventories by: category, revenue, activity, purpose and equine related expenditures. In addition, these surveys will provide NASS with names and addresses of equine operations that can be used for the Census of Agriculture enumeration and for the NASS program that seeks to cover 99 percent of U.S. agricultural cash receipts.

**Description of Respondents:** Farms.

**Number of Respondents:** 73,475.

**Frequency of Responses:** Reporting: one-time.

**Total Burden Hours:** 26,363.

#### Rural Utilities Service

**Title:** Public Television Digital Transition Grant Program.

**OMB Control Number:** 0572-0134.

**Summary of Collection:** As part of the nation's evolution to digital television, the Federal communications commission has ordered all television broadcasters to initiate the broadcast of a digital television signal by May 1, 2003, and to cease analog television broadcasts on December 31, 2006. About half of the nation's public television stations did not meet the deadline to initiate digital broadcasting and received extensions. The Rural Utilities Service (RUS) will develop and issue requirements for the grant program to finance the conversion of television services from analog to digital broadcasting for public television stations serving rural areas.

**Need and Use of the Information:** Applicants will submit grant applications to RUS for review. The information will consist of the following: Standard Form (SF) 424, "Application for Federal Assistance", executive summary, evidence of eligibility and compliance with other Federal statutes and any other supporting documentation. RUS will use the information to score and rank applications for funding. Scoring will consist of three categories: rurality, per

capita income, and special disadvantaging factors facing the station's transition plans. If this information were not collected, there would be no basis for awarding grant funding.

**Description of Respondents:** Not-for-profit institutions; State, Local or Tribal Government.

**Number of Respondents:** 50.

**Frequency of Responses:** Reporting: On occasion.

**Total Burden Hours:** 1,168.

#### Ruth Brown,

*Departmental Information Collection Clearance Officer.*

[FR Doc. 03-30155 Filed 12-3-03; 8:45 am]

**BILLING CODE 3410-01-M**

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

#### Trade Adjustment Assistance for Farmers

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition filed by a group of freshwater crawfish producers in Louisiana for trade adjustment assistance. The Administrator will determine within 40 days whether or not imports of crawfish contributed importantly to a decline in domestic producer prices of more than 20 percent during the marketing year period beginning January 2002 through December 2002. If the determination is positive, all crawfish producers in Louisiana will be eligible to apply to the Farm Service Agency for technical assistance at no cost and for adjustment assistance payments.

**FOR FURTHER INFORMATION CONTACT:** Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720-2916, e-mail: [trade.adjustment@fas.usda.gov](mailto:trade.adjustment@fas.usda.gov).

Dated: November 21, 2003.

#### A. Ellen Terpstra,

*Administrator, Foreign Agricultural Service.*

[FR Doc. 03-30184 Filed 12-3-03; 8:45 am]

**BILLING CODE 3410-10-M**

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

#### Trade Adjustment Assistance for Farmers

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition filed by Organized Seafood Association of Alabama, Bayou La Batre, Alabama, for trade adjustment assistance. The association represents shrimpers and shrimp farmers in Alabama. The Administrator will determine within 40 days whether or not imports of shrimp and prawns contributed importantly to a decline in domestic producer prices of 20 percent or more during the marketing year period beginning January 2002 through December 2002. If the determination is positive, all shrimp producers in Alabama will be eligible to apply to the Farm Service Agency for technical assistance at no cost and for adjustment assistance payments.

**FOR FURTHER INFORMATION CONTACT:** Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720-2916, e-mail: [trade.adjustment@fas.usda.gov](mailto:trade.adjustment@fas.usda.gov).

Dated: November 17, 2003.

#### Kenneth J. Roberts,

*Administrator, Foreign Agricultural Service.*

[FR Doc. 03-30182 Filed 12-3-03; 8:45 am]

**BILLING CODE 3410-10-M**

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

#### Trade Adjustment Assistance for Farmers

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition filed by the US Rice Producers Association, Houston, Texas, for trade adjustment assistance. The Administrator will determine within 40 days whether or not imports of rice contributed importantly to a decline in domestic producer prices of more than 20 percent during the marketing period beginning August 2002 and ending July 2003. If the determination is positive, all producers represented by the group will be eligible to apply to the Farm Service Agency for technical assistance at no

cost and adjustment assistance payments.

**FOR FURTHER INFORMATION CONTACT:** Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720-2916, e-mail: [trade.adjustment@fas.usda.gov](mailto:trade.adjustment@fas.usda.gov).

Dated: November 17, 2003.

**Kenneth J. Roberts,**

*Acting Administrator, Foreign Agricultural Service.*

[FR Doc. 03-30183 Filed 12-03-03; 8:45 am]

**BILLING CODE 3410-10-M**

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

#### Trade Adjustment Assistance for Farmers

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition filed by the United Fisheries Co-Op, Inc., Biloxi, Mississippi, for trade adjustment assistance. The group represents Mississippi shrimpers. The Administrator will determine within 40 days whether or not imports of shrimp contributed importantly to a decline in domestic producer prices of more than 20 percent during the marketing year period beginning January 2002 through December 2002. If the determination is positive, all shrimp producers in Mississippi will be eligible to apply to the Farm Service Agency for technical assistance at no cost and for adjustment assistance payments.

**FOR FURTHER INFORMATION CONTACT:** Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720-2916, e-mail: [trade.adjustment@fas.usda.gov](mailto:trade.adjustment@fas.usda.gov).

Dated: November 21, 2003.

**A. Ellen Terpstra,**

*Administrator, Foreign Agricultural Service.*

[FR Doc. 03-30185 Filed 12-3-03; 8:45 am]

**BILLING CODE 3410-10-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Eastern Arizona Counties Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Eastern Arizona Counties Resources Advisory Committee will

meet in Show Low, Arizona. The purpose of the meeting is to evaluate project proposals for possible funding in accordance with Public Law 106-393 (the Secure Rural Schools and Community Self-Determination Act).

**DATES:** The meeting will be held January 23, 2004, starting at 12:30 p.m.

**ADDRESSES:** The meeting will be held in the conference room at the Holiday Inn Express, 151 West Deuce of Clubs, Show Low, Arizona 85901. Send written comments to Robert Dyson, Eastern Arizona Counties Resource Advisory Committee, c/o Forest Service, USDA, P.O. Box 640, Springerville, Arizona 85938 or electronically to [rdyson@fs.fed.us](mailto:rdyson@fs.fed.us).

**FOR FURTHER INFORMATION CONTACT:** Robert Dyson, Public Affairs Officer, Apache-Sitgreaves National Forests, (928) 333-4301.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Committee discussion is limited to Forest Service staff, project proponents, and Committee members. However, persons who wish to bring Public Law 106-393 related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by January 1, 2004, will have the opportunity to address the Committee at those sessions.

Dated: November 26, 2003.

**Elaine J. Zieroth,**

*Forest Supervisor, Apache-Sitgreaves National Forests.*

[FR Doc. 03-30179 Filed 12-3-03; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

#### Lower Kissimmee River Watershed, Okeechobee and Highlands Counties, FL

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice than an Environmental

Impact Statement is not being prepared for the Lower Kissimmee River Watershed, Okeechobee and Highlands counties, Florida.

**FOR FURTHER INFORMATION CONTACT:** T. Niles Glasgow, State Conservationist, Natural Resources Conservation Service, P.O. Box 141510, Gainesville, FL, 32614, (352) 338-9500.

**SUPPLEMENTARY INFORMATION:** The Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Niles Glasgow, State Conservationist, has determined that the preparation and review of an Environmental Impact Statement is not needed for this project.

Proposed is the implementation of conservation practices on cow/calf farms and dairies in order to reduce phosphorus loads in the watershed and assist in achieving the Total Maximum Daily Load (TMDL) for Lake Okeechobee.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and other interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the Environmental Assessment are on file and may be reviewed by contacting Jessica Bertine, Agricultural Economist, Gainesville, FL, (352) 338-9513.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

**T. Niles Glasgow,**

*State Conservationist.*

[FR Doc. 03-30143 Filed 12-3-03; 8:45 am]

**BILLING CODE 3410-16-M**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-863]

#### Notice of Preliminary Results of Antidumping Duty New Shipper Review: Honey From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty new shipper review.

**SUMMARY:** In response to a request from Shanghai Xiuwei International Trading Co., Ltd. (“Shanghai Xiuwei”) and Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd. (“Sichuan Dubao”), the Department of Commerce (“the Department”) is conducting a new shipper review of the antidumping duty order on honey from the People’s Republic of China. The period of review covers the period February 10, 2001 through November 30, 2002. The preliminary results are listed below in the section titled “Preliminary Results of Review.” Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** December 4, 2003.

**FOR FURTHER INFORMATION CONTACT:** Brandon Farlander at (202) 482-0182 or Dena Aliadinov at (202) 482-3362; 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**

The Department published in the *Federal Register* an antidumping duty order on honey from the People’s Republic of China (“PRC”) on December 10, 2001. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey from the People’s Republic of China*, 66 FR 63670 (December 10, 2001). On December 31, 2002, the Department received properly filed requests from Shanghai Xiuwei and Sichuan Dubao for new shipper reviews under the antidumping duty order on honey from the PRC, in accordance with section 751(a)(2)(B) of the Act and § 351.214(c) of the Department’s regulations. Shanghai Xiuwei identified itself as an exporter of processed honey produced by its supplier, Henan Oriental Bee Products Co., Ltd. (“Henan Oriental”). Sichuan Dubao identified itself as the producer of the processed honey that it exports.

Under the new shipper provisions, an exporter or an exporter that is also a producer of the subject merchandise, in requesting a new shipper review, must certify to the following: (i) It did not export the merchandise to the United States during the period of investigation (POI); and (ii) it is not affiliated with any exporter or producer who exported the subject merchandise during that period. In addition, if the exporter is not the producer, then the person that produced or supplied the subject

merchandise must also submit these same certifications. Moreover, in an antidumping proceeding involving imports from a non-market economy country, the new shipper must also certify that its (and its producers’) export activities are not controlled by the central government. If these provisions are met, the Department will conduct a new shipper review to establish an individual weighted-average dumping margin for such new shipper, if the Department has not previously established such a margin for the exporter or producer. (*See generally* § 351.214(b)(2) of the Department’s regulations.)

The regulations further require that the person making the request include in its request documentation establishing: (i) The date on which the merchandise was first entered, or withdrawn from warehouse, for consumption, or, if it cannot establish the date of first entry, the date on which it first shipped the merchandise for export to the United States; (ii) the volume of that and subsequent shipments; and (iii) the date of the first sale to an unaffiliated customer in the United States. *See* § 351.214(b)(2)(iv).

Shanghai Xiuwei’s and Sichuan Dubao’s requests were accompanied by information and certifications establishing that neither they nor their suppliers exported the subject merchandise to the United States during the POI, and that they were not affiliated with any company which exported subject merchandise to the United States during the POI. Shanghai Xiuwei and Sichuan Dubao provided information and certifications that demonstrated the date on which they first shipped and entered honey for consumption in the United States, the volume of that shipment, and the date of the first sale to the unaffiliated customer in the United States. Additionally, Shanghai Xiuwei and Sichuan Dubao certified that neither they nor their suppliers’ export activities are controlled by the central government.

Because the Department determined that Shanghai Xiuwei’s and Sichuan Dubao’s requests met the requirements of § 351.214 of its regulations, on February 5, 2003, the Department published its initiation of this new shipper review for the period February 10, 2001 through November 30, 2002. *See Honey from the People’s Republic of China: Initiation of New Shipper Antidumping Duty Reviews* (68 FR 5868, February 5, 2003). Accordingly, the Department is now conducting this new shipper review in accordance with

section 751(a)(2)(B) of the Act and § 351.214 of its regulations.

On February 20, 2003, we issued the Department’s antidumping duty questionnaire to Shanghai Xiuwei and Sichuan Dubao. Shanghai Xiuwei and Sichuan Dubao submitted their Section A questionnaire responses on March 20, 2003 and March 28, 2003, respectively. On April 3, 2003, Shanghai Xiuwei submitted its Section C and D questionnaire responses. Also on April 3, 2003, petitioners submitted comments on Shanghai Xiuwei’s Section A response. On April 4, 2003, Sichuan Dubao submitted its Section C and D questionnaire responses. On April 15, 2003 petitioners submitted comments on Sichuan Dubao’s Section A, C, and D questionnaire responses. On April 18, 2003, petitioners submitted comments on Shanghai Xiuwei’s Section C and D questionnaire responses.

On May 1, 2003, petitioners requested that the Department align the period of review for this new shipper review with the antidumping duty review. On May 2, 2003 (for Shanghai Xiuwei) and May 13, 2003 (for Sichuan Dubao), we issued the first supplemental questionnaire covering Shanghai Xiuwei’s and Sichuan Dubao’s Section A, C, and D questionnaire responses. We received Shanghai Xiuwei’s first supplemental questionnaire response on May 15, 2003, and received Sichuan Dubao’s first supplemental questionnaire response on June 3, 2003. On May 30, petitioners submitted comments on Shanghai Xiuwei’s first supplemental questionnaire response. On June 13, petitioners submitted comments on Sichuan Dubao’s first supplemental questionnaire response. We issued the second supplemental questionnaires to Shanghai Xiuwei and Sichuan Dubao, covering their first supplemental responses, on June 27, 2003 and June 26, 2003, respectively. We received Shanghai Xiuwei’s second supplemental questionnaire response on July 12, 2003, and received Sichuan Dubao’s second supplemental questionnaire response on July 10, 2003.

On June 10, 2003, the Department provided the parties with an opportunity to submit publicly available information regarding surrogate country selection and factors of production surrogate values for consideration in the preliminary results of this review. On June 24, 2003, petitioners submitted comments on the surrogate country selection. On July 7, 2003, petitioners submitted information on factors of production surrogate values for consideration. On July 11, 2003, petitioners submitted a declaration

executed by a market researcher that gathered information regarding the Indian honey industry. We did not receive any comments or information from Shanghai Xiuwei or Sichuan Dubao.

On June 13, 2003, the Department issued supplemental questionnaires to Shanghai Xiuwei and Sichuan Dubao to forward to their importers ("importer questionnaire"). We received responses to the importer questionnaires from Shanghai Xiuwei's importer and one of Sichuan Dubao's importers on June 30, 2003. Petitioners submitted comments on the importer questionnaire responses on July 10, 2003 (for Sichuan Dubao) and July 30, 2003 (for Shanghai Xiuwei).

On July 21, 2003, the Department extended the preliminary results of this new shipper review 300 days until November 26, 2003. See *Honey from the People's Republic of China: Extension of Time Limits for Preliminary Results of New Shipper Antidumping Duty Review*, 68 FR 43086 (July 21, 2003). Petitioners submitted comments for consideration in the Department's verification of Shanghai Xiuwei's and Sichuan Dubao's questionnaire responses on July 22, 2003 and July 28, 2003, respectively.

#### Scope of the Antidumping Duty Order

The products covered by this review are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form. The merchandise subject to this review is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (renamed the U.S. Customs and Border Protection) ("CBP") purposes, the Department's written description of the merchandise under order is dispositive.

#### Verification

As provided in section 782(i)(3) of the Act and § 351.307 of the Department's regulations, we conducted verification of the questionnaire responses of Shanghai Xiuwei (August 4 through 7, 2003) and Sichuan Dubao (August 4 through 6, 2003 and August 8, 2003). We used standard verification procedures, including on-site inspection of the production facilities of Henan Oriental (Shanghai Xiuwei's supplier of

processed honey) and Sichuan Dubao, the sales office of Shanghai Xiuwei in Shanghai and the sales office of Sichuan Dubao in Dujiangyan, and the examination of relevant sales and financial records. Our verification results are outlined in the New Shipper Review of Honey from the People's Republic of China (PRC) (A-570-863): Verification of U.S. Sale for respondent Shanghai Xiuwei International Trading Co., Ltd. (Shanghai Xiuwei) and Factors of Production Information Submitted by Henan Oriental Bee Products Co., Ltd. (Henan Oriental), dated September 30, 2003 ("Shanghai Xiuwei Verification Report"); and the New Shipper Review of Honey from the People's Republic of China (PRC) (A-570-863): Verification of U.S. Sales and Factors of Production Information Submitted by Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd. (Sichuan Dubao), dated September 23, 2003 ("Sichuan Dubao Verification Report"). Public versions of these reports are on file in the Central Records Unit ("CRU") located in room B-099 of the Main Commerce Building.

#### New Shipper Status

Based on questionnaire responses submitted by Shanghai Xiuwei and Sichuan Dubao, and our verification thereof, we preliminarily determine that Shanghai Xiuwei and Sichuan Dubao have met the requirements to qualify as new shippers during the POR. We have determined that Shanghai Xiuwei and Sichuan Dubao made their first sale and/or shipment of subject merchandise to the United States during the POR, and that neither was affiliated with any exporter or producer that previously shipped to the United States. We also determined that Henan Oriental did not export subject merchandise during the POI, nor was it affiliated with any other exporter or producer that did so.

In submissions dated April 3, 2003 (for Shanghai Xiuwei) and July 10, 2003 (for Sichuan Dubao), petitioners allege that Shanghai Xiuwei's and Sichuan Dubao's sales to the United States during the POR do not reflect *bona fide* commercial transactions. For Shanghai Xiuwei, petitioners raise issues regarding Shanghai Xiuwei's customer and the shipment destination, and allege that the sales price was too high. For Sichuan Dubao, petitioners raise issues regarding Sichuan Dubao's customers, the sales prices, and whether the sales transactions between Sichuan Dubao and the importers were arm's-length transactions. As an initial matter, the Department examined the average unit values ("AUVs") and quantities of imports into the United States of comparable merchandise from the PRC

during the POR. We note that in comparison to shipments from other PRC honey exporters/producers, the quantities of Shanghai Xiuwei's and Sichuan Dubao's shipments are among the highest and the prices are about average.

For Shanghai Xiuwei, the Department was unable to complete its analysis of all factors relevant to the *bona fides* of Shanghai Xiuwei's new shipper sale. The Department is concerned about the fact that Shanghai Xiuwei and its U.S. customer, who acted as importer of record, were created in a short period of time and that the sales was consummated close to the dates both entities were formed. The Department is requesting comments on this timing issue and will carefully examine these facts for the final results.

For Sichuan Dubao, the Department was unable to complete its analysis of all factors relevant to the *bona fides* of its second sale. The Department is experiencing difficulties contacting the importer of record, who has not responded to the Department's importer questionnaire. For a full review of our research and the efforts the Department has made to locate this importer, see the *Memorandum from Brandon Farlander and Dena Aliadinov to the File*, dated November 26, 2003. The Department is requesting comments on this issue and we will carefully examine this second sale for the final results.

In summary, for purposes of these preliminary results of review, we are treating Shanghai Xiuwei's and Sichuan Dubao's sales of honey to the United States as *bona fide* transactions. However, as noted above, the Department intends to continue to carefully examine this issue for the final results of this review.

#### Separate Rates

In proceedings involving NME countries, the Department begins with a presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. In this review, Shanghai Xiuwei and Sichuan Dubao both requested a separate company-specific rate.

To establish whether a company is sufficiently independent in its export activities from government control to be entitled to a separate, company-specific rate, the Department analyzes the exporting entity in an NME country under the test established in the *Final Determination of Sales at Less Than*

*Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*), and amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–22587 (May 2, 1994) (*Silicon Carbide*).

Shanghai Xiuwei and Sichuan Dubao provided separate-rate information in their responses to our original and supplemental questionnaires. Accordingly, we performed a separate-rates analysis to determine whether this exporter and producer/exporter are independent from government control (see *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 56570 (April 30, 1996)).

#### *De Jure Control*

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR 20588, 20589.

Shanghai Xiuwei and Sichuan Dubao have placed on the record a number of documents to demonstrate absence of *de jure* control, including the "Foreign Trade Law of the People's Republic of China" (May 12, 1994) and the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations" (June 3, 1998). The Department has analyzed such PRC laws and found that they establish an absence of *de jure* control. See, e.g., *Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695, 30696 (June 7, 2001). At verification, we found that Shanghai Xiuwei's and Sichuan Dubao's business licenses and "Certificate of Approval—For Enterprises with Foreign Trade Rights in the People's Republic of China" were granted in accordance with these laws. Moreover, the results of verification support the information provided regarding these PRC laws. See Shanghai Xiuwei Verification Report at 9–10 and Sichuan Dubao Verification Report at 10–11. Therefore, we preliminarily determine that there is an absence of *de jure* control over Shanghai Xiuwei's and Sichuan Dubao's export activities.

#### *De Facto Control*

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide* at 22587.

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See *Silicon Carbide* at 22586–22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

Shanghai Xiuwei and Sichuan Dubao have both asserted the following: (1) They are privately-owned companies; (2) there is no government participation in their setting of export prices; (3) their chief executive officers and authorized employees have the authority to bind sales contracts; (4) they do not have to notify any government authorities of their management selection; (5) there are no restrictions on the use of their export revenue; and (6) they are responsible for financing their own losses. Shanghai Xiuwei's and Sichuan Dubao's questionnaire responses do not suggest that pricing is coordinated among exporters. Furthermore, our analysis of the responses during verification reveal no other information indicating the existence of government control. See Shanghai Xiuwei Verification Report at 10–11 and Sichuan Dubao Verification Report at 11–13. Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over Shanghai Xiuwei's and Sichuan Dubao's export activities, we preliminarily determine that Shanghai Xiuwei and Sichuan Dubao have both met the criteria for the application of a separate rate.

#### **Normal Value Comparisons**

To determine whether the respondent's sale of the subject

merchandise to the United States was made at a price below normal value, we compared their United States price to normal value, as described in the "United States Price" and "Normal Value" sections of this notice.

#### **United States Price**

For both Shanghai Xiuwei and Sichuan Dubao, we based the United States price on export price ("EP") in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price ("CEP") was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States. For Sichuan Dubao, we deducted foreign inland freight from the starting price (gross unit price), in accordance with section 772(c) of the Act. For Shanghai Xiuwei, we deducted foreign inland freight and brokerage and handling expenses incurred in the PRC from the starting price.

#### **Normal Value**

Section 773(c)(1) of the Act provides that the Department shall determine normal value ("NV") using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Shanghai Xiuwei and Sichuan Dubao did not contest such treatment in this review. Accordingly, we have applied surrogate values to the factors of production to determine NV. See the Factor Valuation Memorandum for the Preliminary Results of the Antidumping Duty New Shipper Review of Honey from the People's Republic of China, dated November 26, 2003 ("Factor Valuation Memo"). A public version of this memorandum is on file in the CRU located in room B-099 of the Main Commerce Building.

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and § 351.408(c) of our regulations. Consistent with the original investigation of this order, we determine that India (1) is comparable to the PRC in level of economic

development, and (2) is a significant producer of comparable merchandise. Accordingly, we valued the factors of production using publicly available information from India.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data, in accordance with our practice. Where appropriate, we adjusted Indian import prices by adding foreign inland freight expenses to make them delivered prices. When we used Indian import values to value inputs sourced domestically by PRC suppliers, we added to Indian surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest port of export to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997). When we used non-import surrogate values for factors sourced domestically by PRC suppliers, we based freight for inputs on the actual distance from the input supplier to the site at which the input was used. When we relied on Indian import values to value inputs, in accordance with the Department's practice, we excluded imports from both NMEs and countries deemed to have generally available export subsidies (*i.e.*, Indonesia, Korea, and Thailand) from our surrogate value calculations. For those surrogate values not contemporaneous with the POR, we adjusted for inflation using the wholesale price indices for India, as published in the International Monetary Fund's publication, *International Financial Statistics*.

We valued the factors of production as follows:

To value raw honey, we continue to use the average of the highest and lowest price for one kilogram ("kg.") of raw honey stated in an article published in *The Tribune of India* on March 1, 2000, entitled, "Apiculture, a major foreign exchange earner." (later republished in *The Agricultural Tribune* on May 1, 2000). Consistent with the methodology established in the previous proceedings, to account for raw honey price increases in India, we have inflated the average raw honey price from the March 2000, *Tribune of India* article (*i.e.*, Rs. 35 per kg.) to December 2001 by dividing the Indian WPI for December 2001 by the Indian WPI for March 2000. To account for increases in Indian raw honey prices from December 2001 through May 2002 in excess of inflation, we averaged raw honey

purchase prices from the Tiwana and Jallowal Bee Farms submitted by petitioners in Exhibit 1 of its July 7, 2003 response to calculate a total average raw honey price for each month from December 2001 through May 2002. Next, we calculated monthly price increases on a percentage-basis, and then applied these price increases (percentage) to our adjusted raw honey price from the March 2000, *Tribune of India* article. Then, we calculated a simple average of these adjusted monthly raw honey prices to derive our raw honey surrogate value for the period we had raw honey purchase pricing data (*i.e.*, December 1, 2001–May 31, 2002). In order to make this value fully-contemporaneous to the POR, we further adjusted the raw honey surrogate value for inflation during the period of June 2002 through November 2002 by the Indian WPI for May 2002. Finally, we converted the raw honey value from a per kg.-basis to a per metric ton ("MT") basis. See Attachments 2, 3, and 15 of the Factor Valuation Memo for further details. See also *Notice of Final Results of Antidumping Duty New Shipper Review: Honey from the People's Republic of China*, 68 FR 62053 (October 31, 2003) ("Wuhan NSR Final Results") and *Notice of Final Determination of Sales at Less Than Fair Value; Honey From the People's Republic of China*, 66 FR 50608 (October 4, 2001). However, the Department intends to examine this issue further for the final results of this review. The Department therefore invites interested parties to submit comments on this issue for purposes of the final results.

To value beeswax, a raw honey by-product, we used the average per kilogram import value of beeswax into India for the POR.

To value coal, we relied upon contemporaneous Indian import values of "steam coal" under the Indian Customs' heading of "27011902" obtained from the World Trade Atlas, which notes that its data was obtained from the Ministry of Commerce of India. We also adjusted the surrogate value for coal to include freight costs incurred between the supplier and the factory. To value electricity, we used the 2000 total average price per kilowatt hour ("KWH"), adjusted for inflation, for "Electricity for Industry" as reported in the International Energy Agency's publication, *Energy Prices and Taxes, Second Quarter, 2002*. To value water, we used the water tariff rate, as reported on the Municipal Corporation of Greater Mumbai's Web site. See [\[www.mcgm.gov.in/Stat%20&%20Fig/Revue.htm\]\(http://www.mcgm.gov.in/Stat%20&%20Fig/Revue.htm\) and Attachment X of the Factor Valuation Memo for source documents.](http://</a></p>
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To value packing materials (*i.e.*, paint and steel drums), we relied upon contemporaneous Indian import data under the Indian Customs' heading "3209," and a price quote from an Indian steel drum manufacturer, respectively. We adjusted the surrogate value for steel drums to reflect inflation. We also adjusted the surrogate values of packing materials to include freight costs incurred between the supplier and the factory.

To value factory overhead, selling, general, and administrative expenses ("SG&A"), and profit, we relied upon publicly-available information in the 2001–2002 annual report of the Mahabaleshwar Honey Producers Cooperative Society, Ltd. ("MHPC"), a producer of the subject merchandise in India. We applied these rates to the calculated cost of manufacture and cost of production using the same methodology established in Wuhan NSR Final Results.

For labor, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2002, and corrected in February 2003. Because of the variability of wage rates in countries with similar per capita gross domestic products, § 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source of these wage rate data on the Import Administration's web site is the *Year Book of Labour Statistics 2001*, International Labour Office (Geneva: 2001), Chapter 5B: Wages in Manufacturing.

To value truck freight, we used an average truck freight cost based on Indian market truck freight rates on a per metric ton basis published in the *Iron and Steel Newsletter*, April 2002.

For details on factor of production valuation calculations, see the Factor Valuation Memo, dated November 26, 2003.

#### Currency Conversion

We made currency conversions pursuant to § 351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank.

#### Preliminary Results of Review

We preliminarily determine that the following antidumping duty margins exist:

Manufacturer and exporter	POR	Margin (percent)
Shanghai Xiuwei International Trading Co., Ltd .....	02/10/01–11/30/02	0
Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd .....	02/10/01–11/30/02	8.47

For details on the calculation of the antidumping duty margins, see the Analysis of Data Submitted by Shanghai Xiuwei International Trading Co., Ltd. (“Shanghai Xiuwei”) in the Preliminary Results of New Shipper Review of the Antidumping Duty Order on Honey from the People’s Republic of China (“Shanghai Xiuwei Analysis Memo”), dated November 26, 2003; and the Analysis of Data Submitted by Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd. (“Sichuan Dubao”) in the Preliminary Results of New Shipper Review of the Antidumping Duty Order on Honey from the People’s Republic of China (“Sichuan Dubao Analysis Memo”), dated November 26, 2003. Public versions of these memoranda are on file in the CRU.

#### Assessment Rates

Pursuant to § 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this new shipper review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (i.e., at or above 0.5 percent), the Department will issue appraisal instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. If these preliminary results are adopted in our final results of review, we will direct CBP to assess the resulting rate against the entered customs value for the subject merchandise on each of Shanghai Xiuwei’s and Sichuan Dubao’s importer’s/customer’s entries during the POR.

#### Cash-Deposit Requirements

Shanghai Xiuwei and Sichuan Dubao may continue to post a bond or other security in lieu of cash deposits for certain entries of subject merchandise exported by Shanghai Xiuwei or Sichuan Dubao. As Sichuan Dubao has certified that it both produced and exported the subject merchandise, Sichuan Dubao’s bonding option is limited only to such merchandise for

which it is both the producer and exporter. For Shanghai Xiuwei, which has identified Henan Oriental as the producer of subject merchandise for the sale under review, Shanghai Xiuwei’s bonding option is limited only to entries of subject merchandise from Shanghai Xiuwei that were produced by Henan Oriental. Bonding will no longer be permitted to fulfill security requirements for Shanghai Xiuwei’s and Sichuan Dubao’s shipments after publication of the final results of this new shipper review. The following cash-deposit rates will be effective upon publication of the final results of this new shipper review for all shipments of honey from the PRC entered, or withdrawn from warehouse, for consumption on or after publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by Sichuan Dubao, or produced by Henan Oriental and exported by Shanghai Xiuwei, the cash-deposit rate will be that established in the final results of this review; (2) for all other subject merchandise exported by Shanghai Xiuwei or Sichuan Dubao, the cash-deposit rate will be the PRC country-wide rate, which is 183.80 percent; (3) for all other PRC exporters which have not been found to be entitled to a separate rate, the cash-deposit rate will be the PRC country-wide rate; and (4) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### Schedule for Final Results of Review

The Department will disclose calculations performed in connection with the preliminary results of this review within five days of the date of publication of this notice in accordance with § 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with § 351.310(c) of the Department’s regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who

wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) The party’s name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with § 351.309(c)(ii) of the Department’s regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party’s case brief and may make a rebuttal presentation only on arguments included in that party’s rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing within 48 hours before the scheduled time. The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in the briefs, within 90 days from the date of the preliminary results, unless the time limit is extended.

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under § 351.402(f) of the Department’s regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary’s presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and this notice are published in accordance with

sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: November 25, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03-30178 Filed 12-3-03; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 112103A]

#### Proposed Information Collection; Comment Request; Northeast Region Permit Family of Forms

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before February 2, 2004.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Brian Hooker, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930, (978) 281-9220.

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

Any individual or organization participating in federally-controlled fisheries is required to obtain permits. The purpose and use of permits is to: (1) Register fishermen, fishing vessels, fish dealers, and processors; (2) List the characteristics of fishing vessels and/or dealer/processor operations; (3) Exercise influence over compliance (e.g., withhold issuance pending collection of unpaid penalties); (4) Provide a mailing list for the dissemination of important

information to the industry; (5) Register participants to be considered for limited entry; and (6) Provide a universe for data collection samples. Identification of the participants, their gear types, vessels, and expected activity levels is an effective tool in the enforcement of fishery regulations. This information is needed to measure the consequences of management controls as well. The participants in certain fisheries may also be required to notify NMFS before fishing trips for the purpose of observer placement and to make other reports on fishing activities.

##### II. Method of Collection

Initial permit applications are made by a signed paper form. After initial permit issuance, a pre-printed permit renewal form is generated via computer, using current permit information. This form is then sent to the permit holder for updating. If no changes to the pre-printed form are required, the applicant simply needs to sign the form and return it with any other information (e.g., current state registration or U.S. Coast Guard document) required for permit renewal.

Automated reporting by means of a vessel monitoring system (VMS) is required for all vessels issued a full-time or part-time limited access sea scallop permit, or scallop vessels fishing under the small dredge program. All remaining limited access Northeast (NE) multispecies, monkfish, red crab, and scallop vessels are required to report via a days-at-sea (DAS) call-in system. Vessel owners issued a limited access NE multispecies, monkfish, occasional scallop, or combination permit may voluntarily elect to use the VMS in place of the DAS call-in system. This reporting is required in order to monitor: (1) Usage of DAS allocations; (2) Compliance with vessel layover requirements; (3) Compliance with days out of the fishery requirements; (4) Compliance with closed area regulations; and (5) Compliance with exempted fishery regulations.

##### III. Data

*OMB Number:* 0648-0202.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Business and other for-profit organizations; individuals or households; and State, Local, or Tribal Government.

*Estimated Number of Respondents:* 42,334.

*Estimated Time Per Response:* An initial vessel permit application requires an estimated 45 minutes to complete and preprinted vessel permit renewal forms require an estimated 30 minutes

per response. Initial dealer permit applications take an estimated 15 minutes to complete and preprinted dealer permit renewal forms require an estimated 5 minutes to complete. The initial and renewal vessel operator permit applications are estimated to take an average of 1 hour to complete due to the color photograph submission requirement. Limited access vessel upgrade or replacement applications take approximately 3 hours to complete. Applications for retention of limited access permit history require an estimated 30 minutes.

Limited access NE multispecies, combination, occasional scallop, and monkfish vessels must notify NMFS via the call-in system of the start date and end date for each fishing trip. The estimated time per response is 2 minutes. It is estimated to take NE multispecies and monkfish vessels approximately 3 minutes to declare of blocks of time out of the gillnet fishery. The burden of vessel monitoring for full-time and part-time limited access scallop vessels or authorized NE multispecies, combination, and occasional scallop vessels is estimated to be 1 hour for installation of a VMS unit, 5 minutes for verification of installation of the VMS unit, and 30 seconds per poll for automated polling of vessel position. Vessels required to have a fully functional VMS unit at all times may request to turn off the VMS (power-down exemption) at approximately 30 minutes per request. Requests for observer coverage are estimated to require 2 minutes per request.

Limited access vessels fishing under DAS requirements that have assisted in U.S. Coast Guard search and rescue operations or assisted in towing a disabled vessel may apply for Good Samaritan DAS credits at a burden of 30 minutes per application. Owners or operators of vessels seeking a Letter of Authorization (LOA) to participate in any of the exemption programs must request an LOA from the Administrator, Northeast Region, NMFS (Regional Administrator). The estimated time required to request an LOA is 5 minutes. Vessels fishing in the North Atlantic Fisheries Organization (NAFO) Regulatory Area that wish to be exempt from NE multispecies regulations while transiting the EEZ with NE multispecies on board, or landing NE multispecies in U.S. ports, must request an LOA (5 minutes) in addition to possessing a valid High Seas Fishing Compliance permit under 50 CFR part 300. An LOA (5 minutes) is also required for permitted vessels intending to transfer selected species from one vessel to

another, as follows: *Loligo* and butterfish moratorium permit, or *Illex* moratorium permit, and vessels issued a mackerel or squid/butterfish incidental catch permit that intend to transfer *Loligo*, *Illex*, or butterfish; vessels issued a NE multispecies or scallop permit that intend to transfer species other than regulated species; and NE multispecies vessels intending to transfer up to 500 lb (227 kg) of combined small-mesh NE multispecies per trip for use as bait.

Owners of charter/party vessels intending to fish in the Nantucket Lightship Closure Area must request an LOA from the Regional Administrator, with an estimated time of 5 minutes per request. Vessels fishing under Charter/Party regulations in Gulf of Maine (GOM) closed areas must obtain a Charter/Party Exemption Certificate for GOM Closed Areas, at an estimated 2 minutes per request.

Limited access sea scallop vessels wishing to participate in either the state waters DAS exemption program or the state waters gear exemption program must notify the Regional Administrator by VMS or call-in notification. Participants in the sea scallop state waters exemption programs using VMS notification must notify the Regional Administrator prior to the first trip in the exemption program and prior to the first planned trip in the EEZ, at an estimated 2 minutes per response. Participants in these exemption programs using the call-in system must notify the Regional Administrator at least 7 days prior to fishing under the exemption, at an estimated 2 minutes per call. If participants using the call-in system wish to withdraw from either state waters exemption program prior to the end of the 7-day designated exemption period requirement, they must also call the Regional Administrator to notify of early withdrawal, at an estimated 2 minutes per call.

Surfclam and ocean quahog vessel owners or operators are required to call the NMFS Office of Law Enforcement (OLE) nearest to the point of offloading prior to the departure of the vessel from the dock. It requires approximately 2 minutes for a vessel owner or operator to notify OLE of the vessel's departure from the dock to fish for surf clams or ocean quahogs in the EEZ.

In the American lobster fishery, initial lobster area designations are estimated to take 5 minutes, requests for additional tags is estimated to take 2 minutes, and notification of lost tags is estimated to take 3 minutes.

In the NE multispecies fishery, a request for change in permit category designation requires approximately 2

minutes, and a request for transit to another port by a vessel required to remain in the GOM cod trip limit takes 2 minutes.

In the gillnet fisheries for NE multispecies and monkfish, the burden estimate for calling out of the fishery is 3 minutes. Gillnet category designation, including initial requests for gillnet tags, requires approximately 10 minutes. Requests for additional tags require an estimated 2 minutes. Notification of lost tags and requests for replacement tag numbers also require an estimated 2 minutes. It will take approximately 1 minute to attach each gillnet tag.

Requests for state quota transfers in the bluefish and summer flounder fisheries are estimated to require 1 hour.

*Estimated Total Annual Burden Hours:* 20,212.

*Estimated Total Annual Cost to Public:* \$1,348,473.

#### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 19, 2003.

#### Gwellnar Banks,

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03-30176 Filed 12-3-03; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 112603B]

#### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

**SUMMARY:** The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow up to 60 commercial fishing vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for exemptions from the FMP as follows: The Georges Bank (GB) seasonal closure area; the Days-at-Sea (DAS) notification requirements; the effort-control program (DAS); and minimum fish size restrictions for the temporary retention of undersized fish for data collection purposes.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

**DATES:** Comments on this document must be received on or before December 19, 2003.

**ADDRESSES:** Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Cod Tagging Study." Comments may also be sent via facsimile (fax) to (978) 281-9135.

**FOR FURTHER INFORMATION CONTACT:** Brian Hooker, Fishery Management Specialist, phone (978) 281-9220.

**SUPPLEMENTARY INFORMATION:** The Cape Cod Commercial Hook Fishermen's Association submitted an application for an EFP to NMFS on November 13, 2003. The application was complete as received. The experimental fishing application requests authorization to

allow the catch, tag, and release of Atlantic cod using rod and reel only. The primary goal of the study is to provide high quality scientific data on the current distribution and movement patterns of Atlantic cod on GB. In the long term, it is hoped that the improved understanding of the cod stock that may result from this study would enable better and more effective management of the cod fishery.

The study proposes to catch, tag, and release 30,000 individual cod during 300 dedicated tagging trips, using up to 60 commercial fishing vessels. The participating vessels would catch cod using rod and reel, with treble hooks eliminated from the jigs, temporarily hold caught cod live in tanks aboard the vessel while processing and tagging the fish, and return the fish alive to the sea. Any other species caught would be released as soon as practicable. During the study, no fish of any species would be landed or retained for commercial sale. Cod would be tagged on dedicated tagging trips in four main areas: The Cape Cod/Chatham area; the Great South Channel area; the Nantucket Shoals area; and the Coxes Ledge area. The study would likely have minimal impacts to the target species in the area due to the use of rod and reel as the catch method and efforts to minimize trauma and release all specimens alive. Tagging program staff would be on board the vessel for training purposes and to observe 20 percent of the dedicated trips to assist with tagging operations.

The research study would occur between December 1, 2003, and June 15, 2004, in the area defined by straight lines connecting the points 42°00' N. lat. 70°00' W. long., the northern border of the Nantucket Lightship Closed Area at 70°00' W. long., the northern border of the Nantucket Lightship Closed Area at 69°00' W. long., the western border of Closed Area I at 69°00' W. long., 42°00' N. lat. at Loran C 13700, and then back to 42°00' N. lat. 70°00' W. long. This area excludes the NE multispecies year-round closed areas but includes the GB Seasonal Closure Area (May 1–May 31). The rationale for needing to access this seasonal closure area is to capture and tag fish from aggregating schools of spawning cod prior to their post-spawning migration.

Therefore, the EFP would allow for exemptions from the FMP as follows: the Georges Bank (GB) seasonal closure area specified at 50 CFR 648.81(n); the DAS notification requirements specified at § 648.10; the effort-control program (DAS) as specified at § 648.82(a); and minimum fish-size restrictions specified at § 648.83(a) for the temporary

retention of undersized fish for data collection purposes.

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

Dated: November 28, 2003.

**Bruce C. Morehead,**

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

[FR Doc. 03–30177 Filed 12–3–03; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF DEFENSE

### Department of the Army

#### Performance Review Board Membership for the Chief of Staff of the Army

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice.

**SUMMARY:** Notice is given of the names of members of a Performance Review Board for the Department of the Army.

**EFFECTIVE DATE:** November 26, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army Pentagon, Washington, DC 20310–0111.

**SUPPLEMENTARY INFORMATION:** Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the U.S. Army, Chief of Staff of the Army, are:

1. MG Lawrence R. Adair, Assistant Deputy Chief of Staff, G–1.

2. MG Dorian T. Anderson, Commanding General, United States Army Human Resources Command.

3. BG Harry B. Axson, Jr., Deputy Director for Operations, J–3, U.S. Central Command.

4. Mr. Brian Barr, Technical Director, U.S. Army Test and Evaluation Command.

5. Ms. Jean M. Bennett, Director, Resources and Infrastructure, Office of the Deputy Chief of Staff, G–2.

6. Mr. Vernon M. Bettencourt, Jr., Technical Advisor to the Deputy Chief of Staff, G–3, Office of the Deputy Chief of Staff, G–3.

7. MG Robert W. Chesnut, Assistant Deputy Chief of Staff, G3 (Mobilization), Office of the Chief, Army Reserves.

8. MG Peter W. Chiarelli, Commanding General, 1st Cavalry Division.

9. LTG Claude V. Christianson, Deputy Chief of Staff, G–4.

10. Dr. Craig E. College, Deputy Assistant Secretary of the Army (Infrastructure Analysis), Office of the Assistant Secretary of the Army (Installations and Environment).

11. Mr. William F. Crain, Technical Director, U.S. Army Center for Army Analysis.

12. BG Bruce Davis Deputy Director, Operations, Readiness, and Mobilization, National Guard Bureau.

13. MG B. Sue Dueitt, Director, Personnel Transformation.

14. Mr. Terrance M. Ford Assistant Deputy Chief of Staff, G–2

15. MG James J. Grazioplene, Director, Force Development Office of the Deputy Chief of Staff, G–8.

16. LTG Benjamin S. Griffin, Deputy Chief of Staff, G–8.

17. BG Dennis E. Hardy, Commanding General, 24th Infantry Division (Mechanized ) and Fort Riley.

18. MG David H. Huntoon, Jr., Commandant, U.S. Army War College.

19. BG Kenneth W. Hunzeker, Vice Director for Force Structure, Resources and Assessment, J–8, The Joint Staff.

20. BG Jerome Johnson, Director of Plans, Operations and Readiness, Office of the G–4.

21. LTG John M. Le Moyne, Deputy Chief of Staff, G–1.

22. Mr. Mark R. Lewis, Director of Plans, Resources, and Operations, Office of the Deputy Chief of Staff, G–1.

23. Ms. Maureen T. Lischke, Program Executive Officer for Information Systems and Chief Information Officer, National Guard Bureau.

24. MG James J. Lovelace, Jr., Director of the Army Staff.

25. Mr. Wendell Lunceford, Director, Army Model and Simulation Office, Office of the Deputy Chief of Staff, G–3.

26. LTG Charles S. Mahan, Jr., Deputy Chief of Staff, G–4.

27. BG Jesus A. Mangual, Director of Force Projection and Distribution, Office of the Deputy Chief of Staff, G–4.

28. Mr. John W. Matthews, Director, Army Declassification Activity, Office of the Deputy Chief of Staff, G–1.

29. MG David F. Melcher, Director, Program Analysis and Evaluation, Office of the Deputy Chief of Staff, G–8

30. Mr. William P. Neal, Associate Director, Force Projection and Distribution, Office of the Deputy Chief of Staff, G–4.

31. Mr. Mark J. O'Konski, Director of Research and Development, Directorate of Research and Development, U.S. Army Corps of Engineers.

32. MG Elbert N. Perkins, Commanding General, U.S. Army Japan and 9th Theater Support Command.

33. BG Steven P. Schook, Chief of Staff, KFOR (Main), Film City, Camp Bondsteel.

34. Mr. David L. Snyder, Assistant G1 for Civilian Personnel Policy, Office of the Deputy Chief of Staff, G-1.

35. Mr. John C. Speedy, III, Deputy Director for Army International Affairs, Office of the Deputy Chief of Staff, G-3.

36. Mr. James J. Streilein, Director, Army Evaluation Center, U.S. Army Test and Evaluation Command.

37. Ms. Elizabeth B. Throckmorton, Director, Civilian Personnel Management, Office of the Deputy Chief of Staff, G-1.

38. MG James D. Thurman, Director of Training, Office of the Deputy Chief of Staff, G-3.

39. Mr. Donald C. Tison, Assistant Deputy Chief of Staff for Programs, Office of the Deputy Chief of Staff, G-8.

40. Mr. Edgar B. Vandiver, III, Director, U.S. Army Center for Army Analysis.

41. BG Lloyd T. Waterman, Director of Sustainment, Office of the Deputy Chief of Staff, G-4.

42. MG David P. Wherley, Jr., Commander, DC National Guard.

43. Mr. Daniel F. Wiener, II, Chief Information Officer, Chief Army Reserve.

**Luz D. Ortiz,**

*Army Federal Register Liaison Officer.*

[FR Doc. 03-30157 Filed 12-3-03; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

#### Intent To Prepare a Draft Environmental Impact Statement for the Water Conservation Area 3 Decentralization and Sheet Flow Enhancement Project, Part 1

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The Jacksonville District, U.S. Army Corps of Engineers (Corps), intends to prepare an integrated Project Implementation Report (PIR) and Environmental Impact Statement (EIS) for the Water Conservation Area 3 (WCA-3) Decentralization and Sheet Flow Enhancement Project Part 1 (Decomp Project). The project is a cooperative effort between the Corps

and the south Florida Water Management District (SFWMD), which is also a cooperating agency for this Draft EIS (DEIS). WCA-3 (made up of WCA 3A and WCA 3B) is located immediately north of Everglades National Park (ENP) in Broward and Miami-Dade Counties. Among the environmentally detrimental effects resulting from the construction of the Central and Southern Florida Project (C&SF), of which WCA 3 is a part, are the compartmentalization and constriction of historically broad wetlands, altered hydroperiods, reduction of wildlife, and degradation of water quality. The Decomp Project will investigate alternatives to reduce barriers to sheet flow such as canals and levees to the extent practicable. The goal is to restore historical sheet flow distributions, depth patterns, hydroperiods, and hydrologic connectivity in the various landscapes within WCA-3 and in Northeast Shark River Slough within ENP, thereby creating a sustainable environment suitable for the recovery and long-term survival of native flora and fauna in concert with related projects.

**FOR FURTHER INFORMATION CONTACT:** U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL, 32232-0019; Attn: Ms. Janet Cushing or by telephone at 904-232-2259 or e-mail: [janet.a.cushing@usace.army.mil](mailto:janet.a.cushing@usace.army.mil).

#### **SUPPLEMENTARY INFORMATION:**

a. *Authorization:* Section 601 of the Water Resources Development Act of 2000 (Pub. L. 106-541) authorized the implementation of the Decomp Project.

b. *Study Area:* The study area is the WCA-3 and the northeast section of Everglades National Park, in Broward and Miami-Dade Counties.

c. *Project Scope:* The scope is to investigate alternatives to reduce barriers to sheet flow through modifications to the canals and levees in WCA-3, and modifications to the section of Tamiami Trail south of WCA-3B. Also, seepage control features may be constructed, as needed, along L-30 to prevent project-induced increased flood damages downstream. The evaluation of alternatives and selection of a recommended plan will be documented in the PIR and EIS.

d. *Preliminary Alternatives:* The conceptual design features of the project presented in the 1999 C&SF Comprehensive Review Study include backfilling all or portions of the Miami Canal between S-8 and the east coast protective levee (L-33); increasing the conveyance capacity of four sections of the North New River Conveyance

System to compensate for conveyance lost from the Miami Canal: (1) Along L-38 canal from S-7 to S-34; (2) across Interstate 75; (3) on L-37 canal from I-75 to C-11; and (4) on L-33 canal from C-9 to C-6; constructing additional structures to pass flow from WCA-3A to WCA-3B through the L-67A Levee; degrading all or portions of the L-29 Levee from S-333 east to S-334 and filling in all or portions of the L-29 borrow canal; raising and bridging all or portions of the Tamiami Trail from S-333 east to S-334; and constructing seepage control features along L-30. Alternative plans to be developed and evaluated may include a combination of these features to greater or lesser degrees, such as leaving canals in place, partial canal filling, strategic placement of fill plugs, the creation of tree islands from levee material, and exploring other possibilities that can meet the goals and objectives of the project.

e. *Issues:* The EIS will address the following issues: The relation between this project and related projects including Modified Water Deliveries to ENP and other Comprehensive Everglades Restoration Plan projects; impacts to recreational fishing and hunting; impacts to aquatic and wetland habitats; water flows; hazardous and toxic waste; water quality; flood protection; aesthetics; fish and wildlife resources, including protected species; tree island habitat, cultural resources; socioeconomic issues; water supply; and other impacts identified through Scoping, public involvement and interagency coordination.

f. *Scoping:* A Scoping letter and public workshops will be used to invite comments on alternatives and issues from Federal, State, and local agencies, affected Indian tribes, and other interested private organizations and individuals.

g. *DEIS Preparation:* The integrated draft PIR, including a DEIS, is currently scheduled for publication in the second quarter of 2007.

Dated: November 13, 2003.

**James C. Duck,**

*Chief, Planning Division.*

[FR Doc. 03-30158 Filed 12-3-03; 8:45 am]

BILLING CODE 3710-AJ-M

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. RP04-12-001]

**Florida Gas Transmission Company; Notice of Compliance Filing**

November 28, 2003.

Take notice that on November 25, 2003, Florida Gas Transmission Company ("FGT") tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets effective November 1, 2003:

Substitute Third Revised Sheet No. 14  
Substitute First Revised Sheet No. 22H  
Substitute Fourth Revised Sheet No. 59

FGT states that on October 1, 2003, FGT filed in Docket No. RP04-12-000 a Section 4 Rate Case including revised tariff sheets with a proposed effective date of November 1, 2003. Such tariff sheets included a proposal to provide for partial reservation charge credits, based on the return on equity and related income tax components, in all situations where FGT is unable to fulfill its firm obligations. FGT states that by order dated October 31, 2003 (Order), the Commission, among other things, determined that partial reservation credits were appropriate only in force majeure situations and directed FGT to file within 30 days thereof revised tariff sheets to be effective November 1, 2003.

FGT states that pursuant to the Order, the tariff sheets attached hereto contain revisions that provide for partial reservation charge credits only in force majeure situations.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the eLibrary 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](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or TTY, contact

(202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,  
*Acting Secretary.*

[FR Doc. E3-00455 Filed 12-3-03; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. RP04-23-002]

**Gas Transmission Northwest Corporation; Notice of Tariff Filing**

November 28, 2003.

Take notice that on November 25, 2003, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1-A, Substitute First Revised Sheet No. 23 to correct a rate reference on First Revised Sheet No. 23. GTN requests that the Commission accept the above-referenced tariff sheet to be effective on October 6, 2003.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary". 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](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the "e-Filing" link.

Linda Mitry,  
*Acting Secretary.*

[FR Doc. E3-00456 Filed 12-3-03; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. RP04-23-003]

**Gas Transmission Northwest Corporation; Notice of Tariff Filing**

November 28, 2003.

Take notice that on November 25, 2003, Gas Transmission Northwest Corporation (GTN) tendered for filing various tariff sheets to incorporate into Third Revised Volume No. 1-A, sheets that have recently been approved by the Commission in GTN's superseded FERC Gas Tariff, Second Revised Volume No. 1-A.

GTN states that it recently replaced Second Revised Volume No. 1-A with Third Revised Volume No. 1-A in order to reflect a corporate name change. GTN requests that the Commission accept the above-referenced tariff sheets to be effective on November 1, 2003.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the e-Filing link.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. E3-00457 Filed 12-3-03; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00-329-005]

#### Great Lakes Gas Transmission Limited Partnership; Notice of Compliance Filing

November 28, 2003.

Take notice that on November 24, 2003, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to be effective June 1, 2003:

Second Substitute Eighth Revised Sheet No. 10

Third Substitute Fourth Revised Sheet No. 39A

1st Rev Sixth Revised Sheet No. 42

Substitute Eighth Revised Sheet No. 42A

Second Substitute Third Revised Sheet No. 50A

Substitute Second Revised Sheet No. 50Q

Great Lakes states that these tariff sheets are being filed in compliance with the Commission's October 27, 2003 Order on Compliance Filing relative to Order Nos. 637, 587-G, and 587-L in Docket No. RP00-329-004 (October 27 Order), wherein the Commission accepted Great Lakes' proposed revisions, with some modifications. Great Lakes was directed to file revised tariff sheets within thirty (30) days of the October 27 Order consistent with the modifications set forth in that Order. Great Lakes states that the tariff sheets included in this compliance tariff filing reflect those required modifications.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov>

using the eLibrary 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](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. E3-00453 Filed 12-3-03; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP04-68-000]

#### Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 28, 2003.

Take notice that on November 25, 2003, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A of the filing, to be effective January 1, 2004.

Kern River states that the purpose of this filing is (1) to adjust Kern River's daily reservation/demand rates, authorized overrun rates, and interruptible rates to reflect a slight reduction in those rates because calendar year 2004 has 366 days, and current rates are based on 365 days; (2) to delete the monthly rates stated in Kern River's tariff; (3) to change monthly rate references and formulas to daily rate references and formulas, where applicable, and to make other miscellaneous, rate-related changes.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary". 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](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

**Linda Mitry,**

*Acting Secretary.*

FR Doc. E3-00458 Filed 12-3-03; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP04-70-000]

#### Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

November 28, 2003.

Take notice that on November 24, 2003, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Third Revised Sheet No. 60A, Eleventh Revised Sheet No. 60B and Tenth Revised Sheet No. 60C proposed to be effective January 1, 2004.

Transco states that the purpose of the instant filing is to calculate the firm transportation service load factors on the actual volumes transported during the 12-month period October 2002 through September 2003 in accordance with GRI's 1993 settlement and to make the appropriate changes to its list of small customers and high and low load factor large customers included in its tariff.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance

with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary". 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](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. E3-00451 Filed 12-3-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP02-132-007]

#### Viking Gas Transmission Company; Notice of Compliance Filing

November 28, 2003.

Take notice that on November 24, 2003, Viking Gas Transmission Company (Viking) tendered for filing to become part of Viking's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective January 1, 2004:

Sixth Revised Sheet No. 5  
Fourth Revised Sheet No. 5E  
Fourth Revised Sheet No. 5A  
Fourth Revised Sheet No. 5B  
Fourth Revised Sheet No. 5F  
Fourth Revised Sheet No. 5C  
Fourth Revised Sheet No. 5D  
Fourth Revised Sheet No. 5G  
Sixth Revised Sheet No. 5H  
Second Revised Sheet No. 5I

Viking proposes to place the Stage 2 Rates into effect in accordance with the terms and conditions of Viking's Stipulation and Agreement.

Viking states that copies of this filing have been sent to all of Viking's contracted shippers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the eLibrary 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](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. E3-00454 Filed 12-3-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP02-90-001]

#### AES Ocean Express, L.L.C.; Notice of Availability of the Final Environmental Impact Statement for the Proposed AES Ocean Express Pipeline Project

November 28, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a Final Environmental Impact Statement (FEIS) on the natural gas pipeline facilities proposed by AES Ocean Express, L.L.C. (Ocean Express) in the above-referenced docket.

The FEIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project with the appropriate mitigating measures as recommended, would have limited adverse environmental impact. The FEIS also evaluates alternatives to the proposal, including system alternatives; major route alternatives; and route variations.

The FEIS addresses the potential environmental effects of the construction and operation of the following facilities:

- About 54.5-miles of 24-inch-diameter of new natural gas pipeline extending from a point on the Exclusive Economic Zone ("EEZ") boundary between the United States and the Bahamas to delivery points in Broward County, Florida;

- Two new meter stations, and related facilities;

- One below ground valve;

- One aboveground main pipeline shutoff valve; and

- One pig launching/receiving station.

The purpose of the proposed facilities would be to transport about 842,000 dekatherms/day (Dth/d) of natural gas on an annual basis to new markets in southeastern Florida. The primary market is for natural gas-fueled electric generation plants that are needed to meet the forecasted substantial increases in consumption in Florida.

The FEIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502-8371.

Copies of the FEIS have been mailed to Federal, state and local agencies, public interest groups, individuals who have requested the FEIS, newspapers, and parties to this proceeding.

Additional information about the project is available from the Commission's Office of External Affairs, at 1-866-208-FERC or on the FERC Internet Web site ([www.ferc.gov](http://www.ferc.gov)) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or TTY (202) 502-8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. E3-00459 Filed 12-3-03; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Project No. 2009-018; North Carolina/Virginia]

**Virginia Electric Power Company; Notice of Availability of Environmental Assessment**

November 28, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Roanoke Rapids and Gaston Hydroelectric Project, located on the Roanoke River in Brunswick and Mecklenburg Counties, Virginia, and Halifax, Northampton and Warren Counties, North Carolina. The project occupies approximately 252 acres of federal land that is administered by the U.S. Army Corps of Engineers.

Commission staff has prepared an Environmental Assessment (EA) for the project. The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission's 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](mailto:FERCOnlineSupport@ferc.gov) or call toll free at 1-866-208-3676, for TTY, contact 202-502-8659. Register online at <http://www.ferc.gov/esubscribenow.htm> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments (an original and 8 copies) should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments 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. For further information, contact Allan E. Creamer at (202) 502-8365 or [allan.creamer@ferc.gov](mailto:allan.creamer@ferc.gov).

Linda Mitry,

Acting Secretary.

[FR Doc. E3-00452 Filed 12-3-03; 8:45 am]

BILLING CODE 6717-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

[OECA-2003-0025; FRL-7593-8]

**Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NSPS for Commercial and Industrial Solid Waste Incineration Units (40 CFR Part 60, Subpart CCCC), EPA ICR Number 1926.03, OMB Control Number 2060-0450****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before January 5, 2004.

**ADDRESSES:** Submit your comments, referencing docket ID number OECA-2003-0025, to (1) EPA online using EDOCKET (our preferred method), by email to [docket.oeca@epa.gov](mailto:docket.oeca@epa.gov), or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Learia Williams, Compliance Assessment and Media Programs Division, Mail Code 2223A, Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue,

NW., Washington, DC 20460; telephone number: (202) 564-4113; fax number: (202) 564-0050; e-mail address: [williams.learia@epa.gov](mailto:williams.learia@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 19, 2003 (68 FR 27059), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA has addressed the comments received.

EPA has established a public docket for this ICR under Docket ID No. OECA-2003-0025, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566-1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at <http://www.epa.gov/edocket>. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comment, 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, Confidential Business Information (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](http://www.epa.gov/edocket).

**Title:** NSPS for Commercial and Industrial Solid Waste Incineration Units (40 CFR Part 60, Subpart CCCC).

**Abstract:** The New Source Performance Standards (NSPS) for Commercial and Industrial Solid Waste Incineration Units (CISWI) (40 CFR part 60, subpart CCCC), was proposed on December 1, 2000, and promulgated on March 27, 2001. The standards require initial performance tests for 10 pollutants, annual performance testing for particulate matter (PM), hydrogen chloride (HCl), opacity continuous operating parameter monitoring, annual operator training and annual reporting (deviation reports are required if any of the emission limitations or operating limits are exceeded).

This standard applies to owners or operators of new stationary sources, that is, incineration units that meet either of the two criteria: (1) Sources for which construction begins after the NSPS is proposed which is November 30, 1999, or (2) sources that are reconstructed or modified on or after June 1, 2001. The standard applies to combustion devices that combust commercial and industrial waste. Commercial and industrial waste is a solid waste combusted in an enclosed device using controlled flame combustion without energy recovery, which is a distinct operating unit of any commercial or industrial facility, including field-erected, modular, and custom-built incineration units operating with starved or excess air, or solid waste combusted in an air curtain incinerator without energy recovery.

Owners or operators subject to the provisions of this part will perform annual performance testing on an ongoing basis, ensuring that the air pollution control device is operating properly and its performance has not deteriorated. To minimize the burden of the annual performance testing, the rule only required those respondent tests for PM, HCl, and opacity. Annual performance testing is not required for dioxins/furans, cadmium (Cd), carbon monoxide (CO), lead (Pb), mercury (Hg), nitrogen oxides (NO<sub>x</sub>), and sulfur dioxide (SO<sub>2</sub>). This significantly reduces the testing costs while still providing the EPA with sufficient data to adequately assess compliance. The rule allows respondents to skip two annual tests for a pollutant if all performance tests over the previous three years show compliance with the emission limit. The owner or operator must establish maximum or minimum values for each operating parameter during the initial performance tests for PM, dioxins/

furans, opacity, HCl, Cd, Pb, Hg, CO, NO<sub>x</sub> and SO<sub>2</sub>.

Owners or operators subject to this provision must perform the following activities: Conduct performance tests, monitor operating parameters, prepare siting analysis, prepare waste management plan, operator training and qualifications, one-time and periodic reports, and the maintenance of records. Reports are submitted annually and semiannually. With the exception of requiring records to be maintained for more than three years, none of the guidelines in CFR 1320.5 are being exceeded. In 40 CFR subpart A, "General Provisions for National Emission Standards for Hazardous Air Pollutants for Source Categories," and under section 129 of the Act, CISWI facilities are subject to similar MACT-based regulations, requiring all records to be maintained at the source for a period of five years. In addition, Title V permit programs also require records to be retained for five years.

The proposed standards include annual operator training requirements for incinerator unit operators (rule requires at least one qualified operator or supervisor per facility). The annual training requirements include annual refresher training to maintain operator qualification and an annual review of site-specific documentation. The way in which an incinerator is operated has a significant impact on the emissions from that incinerator. The annual operator training is essential to ensure that the incinerator is being operated properly.

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 and are identified on the form and/or instrument, if applicable.

**Burden Statement:** The annual public reporting and recordkeeping burden for this collection of information is estimated to average 325 hours per response. 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.

**Respondents/Affected Entities:** Commercial and industrial solid waste incineration units.

**Estimated Number of Respondents:** 30.

**Frequency of Response:** Initial, annual, and semiannual.

**Estimated Total Annual Hour Burden:** 16,899.

**Estimated Total Annual Cost:** \$1,343,000, includes \$13,000 annualized capital/startup costs, \$5,000 annual O&M costs, and \$1,325,000 labor costs.

**Changes in the Estimates:** There is an increase of 5,690 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. Approximately six new CISWI units are constructed each year. Therefore, the average number of respondents has increased to 30 in this ICR. In addition, a revised hourly labor rate from the United States Department of Labor, resulted in an increase over the three-year period from the previous ICR.

Dated: November 24, 2003.

**Doreen Sterling,**

*Acting Director, Collection Strategies Division.*

[FR Doc. 03-30161 Filed 12-3-03; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[OAR-2003-0176; FRL-7593-7]

**Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Registration of Fuels and Fuel Additives: Requirements for Manufacturers, EPA ICR Number 0309.11, OMB Control Number 2060-0150**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2004. Under OMB regulations, the Agency may continue to

conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before January 5, 2004.

**ADDRESSES:** Submit your comments, referencing docket ID number OAR-2003-0176, to (1) EPA online using EDOCKET (our preferred method), by e-mail to [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@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, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:**

James W. Caldwell, Office of Transportation and Air Quality, Mail Code 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-9303; fax number: (202) 565-2085; e-mail address: [caldwell.jim@epa.gov](mailto:caldwell.jim@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 7, 2003 (68 FR 47058), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OAR-2003-0176, which is available for public viewing at the Air and Radiation Docket and Information Center 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 and Information Center 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 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 and OMB within 30 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, confidential business information (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](http://www.epa.gov/edocket).

**Title:** Registration of Fuels and Fuel Additives: Requirements for Manufacturers.

**Abstract:** In accordance with the regulations at 40 CFR part 79, subparts A, B, C, and D, Registration of Fuels and Fuel Additives, manufacturers (including importers) of gasoline or diesel fuel for use in motor vehicles, and manufacturers (including importers) of additives for such gasoline or diesel fuel, are required to have these products registered by the EPA prior to their introduction into commerce. Registration involves providing a chemical description of the fuel or additive, certain technical and marketing information, and any health-effects information in possession of the manufacturer. The development of health-effects data, as required by 40 CFR part 79, subpart F, is covered by a separate information collection. Manufacturers are also required to submit periodic reports (annually for additives, quarterly and annually for fuels) on production volume and related information. The information is used to identify products whose evaporative or combustion emissions may pose an unreasonable risk to public health, thus meriting further investigation and potential regulation. The information is also used to ensure that gasoline additives comply with EPA requirements for protecting catalytic converters and other automotive emission controls. The data have been

used to construct a comprehensive data base on fuel and additive composition. The Mine Safety and Health Administration of the Department of Labor restricts the use of diesel additives in underground coal mines to those registered by EPA. Most of the information is confidential since it deals with the proprietary formulations of fuels and additives.

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 and are identified on the form and/or instrument, if applicable.

**Burden Statement:** The annual reporting and recordkeeping burden for this collection of information is estimated to average two hours per response. 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.

**Respondents/Affected Entities:** Manufacturers and importers of gasoline and diesel fuel for use in motor vehicles, and manufacturers and importers of additives for those fuels.

**Estimated Number of Respondents:** 820.

**Frequency of Response:** On occasion, quarterly, annually.

**Estimated Total Annual Hour Burden:** 14,810.

**Estimated Total Annual Cost:** \$1 million (rounded), includes \$0 annualized capital/startup costs, \$29,280 annualized O&M costs and \$977,460 labor costs.

**Changes in Estimates:** There is a decrease of 3,690 hours in the total estimated burden currently identified in the OMB inventory of Approved ICR Burdens. This decrease is due to a decrease in the number of registered fuels.

Dated: November 25, 2003.

**Doreen Sterling,**

*Acting Director, Collection Strategies  
Division.*

[FR Doc. 03-30162 Filed 12-3-03; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7593-6]

### Proposed Agreement Pursuant to Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act for the Marina Cliffs/Northwestern Barrel Site

**AGENCY:** Environmental Protection Agency ("EPA").

**ACTION:** Notice; request for public comment on proposed CERCLA section 122(h)(1) agreement with Towne Realty, Inc. for the Marina Cliffs/Northwestern Barrel Superfund Site.

**SUMMARY:** In accordance with section 122(i)(1) of the comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended ("CERCLA"), notification is hereby given of a proposed administrative agreement concerning the Marina Cliffs/Northwestern Barrel hazardous waste site in South Milwaukee, Wisconsin (the "Site"). EPA proposes to enter into this agreement under the authority of section 122(h) and 107 of CERCLA. The proposed agreement has been executed by Towne Realty, Inc. (the "Settling Party").

Under the proposed agreement, the Settling Party will pay \$850,000 in two installments to the trust fund established to pay for response costs to be incurred by other potentially responsible parties ("PRPs") under cleanup orders issued by EPA at the Site. EPA and these PRPs have incurred and will incur response costs mitigating an imminent and substantial endangerment to human health or the environment present or threatened by hazardous substances present at the Site.

For thirty days following the date of publication of this notice, the Environmental Protection Agency will receive comments relating to this proposed agreement. EPA will consider all comments received and may decide not to enter this proposed agreement if comments disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

**DATES:** Comments on the proposed agreement must be received by EPA on or before January 5, 2004.

**ADDRESSES:** Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and should refer to: In the Matter of Marina Cliffs/Northwestern Barrel Site, Chicago, Illinois, U.S. EPA Docket No. V-W-03C-758.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Krueger, U.S. Environmental Protection Agency, Office of Regional Counsel, C-141J, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, (312) 886-0562.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

**Authority:** The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601-9675.

**William E. Muno,**

*Director, Superfund Division, Region 5.*

[FR Doc. 03-30160 Filed 12-3-03; 8:45 am]

**BILLING CODE 6560-50-M**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7594-5]

### Proposed CERCLA Administrative Agreement for the Recovery of Past Response Costs Incurred at the Weld County Waste Disposal Site Near Ft. Lupton, in Weld County, CO

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice and request for public comment.

**SUMMARY:** In accordance with the requirements of section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement under section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1), concerning the Weld County Waste Disposal site located at 4982 Weld County Road 35, approximately 4½ miles east of Ft. Lupton, in Weld County, Colorado. This settlement, embodied in a CERCLA section 122(h) Agreement for Recovery

of Past Response Costs ("Agreement"), is designed to resolve each Settling Party's liability at the Site for past work and past response costs through covenants under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607. The proposed Agreement requires the Settling Parties listed in the **SUPPLEMENTARY INFORMATION** section below to pay an aggregate total of \$2,710,542.59.

**Opportunity for Comment:** For thirty (30) days following the date of publication of this notice, the Agency will consider all comments received, and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that either settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA Superfund Record Center, 999 18th Street, 5th Floor, in Denver, Colorado.

**DATES:** Comments must be submitted on or before January 5, 2004.

**ADDRESSES:** The proposed settlement and additional background information relating to the settlement are available for public inspection at the EPA Superfund Records Center, 999 18th Street, 5th Floor, in Denver, Colorado. Comments and requests for a copy of the proposed Agreement should be addressed to Carol Pokorny (8ENF-RC), Technical Enforcement Program, U.S. Environmental Protection Agency, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, and should reference the Weld County Waste Disposal Site, in Weld County, Colorado and the EPA docket number, CERCLA-8-2003-0012.

**FOR FURTHER INFORMATION CONTACT:** Carol Pokorny, Enforcement Specialist (8ENF-RC), Technical Enforcement Program, U.S. Environmental Protection Agency, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, (303) 312-6970.

**SUPPLEMENTARY INFORMATION:** Regarding the proposed administrative settlement under section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1): In accordance with section 122(i) of CERCLA, 42 U.S.C. 9622(i), notice is hereby given that the terms of the Agreement have been agreed to by the following settling parties, for the following amounts (where the name of one party is followed by one or more names grouped under it, the main name listed is the name that appears on the settlement signature page or is the name of the party that is assuming liability under the settlement):

**AGREEMENT FOR RECOVERY OF PAST RESPONSE COSTS; EPA DOCKET NO. CERCLA-8-2003-0012**

Settling parties	Settlement amount
Adolph Coors Company and Coors Brewing Company .....	\$278,096.78
AlSCO, Inc. (f/k/a Steiner Corporation), settling on behalf of American Industrial .....	0.00
Arapahoe Chemical, Inc. (n/k/a Roche Colorado Corp) .....	1,939,739.44
Ball Metal Container .....	27,078.61
Borg Warner Corporation (Morse Chain Division) ...	0.00
Burlington Northern and Santa Fe Railway Company, settling on behalf of the Colorado and Southern Railroad Company ....	6,076.75
Claude A. Akridge d/b/a University Hills Conoco and Claude A. Akridge, Inc .....	640.91
COBE Laboratories, Inc. (n/k/a Gambro, Inc.) .....	0.00
ConocoPhillips Company, settling on behalf of Asamera Oil (U.S.), Inc ...	97,768.22
TOSCO Corporation .....	73,423.12
Cooper Industries, settling on behalf of Gardner-Denver Corp .....	13,591.18
CoorsTek, Inc., settling on behalf of Coors Porcelain Company, Inc., Coors Ceramics Company, CoorsTek, Inc .....	200.00
Continental Airlines, Inc., settling on behalf of Frontier Airlines .....	12,272.84
Envirosource, Inc., Successor to National Molasses Company .....	6,805.97
General Iron Works .....	0.00
Graphic Packaging Corporation .....	225.00
Hazen Research, Inc .....	17,353.00
International Business Machines (IBM) .....	58,929.70
Johns Manville Corporation	0.00
Kwal Paints Inc., J&H Shapiro, Inc., Helen Shapiro, Helen Ruth Shapiro Trust, Jack S. Shapiro Marital Trust, Jack S. Shapiro Family Trust, Joliet Associates, LPA, Kwalabuy Inc./Kwal-Howells, Inc., and Professional Paint, Inc .....	14,664.26
Lakewood, City of/South Lakewood Sanitation .....	11,847.70
Marathon Oil Company. ....	4,174.53
National Cash Register (NCR) .....	4,876.23
Power Motive (PM) .....	18,128.63
Regional Transportation District (RTD) .....	292.71
Ryder Truck Rental, Inc .....	0.00

**AGREEMENT FOR RECOVERY OF PAST RESPONSE COSTS; EPA DOCKET NO. CERCLA-8-2003-0012—Continued**

Settling parties	Settlement amount
Safeway, Inc .....	14,488.09
Samsonite .....	1,473.37
SASHCO, Inc .....	0.00
Shattuck Chemical Co (S.W.), Inc .....	24,766.04
Stonehouse Signs, Inc .....	9.18
United Technologies Corporation, on behalf of Sundstrand Aviation Unit	79,472.09
Tomahawk Watkins (n/k/a Alpine Diesel) .....	0.00
U.S Geological Survey .....	1,222.50
Weaver Electric Company ..	2,925.74
<b>Total .....</b>	<b>\$2,710,542.59</b>

By the terms of the proposed Agreement, the Settling Parties will pay a combined total of \$2,710,542.59 to the Hazardous Substance Superfund. This payment represents approximately 53% of the \$5,086,748,001.01 in past response costs incurred through September 30, 2002. The Settling Parties manifested 1,461,777.75 gallons of hazardous substances to the Site. This amount represents approximately 94% of the 1,552,849.32 gallons of hazardous substances manifested to the Site by all generators. The amount that each individual PRP will pay, as shown above, was based upon the number of gallons of hazardous substances manifested to the Site. To be eligible for the settlement, each generator must have submitted a response to EPA's Request for Information.

Dated: November 25, 2003.  
**Carol Rushin,**  
*Assistant Regional Administrator, Office of Enforcement, Compliance, and Environmental Justice, Region VIII.*  
 [FR Doc. 03-30170 Filed 12-3-03; 8:45 am]  
**BILLING CODE 6560-50-P**

**FEDERAL ELECTION COMMISSION  
 Sunshine Act Notices**

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Tuesday, December 2, 2003, 10 a.m. meeting closed to the public. This Meeting was cancelled.

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday, December 4, 2003, 10 a.m. meeting open to the public.

The following item was added to the agenda: Final Rules and Explanation and Justification to Travel on Behalf of Candidates and Political Committees.

The following item was withdrawn: Draft Advisory Opinion 2003-31, Senator Mark Dayton by counsel, Marc E. Elias.

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Tuesday, December 16, 2003, 10 a.m. meeting closed to the public. This Meeting has been rescheduled for Monday, December 15, 2003, at 10 a.m.

**DATE AND TIME:** Tuesday, December 9, 2003, at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This Meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 437(b), and title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

**DATE AND TIME:** Thursday, December 11, 2003, at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor).

**STATUS:** This Meeting will be open to the public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes.  
 Enforcement Disclosure Initiatives.  
 Demonstration of Enforcement Query System.

Policy Statement on Making Closed MURs Public.

Eligibility Report-John R. Edwards/Edwards for President.

Draft Advisory Opinion 2003-31: Senator Mark Dayton by counsel, Marc E. Elias and Brian T. Svoboda.

Draft Advisory Opinion 2003-32: Ms. Inez Tenenbaum by counsel, Marc E. Elias.

Draft Advisory Opinion 2003-33: Anheuser-Busch Companies, Inc., by counsel, Kenneth A. Gross and Ki P. Hong.

Draft Advisory Opinion 2003-35: Gephardt for President, Inc. by Steven G. Murphy, Campaign Manager.

Routine Administrative Matters.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ron Harris, Press Officer, Telephone: (202) 694-1220.

**Mary W. Dove,**  
*Secretary of the Commission.*

[FR Doc. 03-30299 Filed 12-2-03; 2:21 pm]  
**BILLING CODE 6715-01-M**

**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 18, 2003.

**A. Federal Reserve Bank of Atlanta**  
(Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309-4470:

1. *Lawrence Wayne Maxwell*, Anita Kay Maxwell, and Lawrence Todd Maxwell, all of Lakeland, Florida; to collectively acquire up to 19.9 percent of the voting shares of CenterState Banks of Florida, Inc., and thereby indirectly acquire CenterState Bank of Florida, both in Winter Haven, Florida.

**B. Federal Reserve Bank of Chicago**  
(Patrick Wilder, Managing Examiner) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *JP Family Limited Partnership*, Catherine J. Gonzalez, as trustee of the Catherine J. Gonzalez Declaration of Trust, Jane J. Presney, as trustee of the Jane J. Presney Declaration of Trust, Paul E. Presney, Sr., as trustee of the Paul E. Presney, Sr. Declaration of Trust; all of Springfield, Illinois, and Paul E. Presney, II, Rochester, Illinois, to retain control of 34.79 percent of the voting shares of Will Bancorp, Inc., and thereby retain control of Williamsville State Bank and Trust, both of Williamsville, Illinois.

Board of Governors of the Federal Reserve System, November 28, 2003.

**Jennifer J. Johnson**,

*Secretary of the Board.*

[FR Doc. 03-30144 Filed 12-3-03; 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/](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 29, 2003.

**A. Federal Reserve Bank of Atlanta**  
(Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309-4470:

1. *Signature Financial Holdings, Inc.*, St. Petersburg, Florida; to become a bank holding company by acquiring 100 percent of the outstanding shares of Signature Bank, St. Petersburg, Florida.

Board of Governors of the Federal Reserve System, November 28, 2003.

**Jennifer J. Johnson**,

*Secretary of the Board.*

[FR Doc. 03-30145 Filed 12-3-03; 8:45 am]

BILLING CODE 6210-01-S

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Disease Control and Prevention****Sociocultural and Community Risk and Protective Factors for Child Maltreatment and Youth Violence**

*Announcement Type:* New.  
*Funding Opportunity Number:* 04056.  
*Catalog of Federal Domestic Assistance Number:* 93.136.  
*Key Dates: Letter of Intent Deadline:* January 5, 2004.  
*Application Deadline:* February 17, 2004.

**I. Funding Opportunity Description**

**Authority:** This program is authorized under section 301(a) [42 U.S.C. 241(a)] of the Public Health Service Act and section 391(a) [42 U.S.C. 280b(a)] of the Public Service Health Act, as amended.

**Purpose:** The purpose of this program is to inform violence prevention efforts by testing the extent to which potentially modifiable sociocultural and community risk and protective factors are associated with child maltreatment and early risk factors for youth violence. This program addresses the "Healthy People 2010" focus area of Injury and Violence Prevention.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC): Conduct a targeted program of research to reduce injury-related death and disability.

**Research Objectives:** Numerous researchers have stressed the importance of the influence of external environments on family functioning and risk for child maltreatment and subsequent youth violence, as well as the need for research based in an ecological-developmental framework in which risk and protective factors transact across multiple individual and sociocultural contexts (*See Attachment 1, References 1-4 as published on the CDC Web site*). However, to date, the majority of research on risk and protective factors for child maltreatment has focused on identifying individual characteristics of the child (*e.g.*, temperament, cognitive and physical disability) and caregivers (*e.g.*, alcohol/drug use, depression, history of childhood victimization) with fewer studies focusing on the larger community and sociocultural factors that influence these characteristics. In addition, although research has identified a number of early behavioral and family risk factors for youth

violence (e.g., early antisocial or aggressive behavior, poor parent-child relations and parenting practices) few studies have examined how these factors are influenced by sociocultural and community factors (See Attachment 1 Reference 5 as published on the CDC Web site).

The purpose of this program is to empirically demonstrate the predictive utility of potentially modifiable sociocultural and community characteristics to predict child maltreatment and early risk factors for youth violence. Previous research has described the importance of larger community and sociocultural factors such as access to social capital, community social organization, economic and family resources, residential instability, and community and family violence (See Attachment 1 References 6–8 under VIII. Other Information). However, limited information exists about the mechanisms through which these and other potentially modifiable risk and protective factors might have an impact on child maltreatment and the factors that place children on a developmental trajectory toward violence during later childhood, adolescence, and young adulthood. Modifiable factors include those that can be changed directly as well as those whose path to violence can be altered to reduce risk. By improving our understanding of how potentially modifiable community and sociocultural factors are associated with child maltreatment and early risk factors for youth violence the results from this research will inform the development of violence prevention strategies.

Protocols may include data from a variety of sources such as existing or new self-report data, observational data, or archival data. The proposed design and analysis plan should include an assessment of multiple levels of influence (e.g., peer, family, neighborhood, school, and/or community; cf., Coulton *et al.*, 1999; Sampson *et al.*, 2002) with emphasis on the effects of the broader community and sociocultural contexts on these levels of influence.

Protocols should be designed to assess (1) the potentially modifiable sociocultural and community factors that are hypothesized to influence risk for child maltreatment and early risk factors for youth violence; (2) multiple indicators of child maltreatment (e.g., neglect, physical, and/or sexual abuse) and early risk factors for youth violence (e.g., early antisocial or aggressive behavior, poor parent-child relations); and (3) potential mechanisms through which larger community and

sociocultural factors may influence risk at the individual and family levels.

In addition to the measurable outcomes with respect to performance goal, measurable outcomes of the program will be in alignment with the following research agenda items for the National Center for Injury Prevention and Control (NCIPC):

A. Identify modifiable sociocultural and community factors that influence youth violence.

B. Examine the development of child maltreatment perpetration (at the community level) to identify at-risk populations, modifiable risk and protective factors, and optimal times and settings for intervention. (See Attachment 1 Reference 9 as published on the CDC Web site.)

*Activities:* Awardee activities for this program are as follows:

a. Develop and finalize the research design and methodology, data collection measures and analyses, and disseminate the study results through publications and presentations.

b. Develop a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project.

c. Obtain approval of the study protocol by the recipient's local IRB.

d. Form and maintain a community advisory committee to provide guidance on the development of research protocol and the interpretation and dissemination of the study results. Members should include representatives and practitioners from agencies and organizations that engage in related research or service provision, and representatives of the communities targeted in the research.

e. Finalize and implement a research protocol focusing on identifying modifiable sociocultural and community-level characteristics that are hypothesized to predict child maltreatment and early risk factors for youth violence.

f. Finalize, pilot test, revise, and implement data collection instruments.

g. Analyze data and interpret findings focusing on sociocultural and community characteristics that predict child maltreatment and early risk factors for youth violence.

h. Conduct one reverse site visit to meet with CDC staff in Atlanta on an annual basis.

i. Complete all required reports as specified under "Reporting Requirements".

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

a. Provide scientific and programmatic consultation. CDC will collaborate with project staff on research design and methodology, and analysis and dissemination of the study results in publications and presentations.

b. Assist in the development of a research protocol for IRB review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is finished.

c. Provide technical assistance on the selection and evaluation of the data collection instruments.

d. Facilitate an annual meeting between awardee and CDC to coordinate planned efforts and review progress.

## II. Award Information

*Type of Award:* Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

*Fiscal Year Funds:* 2004.

*Approximate Total Funding:* \$500,000.

*Approximate Number of Awards:* One.

*Approximate Average Award:* \$500,000.

*Floor of Award Range:* None.

*Ceiling of Award Range:* \$500,000.

*Anticipated Award Date:* August 2, 2004.

*Budget Period Length:* 12 months.

*Project Period Length:* Four 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:* Applications may be submitted by public and nonprofit private 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, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

- 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.

Foreign institutions are not eligible to apply.

2. *Cost Sharing or Matching:* Matching funds are not required for this program.

3. *Other Eligibility Requirements:* If your application is incomplete or non-responsive to the requirements listed below, it will not be entered into the review process. You will be notified that your application did not meet submission requirements. The following applicant requirements are:

- A principal investigator who has conducted research, published the findings in peer-reviewed journals, and has specific authority and responsibility given by their research institution to carry out the proposed project.

- Demonstrated experience on the applicant's project team in conducting, evaluating, and publishing violence prevention research in peer-reviewed journals.

- Effective and well-defined working relationships within the performing organization and with outside entities, which will ensure implementation of the proposed activities.

- The overall match between the applicant's proposed research objectives and the program priorities as described under the heading, "Research Objectives".

- The requested funding amount should not be greater than the ceiling of the award range.

- Principal investigators (PI's) are encouraged to submit only one proposal in response to this program announcement. With few exceptions (e.g., research issues needing immediate public health attention), only one application per PI will be funded under this announcement.

**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. 5/2001). Forms and instructions are available in an interactive format on the CDC web site, at the following Internet address: [www.cdc.gov/od/pgo/forminfo.htm](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. For further assistance with the PHS 398 application form, contact GrantsInfo, telephone (301) 435-0714, E-mail: [GrantsInfo@nih.gov](mailto:GrantsInfo@nih.gov).

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
  - Single spaced
  - Font size: 12-point un-reduced
  - 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, E-mail 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](mailto:GrantsInfo@nih.gov).

See Attachment 2 of this announcement as it is posted on the CDC web site for guidance on how to complete Form 398 for this Program Announcement. The Program Announcement Title and number must appear in the application.

You must include a research plan with your application. The research plan should be no more than 25 pages (8.5" x 11" in size), single-spaced, printed on one side only, with one-inch margins on all sides, and un-reduced 12-point font.

Your application will be evaluated on the criteria listed under Section V. Application Review Information, so it is important to follow them, as well as the Research Objectives and the Administrative and National Policy Requirements (AR's), in laying out your research plan. Your research plan should address activities to be conducted over the entire project period.

The research plan should consist of the following information:

1. *Research Plan.* Provide a brief one-page description of proposed activities and project outcomes.

2. *Goals and Objectives.* Describe the goals and objectives the proposed research is designed to achieve in the short and long term. Specific research questions and hypotheses should also be included. In addition, the proposal should include an outline of a four-year plan with timeline.

3. *Program Participants.* Describe the study population for the proposed research and how participants will be selected (*i.e.*, sampling strategy). In addition, the research plan should provide evidence that the recipient (or a collaborating partner) has access to the study population, and that the participation by the study population will be adequate to test hypotheses.

4. *Methods.* Describe the proposed study design; methodology, and analysis plan to test the proposed hypotheses.

5. *Project Management.* Provide evidence of the expertise, capacity, and existing staff necessary to successfully conduct the research. Each existing or proposed position for the project should be described by job title, function, general duties, level of effort and allocation of time. Management operation principles, structure, and organization should also be noted.

6. *Collaboration.* Describe plans to convene a community advisory committee that will guide the development of research protocols and

inform the interpretation and dissemination of the study results. Members should include representatives and practitioners from agencies and organizations that engage in related research or service provision, and representatives of the communities targeted in the proposed research. Include letters of support from collaborating partners in the project that document specific contributions, past collaborations, products, services, and other activities that will be provided by and to the applicant through the proposed collaboration.

7. *Project Budget.* Provide a detailed budget for each activity undertaken, with accompanying justification of all operating expenses that is consistent with the stated objectives and planned activities of the project. The budget should include at least one trip per year to CDC for program related meetings. This program announcement does not use the modular budget format.

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 [www.dunandbradstreet.com](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>

3. *Submission Dates and Times:* LOI Deadline Date: January 5, 2004. Application Deadline Date: February 17, 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 carriers 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 of Applications:* 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: None.

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.

6. *Other Submission Requirements:* LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: Robin Forbes, CDC, NCIPC, 4770 Buford Hwy, Mailstop K-62, Atlanta, GA 30341, Phone: 770-488-4037, E-mail: [CIPERT@cdc.gov](mailto: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# 04056, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

## V. Application Review Information

1. *Criteria:* You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. 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.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control

and prevention of disease, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals. The scientific review group will address and consider each of the following criteria in assigning the application's overall score, weighting them as appropriate for each application.

The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The criteria are as follows:

*Significance:* Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

*Approach:* Are the conceptual framework, design, methods, and analyses adequately developed, scientifically rigorous, well integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

*Innovation:* Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

*Investigator:* Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

*Environment:* Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed research take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support?

*Additional Review Criteria:* In addition to the above criteria, the following items will be considered.

*Protection of Human Subjects from Research Risks:* Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? This will not be scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

*Inclusion of Women and Minorities in Research:* Does the application adequately address 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 and 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; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

*Inclusion of Children as Participants in Research Involving Human Subjects:* The NIH maintains a policy that children (*i.e.*, individuals under the age of 21) must be included in all human subjects research, conducted or supported by the NIH, unless there are scientific and ethical reasons not to include them. This policy applies to all initial (Type 1) applications submitted for receipt dates after October 1, 1998.

All investigators proposing research involving human subjects should read the "NIH Policy and Guidelines" on the inclusion of children as participants in research involving human subjects that is available at: <http://grants.nih.gov/grants/funding/children/children.htm>.

*Budget:* The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

*2. Review and Selection Process:* Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) and for responsiveness of other eligibility requirements by NCIPC. Incomplete applications and applications that are non-responsive will not advance through the review process. You will be notified that you did not meet submission requirements.

Applications that are complete and responsive to the announcement will be subjected to a preliminary evaluation (streamline review) by a peer review committee, the Initial Review Group (IRG), convened by NCIPC, to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRG. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator or program director and the official signing for the applicant organization. Those applications judged to be competitive

will be further evaluated by a dual review process.

1. The primary review will be a peer review conducted by the IRG. All applications will be reviewed for scientific merit in accordance with the review criteria listed above. Applications will be assigned a priority score based on the National Institutes of Health (NIH) scoring system of 100–500 points.

2. The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of NCIPC's Advisory Committee for Injury Prevention and Control (ACIPC). The ACIPC Federal agency experts will be invited to attend the secondary review, and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest, so that unwarranted duplication in federally funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as those considered by the SPRS.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally funded research does not occur. The secondary review committee has the latitude to recommend to the NCIPC Director, to reach over better-ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

- a. The results of the primary review including the application's priority score as the primary factor in the selection process.
- b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities and objectives stated in Healthy People 2010, Reducing the Burden of Injury (Bonnie, RJ, Fulco, CE, and CT Liverman. Reducing the Burden of Injury. Institute of Medicine. National Academy Press: 1999) and the CDC Injury Research Agenda (National Center for Injury Prevention and Control. CDC Injury Research Agenda. Atlanta (GA): Centers for Disease Control and Prevention; 2002).

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the IRG, recommendations by the secondary review committee, *e.g.*, NCIPC's Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds.

## VI. Award Administration Information

*1. Award Notices:* Successful applicants 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 Part 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-7 Executive Order 12372.
- AR-8 Public Health System Reporting Requirements.
- AR-9 Paperwork Reduction Act 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-14 Accounting System Requirements.
- AR-15 Proof of Non-Profit Status.
- AR-21 Small, Minority, and Women-Owned Business.
- AR-22 Research Integrity.
- AR-23 States and Faith-Based Organizations.

- AR-24 Health Insurance Portability and Accountability Act Requirements.
- AR-25 Release and Sharing of Data.

Starting with the December 1, 2003 receipt date, all NCIPC funded investigators seeking more than \$500,000 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](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:

- Current Budget Period Activities Objectives.
- Current Budget Period Financial Progress.
- New Budget Period Program Proposed Activity Objectives.
- Detailed Line-Item Budget and Justification.
- 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, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770-488-2700.

For scientific/research program technical assistance, contact: Cindi Melanson, Project Officer, National Center for Injury Prevention and Control, 4470 Buford Highway, NE MS K-60, Atlanta, GA 30342, Telephone: 770-488-1530, E-mail: [CMelanson@cdc.gov](mailto:CMelanson@cdc.gov).

For questions about peer review, contact: Gwen Cattledge, Scientific Review Administrator, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 4470 Buford Highway, NE Mailstop K-02, Atlanta, GA 30342, Telephone: 770-488-1430, E-mail: [GXC8@cdc.gov](mailto:GXC8@cdc.gov).

For budget assistance, contact: Nancy Pillar, Grants Management (or Contract) Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770-488-2721, E-mail: [NPillar@cdc.gov](mailto:NPillar@cdc.gov).

Dated: November 28, 2003.

### Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03-30146 Filed 12-3-03; 8:45 am]

BILLING CODE 4163-18-U

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance

with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the continuing collection of information, which is necessary for assessment and improvement of the delivery of disaster assistance. The forms serve as survey tools used to evaluate customer perceptions of effectiveness, timeliness and satisfaction with initial, continuing and final delivery of disaster-related assistance.

**SUPPLEMENTARY INFORMATION:** This collection is in accordance with Executive Order 12862 that requires all Federal agencies to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. The Government Performance and Results Act (GPRA) requires agencies to set missions and goals and measure performance against them. FEMA will fulfill these requirements by collecting customer service and program information through surveys of the Recovery (RE) Division's external customers.

#### Collection of Information

*Title:* Federal Emergency Management Agency (FEMA) Public Assistance Program Evaluation and Customer Satisfaction Surveys and Individual Assistance Customer Satisfaction Surveys.

*Type of Information Collection:* Extension.

*OMB Number:* 1660-0036.

*Form Numbers:* Public Assistance Program Evaluation and Customer Satisfaction Survey, Registration Intake Survey, Helpline Survey, End of Disaster Survey, Housing Inspection Services Survey. (**Note:** There are no form numbers.)

*Abstract:* Federal agencies are required to survey their customers to determine the kind and quality of services customers want and their level of satisfaction with existing services. FEMA Managers use the survey results to measure program performance against standards for performance and customer service; measure achievement of GPRA objectives; and generally gauge and make improvements to disaster services that increase customer satisfaction and program effectiveness.

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

*Estimated Total Annual Burden Hours:* 12, 210.

FEMA survey forms	Number of respondents	Frequency of response	Hours per response	Annual burden hours (rounded)
Public Assistance Survey—Mail .....	30	50	.30	450
Registration Intake Survey—Phone .....	100	40	.25	1,000
Helpline Survey—Phone .....	100	40	.25	1,000
End of Disaster Survey-Phone .....	100	40	.25	1,000
Inspection Services Survey—Mail .....	750	40	.25	7,500
SubTotal .....				10,950
Focus Groups .....				
Public Assistance .....	20	4	6	480
Individual Assistance for all 4 Survey Types .....	10	24	3.25	780
SubTotal .....				1,260
Grand Total .....				12,210

*Estimated Cost:* \$1,503,080.

*Comments:* Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments should be received within 60 days of the date of this notice.

**ADDRESSES:** Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

**FOR FURTHER INFORMATION CONTACT:** Contact Maggie Billing, Program Analyst, Texas National Processing Service Center, Recovery Division, Response and Recovery Directorate,

Federal Emergency Management Agency, Department of Homeland Security at 940-891-8709 or [maggie.billing@dhs.gov](mailto:maggie.billing@dhs.gov) for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at facsimile number (202) 646-3347 or e-mail address: [Information.Collections@fema.gov](mailto:Information.Collections@fema.gov).

Dated: November 24, 2003.

**Edward W. Kernan,**  
*Division Director, Information Resources Management Division, Information Technology Services Directorate.*  
 [FR Doc. 03-30172 Filed 12-3-03; 8:45 am]  
**BILLING CODE 9110-10-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**Agency Information Collection Activities: Submission for OMB Review; Comment Request**

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in

accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

*Title:* Pre-Disaster Mitigation Grant Program (PDM) E-Grants.

*Type of Information Collection:* Extension of a currently approved collection.

*OMB Number:* 1660-0071.

*Abstract:* This collection is necessary to provide Federal grant assistance to State, local governments, and federally recognized Indian tribal governments, to develop mitigation plans in accordance with section 322 of the Disaster Mitigation Act of 2000, to implement pre-disaster mitigation projects that primarily reduces the risks of natural hazards on life and property, but may include hazards caused by non-natural forces, and to provide information and technical assistance to cost-effective mitigation activities. FEMA will make the Pre-Disaster Mitigation grant application available on-line to States and local governments through a web-based e-Grants application process. The e-Grants system is being developed to meet the intent of the e-Government initiative. This initiative requires that all government agencies both streamline grant applications processes and provide for the means to electronically create, review, and submit a grant application via the Internet.

*Affected Public:* State, local or tribal government.

*Number of Respondents:* 1176.

*Estimated Time per Respondent:*

**GRANT APPLICATION AND REPORTING FORMS**

Type of collection forms	Number of respondents (A)	Number of reponses/respondent (B)	Hours per response and record keeping	Annual burden hours (A*B*C)
SF-424 (Application face sheet) .....	56	2	45 minutes .....	84.0

## GRANT APPLICATION AND REPORTING FORMS—Continued

Type of collection forms	Number of respondents (A)	Number of responses/respondent (B)	Hours per response and record keeping	Annual burden hours (A*B*C)
Budget Information—Construction Program, FEMA Form 20–15 <sup>1</sup> .	56	1	17.2 hours .....	963.2
FEMA Form 20–20 Budget—Non-Construction <sup>1</sup> .....	56	2	9.7 hours .....	1086.4
FEMA Form 20–16, 20–16A, 20–16B, 20–16C (Summary of assurances & certifications).	56	2	1.7 hours .....	190.4
SF–LLL (lobbying disclosure) .....	56	2	10 minutes .....	18.7
FEMA Form 20–10—Financial Status Report, Quarterly Progress Report.	56	8	1 hour .....	448.0
FEMA Form 76–10A Obligating Document For Award/Amendment.	56	2	1.2 hours .....	134.40
FEMA Form 20–17 Outlay Report and Request for Reimbursement.	56	20	17.2 hours .....	19264.0
FEMA Form 20–18 Report of Government Property .....	56	2	4.2 hours .....	235.2
FEMA 20–19—Report of Unobligated Balance (or substitute)	56	2	5 minutes .....	9.3
Annual Audit & Audit Trail Requirements .....	56	1	30 hours .....	28.0
Subtotal for OMB-Approved Standard (SF) and FEMA forms.	.....	.....	.....	22013.4

## PRE-DISASTER MITIGATION GRANT PROGRAM—GRANT SUPPLEMENTAL INFORMATION

Type of collection forms	Number of respondents (A)	Number of responses/respondent (B)	Hours per response and record keeping	Annual burden hours (A*B*C)
Benefit-Cost Determination .....	56	20	5 hours .....	5600.0
Environmental Review .....	56	20	7.5 hours .....	8400.0
Program/Project Narrative (including PDM Supplemental Questions).	56	20	12 hours .....	13440.0
Total Burden for PDM .....	.....	.....	.....	50,887

*Estimated Total Annual Burden Hours:* 50,887 hours.

*Frequency of Response:* On occasion.

*Comments:* Interested persons are invited to submit within 30 days of the date of this notice written comments on the proposed information collection to the FEMA Desk Officer at the Office of Management and Budget at e-mail address [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency at e-mail address [InformationCollections@fema.gov](mailto:InformationCollections@fema.gov).

Dated: November 13, 2003.

**Edward W. Kernan,**

*Division Director, Information Resources Management Division, Information Technology Services Directorate.*

[FR Doc. 03–30173 Filed 12–3–03; 8:45 am]

**BILLING CODE 9110–13–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–97]

### Notice of Submission of Proposed Information Collection to OMB: Public Housing, Contracting With Resident-Owned Business

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This request is for renewal of approval to require eligible resident-owned businesses to submit application information to Housing Agencies (HAs) to be approved for noncompetitive contracting for work to be performed on public housing sites with an alternative to HUD's otherwise-required competitive procurement procedures.

**DATES:** *Comments Due Date:* January 5, 2004.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and OMB approval number (2577–0161) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail [Lauren\\_Wittenberg@omb.eop.gov](mailto:Lauren_Wittenberg@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail [Wayne\\_Eddins@HUD.gov](mailto:Wayne_Eddins@HUD.gov); telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at <http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm>.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as

described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This notice also lists the following information:

*Title of Proposal:* Public Housing, Contracting with RESIDENT-Owned Business.

*OMB Approval Number:* 2577-0161.

*Form Numbers:* None.

*Description of the Need for the Information and Its Proposed Use:* Eligible resident-owned businesses must submit application information to Housing Agencies (HAs) to be approved for noncompetitive contracting for work to be performed on public housing sites with an alternative to HUD's otherwise-required competitive procurement procedures.

*Respondents:* Business or other for-profit, not-for-profit institutions, State, local or tribal government.

*Frequency of Submission:* On occasion, quarterly.

*Reporting Burden:* Number of respondents—40; average annual responses per respondent—2.8; total annual responses—115; average burden per response—16 hrs.

*Total Estimated Burden Hours:* 1,870.

*Status:* Extension of a currently approved collection.

*Authority:* Sec. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 26, 2003.

**Wayne Eddins,**

*Departmental Reports Management Officer,  
Office of the Chief Information Officer.*

[FR Doc. 03-30140 Filed 12-3-03; 8:45 am]

BILLING CODE 4210-72-P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4815-N-98]

### Notice of Submission of Proposed Information Collection to OMB: Application and Re-certification for Approval of Nonprofit Organizations in FHA Activities

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection is an application and/or re-certification criteria for nonprofit organizations seeking approval to participate as FHA insured mortgagors or provide downs payment assistance to home buyers, which can be achieved by secondary financing. This information collection also provides standardized information and procedures to ensure equal treatment of applicants throughout the nation and gives HUD sufficient information to ascertain an organization's management and fiscal abilities.

**DATES:** *Comments Due Date:* January 5, 2003.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and OMB approval number (2502-0540) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395-6974; e-mail [Lauren\\_Wittenberg@omb.eop.gov](mailto:Lauren_Wittenberg@omb.eop.gov).

#### FOR FURTHER INFORMATION CONTACT:

Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail [Wayne\\_Eddins@HUD.gov](mailto:Wayne_Eddins@HUD.gov); telephone (202) 708-2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at <http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm>.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as

described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This notice also lists the following information:

*Title of Proposal:* Application and Re-certification Packages for Approval of Nonprofit Organizations in FHA Activities.

*OMB Approval Number:* 2502-0540.

*Form Numbers:* None.

*Description of the Need for the Information and its Proposed Use:* This information collection is an application and/or re-certification criteria for nonprofit organizations seeking approval to participate as FHA insured mortgagors or provide downs payment assistance to home buyers, which can be achieved by secondary financing. This information collection also provides standardized information and procedures to ensure equal treatment of applicants throughout the nation and gives HUD sufficient information to ascertain an organization's management and fiscal abilities.

*Respondents:* Individuals or household, business or other for-profit, not-for-profit institutions, Federal government, State, local or tribal government.

*Frequency of Submission:* Annually.

*Reporting Burden:* Number of respondents 700; average annual responses per respondent 4.85; total annual responses 3,400; average burden per response 6.82 hrs.

*Total Estimated Burden Hours:* 23,200.

*Status:* Extension or a currently approved collection.

*Authority:* Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 28, 2003.

**Wayne Eddins,**

*Departmental Reports Management Officer,  
Office of the Chief Information Officer.*

[FR Doc. 03-30141 Filed 12-3-03; 8:45 am]

**BILLING CODE 4210-72-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-4815-N-99]

**Notice of Submission of Proposed Information Collection to OMB: Resident Opportunities and Self-Sufficiency (ROSS) Grant Program**

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Applicants for ROSS grant funds submit applications for the following grant categories: Resident Service Delivery Models-Family, Resident Service Delivery Models-Elderly/Persons with Disabilities, Homeownership Supportive Services, and Neighborhood Networks, and for one additional funding category: Family Self-Sufficiency for Public Housing. Applicants describe the activities they will undertake; provide a work plan with a timeline for their activities; indicate their expected outputs and outcomes; provide a budget; and indicate, in the case of nonprofit applicants, which resident groups support their application (per Congressional statute).

**DATES:** *Comments Due Date:* January 5, 2004.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and OMB approval number (2577-0229) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395-6974; e-mail [Lauren\\_Wittenberg@omb.eop.gov](mailto:Lauren_Wittenberg@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail [Wayne\\_Eddins@HUD.gov](mailto:Wayne_Eddins@HUD.gov); telephone (202) 708-2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at <http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm>.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including

number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This notice also lists the following information:

*Title of Proposal:* Resident Opportunities and Self-Sufficiency (ROSS) Grant Program.

*OMB Approval Number:* 2577-0229.  
*Form Numbers:* HUD-52751, HUD-52752, HUD-52753, HUD-52754, HUD-52755, HUD-52756, HUD-52757, HUD-52758, HUD-52759, HUD-52760, HUD-52761, HUD-52762, HUD-52763, HUD-52764, HUD-52765, HUD-52766, HUD-52767, HUD-52768.

*Description of the Need for the Information and its Proposed Use:* Applicants for ROSS grant funds submit applications for the following grant categories: Resident Service Delivery Models-Family, Resident Service Delivery Models-Elderly/Persons with Disabilities, Homeownership Supportive Services, and Neighborhood Networks, and for one additional funding category: Family Self-Sufficiency for Public Housing. Applicants describe the activities they will undertake; provide a work plan with a timeline for their activities; indicate their expected outputs and outcomes; provide a budget; and indicate, in the case of nonprofit applicants, which resident groups support their application (per Congressional statute).

*Respondents:* Not-for-profit institutions, State, local or tribal government.

*Frequency of Submission:* On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden .....	850	850		254		215,900

*Total Estimated Burden Hours:* 215,900.

*Status:* Revision of a currently approved collection.

*Authority:* Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 28, 2003.

**Wayne Eddins,**

*Departmental Reports Management Officer,  
Office of the Chief Information Officer.*

[FR Doc. 03-30142 Filed 12-3-03; 8:45 am]

**BILLING CODE 4210-72-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**Final Comprehensive Conservation Plan for Buenos Aires National Wildlife Refuge, Sasabe, AZ**

**AGENCY:** Fish and Wildlife Service, Department of the Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces that the

Final Comprehensive Conservation Plan (CCP) is available for the Buenos Aires National Wildlife Refuge (Refuge). Prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*), and the National Environmental Policy Act of 1969, this CCP describes how the Service intends to manage this Refuge over the next 15 years.

**ADDRESSES:** Copies of the CCP are available on compact disk or in hard copy, and can be obtained by writing: U.S. Fish and Wildlife Service, Attn: Yvette Truitt-Ortiz, Division of Planning, P.O. Box 1306, Albuquerque, New Mexico, 87103.

**FOR FURTHER INFORMATION CONTACT:** Wayne A. Shifflett, Refuge Manager, Buenos Aires National Wildlife Refuge, P.O. Box 109, Sasabe, Arizona 85633; phone 520-823-4251; or Yvette Truitt-Ortiz, Natural Resource Planner, U.S. Fish and Wildlife Service, Division of Planning, P.O. Box 1306, Albuquerque, New Mexico, 87103; phone 505-248-6452; e-mail: [Yvette\\_TruittOrtiz@fws.gov](mailto:Yvette_TruittOrtiz@fws.gov).

**SUPPLEMENTARY INFORMATION:** A CCP is required by the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*). The purpose in developing CCPs is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. These CCPs will be reviewed and updated at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*), and the National Environmental Policy Act of 1969.

Dated: November 21, 2003.

**Geoffrey L. Haskett,**

*Acting Regional Director, Fish and Wildlife Service, Albuquerque, New Mexico.*

[FR Doc. 03-30211 Filed 12-3-03; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CA-660-04-1150-JP]

#### Restrictions on Use of Public Lands; California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of closure.

**SUMMARY:** This notice closes to casual use certain public lands managed by the Bureau of Land Management (BLM) in the Santa Rosa and San Jacinto Mountains National Monument, in order to prevent hikers and other visitors from accessing ridges that overlook bighorn sheep breeding pens on the property of the Bighorn Institute.

**EFFECTIVE DATE:** December 4, 2003.

**ADDRESSES:** Send inquiries or suggestions to the Santa Rosa and San Jacinto Mountains National Monument, Palm Springs Field Office, Bureau of Land Management, 690 W. Garnet, PO Box 581260, North Palm Springs, CA 92258-1260.

**FOR FURTHER INFORMATION CONTACT:** Danella George, Santa Rosa and San Jacinto Mountains National Monument Manager, (760) 251-4800.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On February 13, 2003, the U.S. Fish and Wildlife Service issued a Biological Opinion (FWS-ERIV-3354.1), in accordance with section 7 of the Endangered Species Act of 1973, as amended, addressing effects on the endangered Peninsular Ranges bighorn sheep (*Ovis canadensis*) from a proposed joint trails and recreation use plan prepared by the City of Palm Desert and the Bureau of Land Management (the joint plan). As part of the proposed action, and consistent with the Biological Opinion, the City of Palm Desert (City) and the Bureau of Land Management (BLM) agreed to close portions of City and BLM-managed public lands to recreation and casual use to prevent hikers from accessing ridges that overlook bighorn sheep breeding pens on the property of the Bighorn Institute.

The population of bighorn sheep in the United States' Peninsular Ranges was listed as an endangered species on March 18, 1998. The Recovery Plan for Bighorn Sheep in the Peninsular Ranges, California, was issued on October 25, 2000. On October 25, 2000, the Santa Rosa and San Jacinto Mountains National Monument was established by an Act of Congress that was signed into law by President Clinton (Pub. L. 106-351). BLM completed the California Desert Conservation Area Plan Amendment for the Coachella Valley (Coachella Valley Plan) on December 27, 2002. The Coachella Valley Plan covered portions of the Santa Rosa and San Jacinto Mountain National Monument and addresses recovery of the bighorn sheep.

Because bighorn sheep evolved with canine predators, they are particularly sensitive to the presence of dogs. This has created a conflict between bighorn sheep conservation management and recreational use of public lands. In 2000, BLM issued a temporary closure of public lands prohibiting dogs in designated critical bighorn sheep habitat, except in a few designated areas. Recreational hiking with dogs had been a popular use on City owned lands and public lands south of the Santa Rosa and San Jacinto Mountains National Monument Visitor Center on Highway 74. This situation caused a conflict with the Bighorn Institute, a captive bighorn sheep breeding facility located north of the Visitor Center. The director of the Bighorn Institute expressed concern over the nearness of dogs south of the Visitor Center and requested that they be moved to a different location. BLM and the City proposed to construct a loop trail south of the Visitor Center that would be off-limits to dogs, and to construct an additional trail, open to hikers with dogs, on the west side of Highway 74 that would connect the City's Homme-Adams Park with the Cahuilla Hills Park. Dogs would be allowed on the Homme-Adams Park Trail and Cahuilla Hills Park Trail. Under agreements with the Bighorn Institute and the City, BLM proposed to discourage hiking access by reclaiming an unauthorized road and enforce a closure along the saddle immediately south of the BLM property line that leads to an overlook on BLM lands above the Bighorn Institute's sheep pens. The proposed action for trail realignments, new trail construction, and blocking access to the ridge overlooking the Bighorn Institute was analyzed under an environmental assessment (*Homme-Adams and Visitor Center Trail Loops, EA-660-03-08*). The BLM initiated consultation with the U.S. Fish and Wildlife Service (Service) on the effects of the proposed project on the endangered Peninsular Ranges bighorn sheep, in accordance with section 7 of the Endangered Species Act of 1973, as amended (ESA), on December 30, 2002. The Service issued a Biological Opinion based on the BLM and City environmental assessments, information in Service files, and on information and agreements obtained in meetings, telephone conversations, and e-mails prior to and during the consultation period. Under the Terms and Conditions of the Biological Opinion, and to meet the requirement of section 9 of the ESA, the BLM must take reasonable and prudent measures to minimize the impact of incidental take

by minimizing the adverse effects of human disturbance to wild and captive bighorn sheep, through the proposed actions referenced in EA-660-03-08. These actions include BLM and City commitments: (1) To block human access to the old "Shirley" road on their lands through a combination of signage, fencing and physical barriers, including deconstructing and recontouring the road sufficient to discourage access and reinforce the closure along the saddle immediately south of the BLM property line that leads to an overlook on BLM lands of the Bighorn Institute's sheep pens, and (2) to employ a progressive management strategy to prevent hiking off the designated trail system and towards or overlooking captive sheep in the Bighorn Institute pens, including signage, stricter enforcement and penalties when legally feasible, physical barriers and fencing at strategic locations. The BLM issued a Decision Record to implement the proposed action, including the Terms and Conditions of the Biological Opinion, on March 7, 2003. The City issued an ordinance (Ordinance No. 1034) and a resolution (Resolution No. 03-12), approving construction of a new trail and closing portions of City lands between the National Monument Visitor Center and the ridge overlooking the Bighorn Institute, on January 23, 2003 (mitigation measures B-5 and B-6).

## II. Closure

In compliance with 43 CFR 8364.1(c), notice is hereby given that BLM is closing portions of public lands in the Santa Rosa and San Jacinto Mountains National Monument. The public lands hereby closed are those lands within the north 1/2 of the north 1/2 of Section 7, Township 6 South, Range 6 East, San Bernardino Meridian (SBM). These restrictions will be in effect year-round from December 4, 2003 until rescinded by the authorized officer. The order to close these lands is needed to protect the resources of the public lands and to minimize conflicts among various uses of the public lands.

BLM finds good cause to publish this closure notice effective the date of publication and without providing for public comment due to the immediate need to protect the Peninsular Range bighorn sheep from the stress that is likely to be caused by recreational use of land overlooking their captive breeding pens. A 30-day public comment on the subject of this action began on December 30, 2002, through publication of an environmental assessment (*Homme-Adams and Visitor Center Trail Loops*, EA-660-03-08). A Biological Opinion issued by the U.S.

Fish and Wildlife Service on February 13, 2003 (FWS-ERIV-3354.1) supported BLM's proposed action as a reasonable and prudent measure to minimize the adverse effects of human disturbance to wild and captive bighorn sheep. All public comments received were considered prior to BLM's issuance of its Decision Record (DR) on March 7, 2003. BLM provided the public notification of this DR and the procedures for appeals through a news release issued March 11, 2003. No appeals were filed. Furthermore, the public was fully involved in the development of the joint plan. Also, the regulations on Closures and Restrictions at 43 CFR 8364.1 do not require publication of a request for comments.

The BLM lands covered by this closure order cannot be accessed except by crossing closed City lands. In compliance with the proposed action described in *Homme-Adams and Visitor Center Trail Loops*, EA-660-03-08, the Biological Opinion (FWS-ERIV-3354.1) dated February 13, 2003, and the City of Palm Desert ordinance, BLM hereby closes the described public lands to recreational and casual use. Any person who fails to comply with this order may be subject to the penalties provided in CFR 8360.0-7.

## III. Exceptions

The following are exempt from this order: (1) fire, emergency, or law enforcement personnel when engaged in emergency or patrol activities; and (2) persons or uses expressly authorized by BLM.

Dated: October 30, 2003.

**Linda Hansen,**

*California Desert District Manager.*

[FR Doc. 03-30156 Filed 12-3-03; 8:45 am]

**BILLING CODE 4310-40-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 30-Day Federal Register Notice of Submission of Network to Freedom Application Package to Office of Management and Budget; Opportunity for Public Comment

**AGENCY:** Department of the Interior, National Park Service, National Underground Railroad Network to Freedom Program.

**ACTION:** Notice and request for comments.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. 3507) and 5 CFR part 1320, Reporting and Recordkeeping

Requirements, the National Park Service (NPS) invites comments on a submitted request to the Office of Management and Budget (OMB) to approve an extension of a currently approved information collection clearance (OMB 1024-0232). Comments are invited on (1) the need for the information including whether the information has practical utility; (2) the accuracy of this reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected on respondents, including the use of automated collection techniques or other forms of information technology. This program will measure performance in meeting goals as required by the 1995 Government Performance and Results Act.

Public Law 105-203 authorizes the NPS to develop and administer the National Underground Railroad Network to Freedom (Network), a nationwide collection of governmental and nongovernmental sites, facilities, and programs associated with the historic Underground Railroad movement. The NPS has developed the application process through which associated elements can be included in the Network. The information collected will: (a) Verify associations to the Underground Railroad, (b) Measure minimum levels of standards for inclusion in the Network, and (c) Identify general needs for technical assistance.

The purpose of the proposed ICR is to evaluate sites, facilities, and programs that are applying for inclusion in the National Underground Railroad Network to Freedom. The information will be used by the NPS to determine if candidates seeking inclusion in the Network meet the minimum criteria. There were no public comments received as a result of publishing in the **Federal Register** a 60-day notice of intention to request clearance of information collection for this survey.

**DATES:** Public Comments on the proposed ICR will be accepted on or before January 5, 2004, to be assured of consideration. The Office of Management and Budget (OMB) has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore to ensure maximum consideration, OMB should receive comments 30 days from the date of publication in the **Federal Register**.

**ADDRESSES:** You may submit comments directly to Ms. Ruth Solomon, Desk Officer for the Department of the Interior (OMB 0124-0232), Office of Information and Regulatory Affairs, OMB, by fax at 202-395-6566 or by

electronic mail at [aira\\_docket@omb.eop.gov](mailto:aira_docket@omb.eop.gov). Mail or hand carry a copy of your comments to Dianne Miller, National Coordinator, National Underground Railroad Network to Freedom Program, National Park Service, Midwest Regional Office, 1709 Jackson Street, Omaha, Nebraska, 68102. If you wish to send a copy of your comments by electronic mail, you may send them to [diane\\_miller@nps.gov](mailto:diane_miller@nps.gov). All comments will become a matter of public record.

**FOR FURTHER INFORMATION OR A COPY OF THE STUDY PACKAGE SUBMITTED FOR OMB REVIEW, CONTACT:** Diane Miller, 402-221-3749 or James Hill, 402-221-3413 at National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102.

**SUPPLEMENTARY INFORMATION:**

*Title:* NPS National Underground Railroad Network to Freedom Application.

*Bureau Form Number:* n/a.

*OMB Number:* 1024-0232.

*Expiration Date:* 11/30/2003.

*Type of request:* Extension of a currently approved information collection.

*Description of need:* The NPS has identified guidelines and criteria for associated elements to qualify for the Network. The application form documents sites, programs, and facilities and demonstrates that they meet the criteria established for inclusion. The documentation will be incorporated into a database that will be available to the general public for information purposes. The proposed information to be collected regarding these sites, facilities, and programs is not available from existing records, sources, or observations.

*Automated data collection:* Respondents must verify associations and characteristics through descriptive texts that are the result of historical research. Evaluations are based on subjective analysis of the information provided, which often includes copies of rare documents and photographs. Much of the information is submitted in electronic format, but at the present time, there is capacity to gather all of the required information electronically.

*Description of respondents:* The affected publics are state, tribal, and local governments, federal agencies, businesses, non-profit organizations, and individuals throughout the United States. Nominations to the Network are voluntary.

*Estimated average number of respondents:* 80.

*Estimated average number of responses:* 80.

*Estimated average burden hours per response:* 15.

*Estimated frequency of response:*

Once per respondent.

*Estimated annual reporting burden:* 1200 hours.

Dated: October 24, 2003.

**Leonard E. Stowe,**

*Acting, NPS Information Collection Clearance Officer, Washington Administrative Program Center.*

[FR Doc. 03-30149 Filed 12-3-03; 8:45 am]

**BILLING CODE 4310-70-M**

**POSTAL SERVICE**

**Board of Governors;**

**Sunshine Act Meeting**

*Dates and Times:* Monday, December 8, 2003, at 1 p.m.; Tuesday, December 9, 2003, at 8:30 a.m.

*Place:* Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

*Status:* December 8-1:00 p.m. (Closed); December 9-8:30 a.m. (Open).

*Matters to be Considered:*

**Monday, December 8-1 p.m. (Closed)**

1. Audit and Finance Committee Report and Review of Year-End Financial Statements.

2. Financial Update.

3. Strategic Planning.

4. Personnel Matters and Compensation Issues.

**Tuesday, December 9-8:30 a.m. (Open)**

1. Minutes of the Previous Meeting, November 3-4, 2003.

2. Remarks of the Postmaster General and CEO.

3. Committee Reports.

4. Fiscal Year 2003 Audited Financial Statements.

5. Postal Service Fiscal Year 2003 Annual Report.

6. Final Fiscal Year 2005 Appropriation Request.

7. Tentative Agenda for the January 5-6, 2004, meeting in Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC. 20260-1000. Telephone (202) 268-4800.

**William T. Johnstone,**

*Secretary.*

[FR Doc. 03-30210 Filed 12-1-03; 4:40 pm]

**BILLING CODE 7710-12-M**

**SECURITIES AND EXCHANGE COMMISSION**

[File No. 22-28712]

**Application and Opportunity for Hearing: Hard Rock Hotel, Inc.**

November 26, 2003.

The Securities and Exchange Commission gives notice that Hard Rock Hotel, Inc. has filed an application under section 304(d) of the Trust Indenture Act of 1939. Hard Rock Hotel asks the Commission to exempt from the certificate or opinion delivery requirements of section 314(d) of the 1939 Act certain provisions of an indenture dated May 30, 2003, as supplemental by indentures dated November 20, 2003, and November 24, 2003, between Hard Rock Hotel and U.S. Bank National Association, as trustee. The indenture relates to 8 $\frac{7}{8}$ % Second Lien Notes due 2013.

Section 304(d) of the 1939 Act, in part, authorizes the Commission to exempt conditionally or unconditionally any indenture from one or more provisions of the 1939 Act. The Commission may provide an exemption under section 304(d) if it finds that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the 1939 Act.

Section 314(d) requires the obligor to furnish to the indenture trustee certificates or opinions of fair value from an engineer, appraiser or other expert upon any release of collateral from the lien of the indenture. The engineer, appraiser or other expert must opine that the proposed release will not impair the security under the indenture in contravention of the provisions of the indenture. The application requests an exemption from section 314(d) for specified collateral that are made in Hard Rock Hotel's ordinary course of business.

In its application, Hard Rock Hotel alleges that:

1. The indenture permits Hard Rock Hotel to dispose of collateral in the ordinary course of its business;

2. Hard Rock Hotel will deliver to the trustee annual financial statements audited by certified independent accountants; and

3. Hard Rock Hotel will deliver to the trustee a semi-annual certificate stating that all dispositions of collateral during the relevant six-month period occurred in Hard Rock Hotel's ordinary course of business and that all of the proceeds were used as permitted by the indenture.

Any interested persons should look to the application for a more detailed statement of the asserted matters of fact and law. The application is on file in the Commission's Public Reference Section, File Number 222-28712, 450 Fifth Street, NW., Washington, DC 20549.

The Commission also gives notice that any interested persons may request, in writing, that a hearing be held on this matter. Interested persons must submit those requests to the Commission no later than December 31, 2003. Interested persons must include the following in their request for a hearing on this matter:

- The nature of that person's interest;
- The reasons for the request; and
- The issues of law or fact raised by the application that the interested person desires to refute or request a hearing on.

The interested person should address this request for a hearing to: Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. At any time after December 31, 2003, the Commission may issue an order granting the application, unless the Commission orders a hearing.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-30154 Filed 12-3-03; 8:45 am]

BILLING CODE 8010-01-P

## DEPARTMENT OF STATE

[Public Notice 4550]

### **Bureau of Political-Military Affairs; 60-Day Notice of Proposed Information Collection: Form DS-4048, Projected Sales of Major Weapons in Support of Section 25(a)(1) of the Arms Export Control Act; OMB No. 1405-XXXX**

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the Federal Register preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

*Type of Request:* Existing collection in use without an OMB control number.

*Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.

*Title of Information Collection:* Projected Sales of Major Weapons in Support of Section 25(a)(1) of the Arms Export Control Act.

*Frequency:* Once a year.

*Form Number:* DS-4048.

*Respondents:* Business organizations.

*Estimated Number of Respondents:* 20.

*Average Hours Per Response:* 3 hours.

*Total Estimated Burden:* 60 hours.

(Total Estimated Burden based on number of reports received per year.)

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

**FOR FURTHER INFORMATION:** Contact Copies of the proposed information collection and supporting documents may be obtained from Michael T. Dixon, Director, Office of Defense Trade Controls Management, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, SA-1, Room H1200, 2401 E Street, NW., Washington, DC 20522-0112 (202) 663-2700.

Dated: November 14, 2003.

**Gregory M. Suchan,**

*Deputy Assistant Secretary for Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.*

[FR Doc. 03-30186 Filed 12-3-03; 8:45 am]

BILLING CODE 4710-25-P

## DEPARTMENT OF STATE

[Public Notice: 4548]

### **Office of Visa Services; 60-Day Notice of Proposed Information Collection: Forms DS-2053, DS-3024, DS-3025 and DS-3026; Medical Examination for Immigrant or Refugee Applicant; OMB Control #1405-0113**

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** The Department of State is seeking Office of Management and

Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

*Type of Request:* Extension of currently approved collection.

*Originating Office:* Bureau of Consular Affairs, Department of State (CA/VO).

*Title of Information Collection:* Medical Examination for Immigrant or Refugee Applicant.

*Frequency:* Once per respondent.

*Form Numbers:* DS-2053, DS-3024, DS-3025 and DS-3026.

*Respondents:* Immigrant visa and refugee applicants.

*Estimated Number of Respondents:* 630,000 per year.

*Average Hours Per Response:* 1.75 hours.

*Total Estimated Burden:* 1,102,500 hours per year.

*Public comments are being solicited to permit the agency to:*

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

#### **FOR FURTHER INFORMATIONCONTACT:**

Public comments, or requests for additional information regarding the collection listed in this notice should be directed to Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St. NW., RM L-703, Washington, DC 20520, who may be reached at 202-663-1166.

Dated: November 25, 2003.

**Catherine Barry,**

*Acting Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.*

[FR Doc. 03-30187 Filed 12-3-03; 8:45 am]

BILLING CODE 4710-06-P

**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****Environmental Impact Statement:  
Town Boone, Watauga County, NC**

**AGENCY:** Federal Highway Administration (FHWA). DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project within Watauga County, North Carolina.

**FOR FURTHER INFORMATION CONTACT:** Ms. Emily O. Lawton, Operations Engineer, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601, Telephone (919) 856-4350.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an Environmental Impact Statement (EIS) for the proposed improvement of US 421 to multi-lanes from NC 105 Bypass to east of SR 1514 (Bamboo Road) in Watauga County (approximately 5.3 miles). The proposed action is to upgrade this section of US 421 to a high speed, multi-lane facility. US 421, the primary east-west corridor in the north-western part of the state, connects the North Carolina coastal region (Wilmington) to the western part of the state and, ultimately, to Tennessee. This proposed project is a portion of the projects proposed for US 421 in the NCDOT's 2004-2010 Transportation Improvement Program (TIP).

Alternatives under consideration include: (1) "no-build", (2) widening the existing facility, and (3) multiple bypass alternatives for a four-lane divided facility control of access.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies. A Citizens Informational Workshop and meetings with local officials and neighborhood groups will be held in the study area. Public hearings will also be held. Information on the time and place of the public hearings will be provided in the local news media and project newsletters. The draft EIS will be available for public and agency review and comment at the time of the hearing. No formal scoping meeting is planned at this time.

To ensure the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the

proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

**Emily O. Lawton,**

*Operations Engineer, Raleigh, North Carolina.*  
[FR Doc. 03-30181 Filed 12-3-03; 8:45 am]

**BILLING CODE 4910-22-M**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Proposed Collection; Comment  
Request for Form 2758**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2578, Application for Extension of Time To File Certain Excise, Income, and Other Returns.

**DATES:** Written comments should be received on or before February 2, 2004 to be assured of consideration.

**ADDRESSES:** Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622-3945, or through the Internet at [CAROL.A.SAVAGE@irs.gov](mailto:CAROL.A.SAVAGE@irs.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Application for Extension of Time To File Certain Excise, Income, Information, and Other Returns.

*OMB Number:* 1545-0148.

*Form Number:* 2758.

*Abstract:* Internal Revenue Code section 6081 allows a reasonable

extension of time for filing any return, declaration, statement, or other document. Form 2758 is used by fiduciaries, trustees, and certain other organizations to request an extension of time to file their returns. The information is used to determine whether the extension should be granted.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and not-for-profit institutions.

*Estimated Number of Respondents:* 70,371.

*Estimated Time Per Respondent:* 5 hours, 21 minutes.

*Estimated Total Annual Burden Hours:* 375,923.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 28, 2003.

**R. Joseph Durbala,**

*IRS Reports Clearance Officer.*

[FR Doc. 03-30188 Filed 12-3-03; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, December 23, 2003.

**FOR FURTHER INFORMATION CONTACT:** Marisa Knispel at 1-888-912-1227 (toll-free), or 718-488-3557 (non toll-free).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, December 23, 2003 from 11 a.m. to 12 p.m. e.t. via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 718-488-3557, or write Marisa Knispel, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited

conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel.

The agenda will include various IRS issues.

Dated: December 1, 2003.

**Tersheia Carter,**

*Acting Director, Taxpayer Advocacy Panel.*  
[FR Doc. 03-30189 Filed 12-3-03; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF VETERANS AFFAIRS****Advisory Committee on Homeless Veterans, Notice of Meeting**

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Homeless Veterans will be held from Monday, December 15, 2003, through Tuesday, December 16, 2003, at the Marriott San Diego Hotel, Carlsbad Room, 333 West Harbor Drive, San Diego, CA 98101. On December 15, the meeting will convene at 1 p.m. and end at 4 p.m. and on December 16 the meeting will convene at 8 a.m. and end at 4 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs with an on-going assessment of the effectiveness of the policies, organizational structures, and services of the Department in assisting homeless veterans. The Committee shall assemble

and review information relating to the needs of homeless veterans and provide on-going advice on the most appropriate means of providing assistance to homeless veterans. The Committee will make recommendations to the Secretary regarding such activities.

On December 15, the Committee will hear from key VA leaders from the San Diego area in regards to issues and developments affecting veterans' health and benefits. On December 16, the committee will receive updates on veterans' health, employment, dental care, multi-family housing, community participation and technical assistance efforts to assist homeless veterans.

Those wishing to attend the meeting should contact Mr. Pete Dougherty, Department of Veterans Affairs, at (202) 273-5764. No time will be allocated for receiving oral presentations during the public meeting. However, the Committee will accept written comments from interested parties on issues affecting homeless veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Homeless Veterans, Homeless Veterans Programs Office (075D), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: November 21, 2003.

By Direction of the Secretary:

**E. Phillip Riggan,**

*Committee Management Officer.*

[FR Doc. 03-30139 Filed 12-3-03; 8:45 am]

**BILLING CODE 8320-01-M**



# Federal Register

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**Thursday,  
December 4, 2003**

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**Part II**

## **Department of Homeland Security**

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**48 CFR Chapter 30  
Department of Homeland Security  
Acquisition Regulation; Interim Rule**

**DEPARTMENT OF HOMELAND SECURITY****48 CFR Chapter 30**

[Docket Number USCG–2003–16571]

RIN 1601–AA16

**Department of Homeland Security Acquisition Regulation**

**AGENCY:** Office of the Chief Procurement Officer, Department of Homeland Security.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Department of Homeland Security (DHS) is issuing an interim rule to establish the Department of Homeland Security Acquisition Regulation (HSAR). The HSAR is intended as regulatory guidance. The HSAR reflects recent changes to the Federal Acquisition Regulation (FAR) and it establishes and encourages participation in the DHS Mentor-Proege Program.

**DATES:** This rule is effective on December 4, 2003. Comments must reach the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy on or before January 5, 2004, to be considered in the formation of the final rule. Comments on collection of information sent to the Office of Management and Budget (OMB) must reach OMB on or before January 5, 2004.

**ADDRESSES:** Please submit written comments by one of the following means:

(1) Electronically to [acquisition@dhs.gov](mailto:acquisition@dhs.gov).

(2) By mail to the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Oversight, ATTN: Kathy Strouss, 245 Murray Drive, Bldg. 410 (RDS), Washington, DC 20528.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, DHS.

**FOR FURTHER INFORMATION CONTACT:** Kathy Strouss, Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy, at (202) 205–0141.

**SUPPLEMENTARY INFORMATION:****Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. Your comments will be considered for the final rule we plan to issue to replace

this interim rule. If you choose to comment on this rule, please include your name and address, indicate the specific heading of this document to which each comment applies, and give the reason for each comment. Comments should be organized by HSAR Part, and address the specific section (*e.g.* (HSAR) 48 CFR 3006.302–7) that is being commented on. You may submit your comments and material by mail or electronic means to the address under **ADDRESSES**. Please submit your comments and material by only one means. If you submit them by mail, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Department of Homeland Security, Office of Chief Procurement Officer, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

**Background and Purpose**

DHS is issuing the Homeland Security Acquisition Regulation (HSAR) to establish a uniform departmentwide acquisition policy and regulation. The HSAR uses plain language for clarity and understanding; does not contain internal operating procedures that do not have a significant effect beyond DHS; and establishes the DHS Mentor-Proege Program.

The Department formed a HSAR Work Group that included both acquisition and legal staff from both the Department and its organizational elements. The team's approach was to develop and issue a regulation that delegates authority, where appropriate, to the lowest levels, is concise, and is simple for contractor's, offerors, and DHS contracting personnel to use.

**Discussion of Interim Rule**

The parts that contain no coverage and have been reserved are parts 3007, 3008, 3010, 3012, 3014, 3018, 3020, 3021, 3025, 3026, 3029, 3034, 3038, 3039, 3040, 3041, 3043, 3044, 3048, 3049, 3050, and 3051.

Part 3001, Federal Acquisition System, sets forth basic policies and general information about the Department of Homeland Security Regulation system including purpose, guiding principles, applicability, issuance, arrangement, numbering, dissemination, publication and codification, deviations, career development, contracting authority, and policy regarding determinations,

waivers, exceptions, approvals and reviews.

Part 3002, Definitions and Abbreviations of Words and Terms, provides definitions and abbreviations for commonly used terms.

Part 3003, Improper Business Practices and Personal Conflicts of Interest, lists the authorities for Standards of Conduct and defines the Federal Acquisition Regulation (FAR) term "authorized official of an agency." The Part also contains procedures for reporting suspected violations of the Gratuities clause, and reports of suspected antitrust violations, Contingent Fees and subcontractor kickbacks.

Part 3004, Administrative Matters, prescribes an Approval of Contract clause, and a Security Requirements for Unclassified Information Technology Resources clause. The Part also establishes when quick close out procedures can be used, as well as the applicable forms to be used in contract close out.

Part 3005, Publicizing Contract Actions, includes a requirement that releases of information to the general public will follow Freedom of Information Act (FOIA) rules, and a United States Coast Guard (USCG) exemption for publicizing contract actions for personal medical services contracting.

Part 3006, Competition Requirements, includes policies and procedures for establishing or maintaining alternative sources; circumstances permitting other than full and open competition, public interest; and Competition Advocates requirements, duties and responsibilities. The Part also includes a USCG exemption from competition requirements for personal medical services contracting.

Part 3009, Contractor Qualifications, sets forth policy on responsible prospective contractors; debarment, suspension and ineligibility; and a solicitation provision for organizational and consultant conflicts of interest.

Part 3011, Describing Agency Needs, includes a policy on selecting and developing requirements documents; solicitation and contract clauses for using and maintaining requirements documents; liquidated damages; and priorities and allocations.

Part 3013, Simplified Acquisition Procedures, includes a solicitation provision, and contract and purchase order clauses for the USCG bar coding requirement. It also includes the implementation of DHS special streamlined acquisition authorities.

Part 3015, Contracting By Negotiation, prescribes a Key Personnel or Facilities

clause that will be used when selection for award is substantially based on offeror's possession of special capabilities. A policy on handling proposals and information, payment of profit or fee, and unsolicited proposals is also included in this Part.

Part 3016, Types of Contracts, includes a policy on fixed price, incentive, indefinite-delivery contracts, and a settlement of letter contract clause.

Part 3017, Special Contracting Methods, includes guidance on use of options, leader company contracting, energy savings performance contracts, and USCG clauses for fixed price contracts for vessel repair, alteration or conversion.

Part 3019, Small Business Programs, sets forth general policies for the small business and small business subcontracting program. This Part prescribes that a provision and clause be placed in all respective solicitations and contracts requiring a subcontracting plan. Also, two clauses are prescribed for DHS' Mentor-Protégé Program, which assists qualified small businesses in receiving developmental assistance from DHS prime contractors in order to increase the base of small businesses eligible to perform DHS contracts and subcontracts.

Part 3022, Application of Labor Laws to Government Acquisitions, sets forth DHS' policy on the admittance of union representatives to DHS installations. Prescriptions for HSAR 3052.222-70, Strikes or Picketing Affecting Timely Completion of the Contract Work, and HSAR 3052.222-71, Strikes or Picketing Affecting Access to a DHS Facility, are included. Guidance on withholding from or suspension of contract payments is also included. This part sets forth the USCG policy, provision and clause for local hires in all solicitations and contracts for construction or services with regard to a State's unemployment rate.

Part 3023, Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace, includes a provision and clause for removal or disposal of hazardous substances. It also includes drug-free workplace applicability guidance and sets forth approval authorities for a determination to suspend payments, terminate contracts or debar and suspend as it relates to this part. This Part also includes a requirement for Accident and Fire reporting when work will be performed on government-owned or leased property.

Part 3024, Protection of Privacy and Freedom of Information, specifies where

DHS policies and procedures for implementing the Privacy Act of 1974 and the FOIA are found.

Part 3027, Patents, Data, and Copyrights, provides general guidance on patents, adjustment of royalties and use of patented technology under the North American Free Trade Agreements Act; patent rights clauses; and approval and justification requirements for administration of licensing background patent rights to third parties. Also, it includes guidance on use of an appropriate rights in data clause.

Part 3028, Bonds and Insurance, includes a requirement for the contracting officer to furnish surety information, and it includes policy on execution and administration of bonds. There is a requirement for the USCG to insert a provision or clause on Notification of Miller Act Payment Bond Protection. There are also USCG clauses for the insurance requirements for contracts for lease of aircraft. An insurance provision or clause requirement is found in this part.

Part 3030, Cost Accounting Standards Administration, provides that the Head of the Contracting Activity (HCA) is authorized to waive application of Cost Accounting Standards to individual commercial item, firm-fixed priced contracts.

Part 3031, Contract Cost Principles and Procedures, includes policy for pre-contract costs.

Part 3032, Contract Financing, provides guidance on contract financing for simplified acquisitions and specifies that the Chief Procurement Officer (CPO) is the DHS remedy coordination official. It also contains the Payment by Electronic Funds Transfer—Central Contractor Registration (CCR) requirement for all solicitations and contracts.

Part 3033, Protests, Disputes, and Appeals includes the designation of Department of Transportation Board of Contract Appeals as the DHS BCA.

Part 3035, Research and Development Contracting, includes policy on cost sharing and recoupment.

Part 3036, Construction and Architect and Engineering Contracts, includes a policy on performance reports and a contract clause for special precautions for work at operating airports.

Part 3037, Service Contracting, includes guidance on contract personnel access application, and conditional access to sensitive but unclassified information. The Part also provides policy for personal services contracts.

Part 3042, Contract Administration and Audit Services, includes prescriptions for clauses for dissemination of contract information;

contracting officer's technical representative, and a requirement to use the Contractor Performance System for evaluating contractor performance.

Part 3045, Government Property, sets for reporting and auditing requirements, and a provision for a contract clause.

Part 3046, Quality Assurance, includes definitions relative to warranties; criteria for use of warranties; and terms and conditions. The Part also includes additional requirements for the USCG.

Part 3047, Transportation, sets forth the provisions for the transportation clauses for use, when applicable.

Part 3052, Solicitation Provisions and Contract Clauses, provides the text of the provisions and clauses. It also includes the text for the USCG specific provisions and clauses.

Part 3053, Forms, includes five forms that require completion by contractors or contract employees. The forms will be available and linked to the DHS website after they are approved by OMB, and upon publication of the final rule.

The Matrix lists the provisions and clauses, and illustrates whether a provision or clause is required or to be used when applicable.

### Regulatory Assessment

This interim rule is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13132, Federalism, and is not a major rule under 5 U.S.C. 804. It therefore does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under Executive Order 12866. It is not significant under the regulatory policies and procedures of the Department of Homeland Security.

### Small Entities

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

Flexibility Analysis has not been performed.

The Mentor-Protégé Program does apply to large business and small business firms that receive a form of incentive for assuming the role of mentor to small businesses, other small disadvantaged businesses, qualified HUBZone small businesses, small businesses owned and controlled by service disabled veterans, and small women-owned businesses. It is expected that the protégé entities would directly benefit from the forms of mentoring provided for in this rule. The interim regulation provides consistency with the FAR.

#### Collection of Information

This interim rule contains information collection requirements subject to the Paperwork Reduction Act (44 U.S.C. 3501–3520) that are being submitted to OMB for approval. As defined in 5 CFR 1320.3(c), “collection of information” comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. DHS is awaiting approval from OMB for the five (5) forms that are referenced in the HSAR, and that can be found in Part 3053. DHS is also awaiting approval and the assignment of numbers for contract, solicitations and protests.

This information will be shown in HSAR Section 3001.106 and Part 3053, and will be published separately. This information is required by the Office of the Chief Procurement Officer in order to solicit, negotiate, award, and administer contracts in accordance with the Federal Acquisition Regulation, other regulations and statutes; in order to evaluate offers, ensure appropriate contract cost controls, and minimize conditions conducive to fraud, waste, and abuse; and in order to collect appropriate information from prospective contractors when protests are filed.

Additionally, the collections of information in this rule in part 3053 are for DHS Forms 0700–01 through 0700–05. These forms will be used when applicable for the following purposes: Cumulative Claim and Reconciliation Statement; Contractor’s Assignment of Refunds, Rebates, Credits, and Other Amounts; Contractor’s Release; Contractor Report of Government Property; and Employee Claim for Wage Restitution.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this interim rule to the Office of Management and Budget (OMB) for its review of the collection of information. Due to the circumstances surrounding

this temporary rule, we asked for “emergency processing” of our request.

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

If you submit comments on the collection of information, submit them both to OMB and to DHS at the address indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB.

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. This rule is not subject to the requirements of Executive Order 13132. DHS has determined that this proposed rule does not contain federalism implications and would not preempt State laws.

#### Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Homeland Security that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Sections 833 and 835 of the Homeland Security Act (Public Law 107–296), signed on November 25, 2002. The act provides authorities to be used in contracting for supplies and services required to accomplish the DHS mission of preventing and reducing terrorist attacks as well as minimizing damage and assisting in recovery from terrorist attacks for the Department and its organizational elements (OEs). Comments received in response to this interim rule will be considered in the formation of the final rule.

Under 5 U.S.C. 553(b)(B), the Department of Homeland Security (DHS) finds that good cause exists for not publishing a general notice of proposed rulemaking (NPRM). DHS consists of agencies and other operating elements of Government that pre-existed the formation of DHS. Prior to DHS’s formation, those agencies used

supplemental acquisition regulations as a foundation for the conduct of their procurement and acquisition functions. For example, the Coast Guard utilized the Department of Transportation (DOT) Acquisition Regulations found at 48 CFR Chapter 12. The Coast Guard can no longer rely on the DOT regulations since they no longer are a part of DOT. Similarly, organizations that used the Department of Treasury’s or Department of Justice’s acquisition supplements can no longer rely on those regulations.

DHS finds that due to an urgent need for seamless continued acquisition and contracting operations of the previous agencies and organizations that now comprise DHS, it is impracticable to afford the public an opportunity to comment prior to issuing this interim rule. Currently, there are no Department-level acquisition regulations governing DHS’s vital contracting business. Consequently, a delay in issuing this regulation would be contrary to the public interest. This regulation realigns contracting authority within the Department and provides uniform regulatory guidance for the acquisition of supplies and services required to accomplish DHS’s mission of preventing and reducing terrorist attacks as well as minimizing damage and assisting in recovery from terrorist attacks.

Under 5 U.S.C. 553(d)(3), DHS also finds that for the same reasons discussed above respecting 5 U.S.C. 553(b)(B), good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**.

#### List of Subjects in 48 CFR Parts 3001 Through 3053

Government procurement.

Dated: November 21, 2003.

**Gregory D. Rothwell**,  
*Chief Procurement Officer.*

■ For the reasons discussed in the preamble, the Department of Homeland Security is adding chapter 30 of title 48 in the CFR to read as follows:

#### CHAPTER 30—DEPARTMENT OF HOMELAND SECURITY, HOMELAND SECURITY ACQUISITION REGULATION (HSAR)

##### SUBCHAPTER A—GENERAL

##### PART 3001—FEDERAL ACQUISITION REGULATIONS SYSTEM

##### PART 3002—DEFINITIONS OF WORDS AND TERMS

##### PART 3003—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

##### PART 3004—ADMINISTRATIVE MATTERS SUBCHAPTER B—ACQUISITION PLANNING

PART 3005—PUBLICIZING CONTRACT ACTIONS  
 PART 3006—COMPETITION REQUIREMENTS  
 PART 3007—ACQUISITION PLANNING—[RESERVED]  
 PART 3008—REQUIRED SOURCES OF SUPPLIES AND SERVICES—[RESERVED]  
 PART 3009—CONTRACTOR QUALIFICATIONS  
 PART 3010—MARKET RESEARCH—[RESERVED]  
 PART 3011—DESCRIBING AGENCY NEEDS  
 PART 3012—ACQUISITION OF COMMERCIAL ITEMS—[RESERVED]  
 SUBCHAPTER C—CONTRACT METHODS AND CONTRACT TYPES  
 PART 3013—SIMPLIFIED ACQUISITION PROCEDURES  
 PART 3014—SEALED BIDDING—[RESERVED]  
 PART 3015—CONTRACTING BY NEGOTIATION  
 PART 3016—TYPES OF CONTRACTS  
 PART 3017—SPECIAL CONTRACTING METHODS  
 PART 3018—[RESERVED]  
 SUBCHAPTER D—SOCIOECONOMIC PROGRAMS  
 PART 3019—SMALL BUSINESS PROGRAMS  
 PART 3020—[RESERVED]  
 PART 3021—[RESERVED]  
 PART 3022—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS  
 PART 3023—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE  
 PART 3024—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION  
 PART 3025—FOREIGN ACQUISITION—[RESERVED]  
 PART 3026—OTHER SOCIOECONOMIC PROGRAMS—[RESERVED]  
 PART 3027—PATENTS, DATA AND COPYRIGHTS  
 PART 3028—BONDS AND INSURANCE  
 SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS  
 PART 3029—TAXES—[RESERVED]  
 PART 3030—COST ACCOUNTING STANDARDS ADMINISTRATION  
 PART 3031—CONTRACT COST PRINCIPLES AND PROCEDURES  
 PART 3032—CONTRACT FINANCING  
 PART 3033—PROTESTS, DISPUTES, AND APPEALS  
 PART 3034—MAJOR SYSTEM ACQUISITION—[RESERVED]  
 SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING  
 PART 3035—RESEARCH AND DEVELOPMENT CONTRACTING  
 PART 3036—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS  
 PART 3037—SERVICE CONTRACTING  
 PART 3038—FEDERAL SUPPLY SCHEDULE CONTRACTING—[RESERVED]  
 PART 3039—ACQUISITION OF INFORMATION TECHNOLOGY—[RESERVED]  
 PART 3040—[RESERVED]  
 PART 3041—ACQUISITION OF UTILITY SERVICES—[RESERVED]  
 SUBCHAPTER G—CONTRACT MANAGEMENT

PART 3042—CONTRACT ADMINISTRATION AND AUDIT SERVICES  
 PART 3043—CONTRACT MODIFICATIONS—[RESERVED]  
 PART 3044—SUBCONTRACTING POLICIES AND PROCEDURES—[RESERVED]  
 PART 3045—GOVERNMENT PROPERTY  
 PART 3046—QUALITY ASSURANCE  
 PART 3047—TRANSPORTATION  
 PART 3048—VALUE ENGINEERING—[RESERVED]  
 PART 3049—TERMINATION OF CONTRACTS—[RESERVED]  
 PART 3050—EXTRAORDINARY CONTRACTUAL ACTIONS—[RESERVED]  
 PART 3051—USE OF GOVERNMENT SOURCES BY CONTRACTORS—[RESERVED]  
 SUBCHAPTER H—CLAUSES AND FORMS  
 PART 3052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES  
 PART 3053—FORMS

■ 1. The authority citation for parts 3001 through 3053 reads as follows:

Authority: 41 U.S.C. 418b (a) and (b).

■ 2. The text of parts 3001 through 3053 reads as follows:

## PART 3001—FEDERAL ACQUISITION REGULATIONS SYSTEM

### Subpart 3001.1—Purpose, Authority, Issuance

Sec.

- 3001.101 Purpose.
- 3001.102 Statement of Guiding Principles for the Federal Acquisition System.
- 3001.104 Applicability.
- 3001.105 Issuance.
- 3001.105-1 Publication and code arrangement.
- 3001.105-2 Arrangement of regulations.
- 3001.105-3 Copies.
- 3001.106 OMB Approval under the Paperwork Reduction Act.

### Subpart 3001.3—Agency Acquisition Regulations

- 3001.301 Policy.
- 3001.301-70 Amendment of HSAR.
- 3001.301-71 Effective date.
- 3001.301-72 HSAC or HSAR Notice numbering.
- 3001.303 Publication and codification.
- 3001.304 Agency control and compliance procedures.

### Subpart 3001.4—Deviations from the FAR

- 3001.403 Individual deviations.
- 3001.404 Class deviations.

### Subpart 3001.6—Career Development, Contracting Authority, and Responsibilities

- 3001.601 General.
- 3001.602 Contracting Officers.
- 3001.602-3 Ratification of unauthorized commitments.
- 3001.603 Selection, appointment, and termination of appointment.
- 3001.603-1 General.

### Subpart 3001.7—Determinations and Findings

- 3001.704 Content.

### Subpart 3001.70—Other Determinations, Waivers, Exceptions, Approvals, Reviews, and Submittals.

- 3001.7000 Coordination and approval.
- 3001.7001 Content.

### Subpart 3001.1—Purpose, Authority, Issuance

#### 3001.101 Purpose.

The Department of Homeland Security Acquisition Regulation (HSAR) establishes uniform acquisition policies and procedures, which implement and supplement the Federal Acquisition Regulation (FAR).

#### 3001.102 Statement of Guiding Principles for the Federal Acquisition System.

(d) The FAR and this supplement are to be interpreted permissively, if consistent with statutory and regulatory requirements, policy, and sound professional judgment.

#### 3001.104 Applicability.

(a) The following order of precedence applies to resolve any acquisition regulation or procedural inconsistency found within HSAR or the Homeland Security Acquisition Manual (HSAM):

- (1) Statute;
- (2) FAR or other applicable regulation or Executive Order;
- (3) HSAR;
- (4) Department of Homeland Security (DHS) Directives; and
- (5) HSAM.

(b) The Transportation Security Administration (TSA) exception to this regulation is authorized by the Aviation and Transportation Security Act of 2001 (Section 101(a) of Public Law 107-71). However, see (HSAR) 48 CFR 3033.211, regarding Board of Contract Appeals (BCA).

(c) For nonappropriated fund contracts, the FAR and HSAR will be followed to the maximum extent feasible excluding provisions determined by counsel not to apply to Nonappropriated Fund institutions (NAFIs). Contracting terms may provide for mutual agreement as to the Board of Contract Appeals jurisdiction but this policy will not confer court jurisdiction concerning NAFIs that does not otherwise exist.

#### 3001.105 Issuance.

##### 3001.105-1 Publication and code arrangement.

- (a) The HSAR is published in:
- (1) The **Federal Register** and
  - (2) Cumulated form in the Code of Federal Regulations (CFR).

##### 3001.105-2 Arrangement of regulations.

- (a) General. The HSAR, which encompasses both Department-wide and

organizational element-unique guidance, conforms to the arrangement and numbering system prescribed by (FAR) 48 CFR 1.105–2. Guidance that is unique to an organization with Head of the Contracting Activity (HCA) authority contains the organization's acronym directly preceding the cite. The following acronyms apply:

Bureau of Customs and Border Protection (CBP)  
 Bureau of Immigration and Customs Enforcement (ICE)  
 DHS Office of Procurement Operations (OPO)  
 Federal Emergency and Management Agency (FEMA) (Includes all elements of the Emergency Preparedness and Response Directorate)  
 Federal Law Enforcement Training Center (FLETC)  
 Transportation Security Administration (TSA)  
 U.S. Coast Guard (USCG)  
 U.S. Secret Service (Secret Service)

### 3001.105–3 Copies.

The HSAR is available in the **Federal Register** and electronically at <http://www.dhs.gov/dhspublic/>.

### 3001.106 OMB Approval under the Paperwork Reduction Act.

(a) The Office of Management and Budget (OMB) has assigned the following control numbers that must appear on the upper right-hand corner of the face page of each solicitation, contract, modification, and order:

OMB Control No. 1600–002 (Contract related forms)  
 OMB Control No. 1600–005 (Offeror submissions)  
 OMB Control No. 1600–003 (Contractor submissions)  
 OMB Control No. 1600–004 (Protests)

(b) OMB regulations and OMB's approval and assignment of control numbers are conditioned upon not requiring more than three copies (including the original) of any document of information. OMB has granted a waiver to permit the Department to require up to eight copies of proposal packages, including proprietary data, for solicitations, provided that contractors who submit only an original and two copies will not be placed at a disadvantage.

### Subpart 3001.3—Agency Acquisition Regulations

#### 3001.301 Policy.

(a)(1) The HSAR is issued for Departmental guidance according to the policy cited in (FAR) 48 CFR 1.301. The

HSAR establishes uniform Homeland Security policies and procedures for all acquisition activities within the Department of the Homeland Security, except the TSA. OE supplemental acquisition regulations to be inserted in the HSAR as a HSAR supplement regulation must be reviewed and approved by the Chief Procurement Officer (CPO) before the CPO submits the proposed coverage for publication in the **Federal Register** according to (FAR) 48 CFR 1.501.

(2)(i) The CPO is authorized to issue internal agency guidance at any organizational level. Department-wide procedures are contained in the HSAM. The HCA may implement internal procedures or supplement the FAR, HSAR, or HSAM as provided in HSAM 3001.3. The HCA may issue procedures or delegate this authority to any organizational level deemed appropriate. OE procedures may be more restrictive or require higher approval levels than those permitted by the HSAM, unless otherwise specified.

(ii) Individuals granted authority in the HSAR may delegate that authority, unless the FAR or HSAR specifically state that the authority is not delegable.

(b) The Under Secretary of Management established procedures through Management Directive (MD) 0490.1, entitled *Federal Register Notice and Rules*, to ensure that agency acquisition regulations are published for comment in the **Federal Register** in conformance with FAR procedures at (FAR) 48 CFR subpart 1.5.

#### 3001.301–70 Amendment of HSAR.

(a) Request for changes to the regulation may be recommended by DHS personnel, other Government agencies, or the public. Change requests are to be submitted in the following format to the Department of Homeland Security, Attn: Office of the Under Secretary of Management, Chief Procurement Officer, Washington, DC 20598.

(1) *Problem*: Succinctly state the problem(s) created by current HSAR requirements or processes and describe the factual or legal reasons for requesting a regulatory change.

(2) *Recommendation*: Identify the recommended change by using the current language and lining through the words to be deleted and inserting proposed language in brackets. If the change is extensive, deleted language may be displayed by forming a box with diagonal lines connecting the corners.

(3) *Discussion*: Explain why the change is necessary and how the change will solve the problem. Address any cost or administrative impact on

Government activities, offerors, and contractors. Provide any other helpful information and documents such as statutes, legal decisions, regulations, reports, etc.

(4) *Point of Contact*: Provide a point of contact for answering questions regarding the recommendation, along with a telephone number, e-mail or other method of reaching the contact.

(b) The HSAR is maintained by the CPO through the HSAR/HSAM change process (*i.e.*, input from various OEs including representatives specifically designated to formulate Departmental acquisition policies and procedures).

(1) Homeland Security Acquisition Circular (HSAC). HSAC (*see* (HSAR) 48 Chapter 3001.301–72) will be used to amend (HSAR) 48 Chapter 30.

(2) HSAR Notices will be issued (with a specified expiration date) when interim guidance is necessary under any of the following circumstances:

(i) To promulgate, as rapidly as possible, selected material in a general or narrative manner, in advance of a HSAC issuance;

(ii) To disseminate other acquisition related information; or

(iii) To issue guidance that is expected to be effective for a period of 1 year or less.

#### 3001.301–71 Effective date.

Unless otherwise stated, the following applies—

(a) Statements in HSACs or HSAR Notices that the content is “upon a specified date,” or that changes in the document are “to be used upon receipt,” mean that any new or revised provisions, clauses, procedures, or forms must be included in solicitations or contracts issued thereafter; and

(b) Unless expressly directed by statute or regulation, if solicitations have been issued prior to the HSAC or HSAR notice receipt or publication, the new information (*e.g.*, forms and clauses) need not be included if the Chief of the Contracting Office (COCO) determines, in writing, that including the new information would not be in the best interests of the Government.

#### 3001.301–72 HSAC or HSAR Notice numbering.

HSACs and HSAR Notices will be numbered consecutively on a fiscal year basis beginning with number “01” prefixed by the last two digits of the fiscal year (*e.g.*, HSAR Notices 03–01 and 03–02 indicate the first two HSAR Notices issued in fiscal year 2003).

#### 3001.303 Publication and codification.

(a) The HSAR is issued as chapter 30 of Title 48 of the CFR.

(1) The FAR numbering illustrations at (FAR) 48 CFR 1.105-2 apply to the HSAR.

(2) Coverage within HSAR 48 CFR chapter 30 is identified by the prefix "30" followed by the complete FAR cite which may extend downward to the subparagraph level (e.g., (HSAR) 48 CFR 3001.101).

(3) Coverage in HSAR Chapter 30 that supplements the FAR will use part, subpart, section and subsection numbers ending in "70" through "89". A series of numbers beginning with "70" is used for provisions and clauses (e.g., (HSAR) 48 CFR 3001.301-70).

(4) Coverage in HSAR 48 CFR chapter 30, other than that identified with a "70" or higher number, which

implements the FAR uses the identical number sequence and caption of the FAR segment being implemented which may extend downward to the subparagraph level. Subparagraph numbers/letters may not be shown as sequential, but may be shown by the specific paragraph/subparagraph implemented from the FAR (e.g., (HSAR) 48 CFR 3003.301 contains subparagraphs (a) and (b) because only these subparagraphs, correlating to FAR, are being supplemented by (HSAR) 48 CFR chapter 30).

(5) Organizational Element-unique guidance. Supplementary material for which there is no counterpart in the FAR or HSAR shall be identified using chapter, part, subpart, section, or

subsection numbers of "90" and up (e.g., the U.S. Coast Guard's acronym is "USCG"; an USCG-unique clause pertaining to "Inspection and/or Acceptance" would be designated "USCG 3052.246-90").

(6) References and citations. Cross references to the FAR in the HSAR will be cited by "FAR" followed by the FAR numbered cite, and cross reference to the HSAM in the HSAR will be cited by "HSAM" followed by the HSAM numbered cite.

(7) Department/agency and OE supplements must parallel the FAR and HSAR numbering, except department/agency supplemental numbering uses subsection numbering of 90 and up, instead of 70 and up.

TABLE 1-1.—HSAR NUMBERING

FAR	Is implemented as	Is supplemented as
19 .....	3019	3019.70
19.5 .....	3019.5	3019.570
19.501 .....	3019.501	3019.501-70
19.501-1 .....	3019.501-1	3019.501-170

**3001.304 Agency control and compliance procedures.**

(a) The HSAR is under the direct oversight and control of the Homeland Security, Office of the Chief Procurement Officer (OCPO), which is responsible for evaluation, review, and issuance of all Department-wide acquisition regulations and guidance. Each HCA may supplement the HSAR with OE guidance. Supplementation should be kept to a minimum. OEs proposing to issue regulatory supplements or use solicitation or contract clauses on a repetitive basis must obtain legal review by the OE's legal counsel and forward supplements to the CPO for concurrence prior to publication in the **Federal Register**.

(c) The CPO is responsible for evaluating all regulatory coverage in agency acquisition regulations to determine if the substance could apply to other agencies and to make recommendation for inclusion in the FAR.

**Subpart 3001.4—Deviations from the FAR and HSAR**

**3001.403 Individual deviations.**

Unless precluded by law, executive order, or other regulation, the HCA is authorized to approve individual deviation (except with respect to (FAR) 48 CFR 30.201-3, 30.201-4; the requirements of the Cost Accounting Standards board rules and regulations at 48 CFR chapter 99 (FAR appendix); and

part 50). Submit requests per (HSAR) 48 CFR 3001.7000(a), including complete documentation of the justification for the deviation (See HSAM 3001.403).

**3001.404 Class deviations.**

(a) Unless precluded by law, executive order, or other regulation, the CPO is authorized to approve class deviations (except (FAR) 48 CFR 30.201-3, 30.201-4; the requirements of the Cost Accounting Standards board rules and regulations at 48 CFR Chapter 99 (FAR Appendix); and Part 50). Submit requests per (HSAR) 48 CFR 3001.7000(a), including complete documentation of the justification for the deviation, and the number and type of contract actions affected. Include a copy of the approved deviation in each contract file. The CPO will transmit a copy of each approved deviation to the FAR Secretariat.

**Subpart 3001.6—Career Development, Contracting Authority, and Responsibilities**

**3001.601 General.**

DHS Delegation Number 0200.1, Delegation to the Directorate of Management, delegates authority from the Secretary to the Under Secretary of Management to manage the acquisition function. DHS Delegation 0700, Delegation to the Chief Procurement Officer for Acquisition and Financial Assistance Management, delegates this authority from the Under Secretary of

Management to the Chief Procurement Officer.

**3001.602 Contracting officers.**

**3001.602-3 Ratification of unauthorized commitments.**

Department of Homeland Security (DHS) policy requires that acquisitions be made only by Government officials having authority to enter into such acquisitions. Acquisitions made by other than authorized personnel are contrary to Departmental policy and may be considered matters of serious misconduct on the part of an employee making an unauthorized commitment, and may result in disciplinary action being taken against an employee who makes an unauthorized commitment.

**3001.603 Selection, appointment, and termination of appointment.**

**3001.603-1 General.**

Under DHS Delegations, the Heads of the Contracting Activity (HCA), with authority to redelegate no lower than the COCO, are authorized to select and appoint contracting officers and terminate their appointment.

**Subpart 3001.7—Determinations and Findings**

**3001.704 Content.**

The following format shall be used for all determinations and findings (D&Fs), unless otherwise specified in the FAR or the HSAR. The contracting officer is responsible for preparing D&Fs, and

requirements and technical personnel are responsible for the accuracy and adequacy of the supporting factual information, which shall be furnished to the contracting officer.

Insert specific information indicated in brackets.

#### Determination and Findings

Under [insert citation for appropriate statutory and/or regulatory basis for D&F], the Department of Homeland Security, [insert contracting activity], is granted authority to [insert nature and/or description of the action being approved].

#### Findings

[Findings that detail the particular circumstances, facts, or reasoning essential to support the determination.]

#### Determination

[A determination, based on the findings, that the proposed action is justified under the applicable statute or regulation.]  
[Expiration date of the D&F, if required.]  
[Signature of authorized official]

Name and Title

[month, day, and year]

Date

### Subpart 3001.70—Other Determinations, Waivers, Exceptions, Approvals, Reviews, and Submittals

#### 3001.7000 Coordination and approval.

*Documents requiring CPO approval.* Requests shall be prepared in writing by the contracting officer and submitted through the HCA to the CPO for approval.

#### 3001.7001 Content.

The general format at (HSAR) 48 CFR 3001.704 shall be used to provide a justification to support the requested determination, waiver, exception or approval.

## PART 3002—DEFINITIONS OF WORDS AND TERMS

### Subpart 3002.1—Definitions

Sec.  
3002.101 Definitions.

### Subpart 3002.2—Abbreviations

3002.270 Abbreviations.

### Subpart 3002.1—Definitions

#### 3002.101 Definitions.

*Chief Information Officer (CIO)* means the Director of the Office of the CIO.

*Chief of the Contracting Office (COCO)* means the individual(s) responsible for managing the contracting office(s) within an organizational element (OE).

*Chief Procurement Officer (CPO)* means the Senior Procurement Executive (SPE).

*Contracting activity* includes all the contracting offices within an OE and is the same as the term “procuring activity.”

*Contracting officer* means an individual authorized by virtue of position or by appointment to perform the functions assigned by the Federal Acquisition Regulation and the Homeland Security Acquisition Regulation.

*Head of Contracting Activity (HCA)* means the individual responsible for direct management of the entire acquisition function within an organizational element.

*Head of the Agency* means the Secretary of the Department of Homeland Security, or, by delegation, the Under Secretary of Management. “Legal counsel” means the Department of Homeland Security Office of General Counsel or OE office providing legal services to the contracting organization.

*Legal review* means review by legal counsel.

*Major system* means an acquisition as defined in Management Directive Number 1400, Investment Review Process.

*Micro-purchase threshold* means \$2,500 (see (HSAR) 48 CFR 3013–70), except it means—

- (1) \$2,000 for construction subject to the Davis-Bacon Act; and
- (2) \$7,500 for acquisitions of supplies or services, except for construction subject to the Davis-Bacon, if the Secretary determines in writing that the mission of the Department (described in Pub. L. 107–296, Sec. 101) would be seriously impaired without the use of such authorities, Act (Pub. L. 107–296, section 833).

*Organizational Element (OE)* means the following entities for purposes of this chapter:

- (1) Bureau of Customs and Border Protection (CBP);
- (2) Bureau of Immigration and Customs Enforcement (ICE);
- (3) DHS Office of Procurement Operations (OPO);
- (4) Federal Emergency Management Agency (FEMA) (Includes all elements of the Emergency Preparedness and Response Directorate);
- (5) Federal Law Enforcement Training Center (FLETC);
- (6) Transportation Security Administration (TSA); (TSA is exempt from the HSAR and HSAM according to the “Aviation and Transportation Security Act of 2001”);
- (7) U.S. Coast Guard (USCG); and
- (8) U.S. Secret Service (Secret Service).

*Senior Procurement Executive (SPE)* for the Department of Homeland

Security is the Chief Procurement Officer (CPO).

*Simplified acquisition threshold* means \$100,000 (see (HSAR) 48 CFR 3013–70), except that for acquisitions of supplies or services that, if the Secretary determines in writing that the mission of the Department (described in Pub. L. 107–296, section 101) would be seriously impaired without the use of such authorities from November 25, 2002 to December 30, 2007 (Pub. L. 107–296, section 833(c)), the term means—

- (1) \$200,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and
- (2) \$300,000 for any contract to be awarded and performed, or purchase to be made, outside the United States.

### Subpart 3002.2—Abbreviations

#### 3002.270 Abbreviations.

CFO Chief Financial Officer  
CIO Chief Information Officer  
COCO Chief of the Contracting Office  
COR Contracting Officers Representative  
COTR Contracting Officer’s Technical Representative  
CPO Chief Procurement Officer  
D&F Determination and Findings  
DOTBCA Department of Transportation Board of Contract Appeals  
FOIA Freedom of Information Act  
HCA Head of Contracting Activity  
J & A Justification and Approval for Other than Full and Open Competition  
KO Contracting officer  
MD Management Directive  
OCPO Office of the Chief Procurement Officer  
OE Organizational Element  
OIG Office of the Inspector General  
OSDBU Office of Small and Disadvantaged Business Utilization  
PCR SBA’s Procurement Center Representative  
RFP Request for Proposal  
SBA Small Business Administration  
SBS Small Business Specialist  
SPE Senior Procurement Executive

## PART 3003—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

### Subpart 3003.1—Safeguards

Sec.  
3003.101 Standards of conduct.  
3003.101–3 Agency regulations.

### Subpart 3003.2—Contractor Gratuities to Government Personnel

3003.203 Reporting suspected violations of the Gratuities clause.  
3003.204 Treatment of violations.

### Subpart 3003.3—Reports Of Suspected Antitrust Violations

3003.301 General.

**Subpart 3003.4—Contingent Fees**

3003.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

**Subpart 3003.5—Other Improper Business Practices**

3003.502 Subcontractor kickbacks.  
3003.502-2 Subcontractor kickbacks.

**Subpart 3003.9—Whistleblower Protections for Contractor Employees**

3003.901 Definitions.

**Subpart 3003.1—Safeguards****3003.101 Standards of conduct.****3003.101-3 Agency regulations.**

(a) Government-wide and Department of Homeland Security regulations governing the conduct and responsibilities of employees are contained in 5 CFR parts 2635 and 3101, and MD 0480, Ethics/Standards of Conduct.

**Subpart 3003.2—Contractor Gratuities to Government Personnel****3003.203 Reporting suspected violations of the Gratuities clause.**

(a) Suspected violations of the Gratuities clause shall be reported to the contracting officer responsible for the acquisition (or the COCO if the contracting officer is suspected of the violation). The contracting officer (or the COCO) shall obtain from the person reporting the violation, and any witnesses to the violation, the following information:

- (1) The date, time, and place of the suspected violation;
  - (2) The name and title (if known) of the individual(s) involved in the violation; and
  - (3) The details of the violation (*e.g.*, the gratuity offered or intended) to obtain a contract or favorable treatment under a contract.
- (4) The person reporting the violation and witnesses (if any) shall be requested to sign and date the information certifying that the information furnished is true and correct.

(b) The contracting officer shall submit the report to the COCO (unless the alleged violation was directly reported to the COCO) and the Head of the Contracting Activity (HCA) for further action. The COCO and HCA will determine, with the advice of OE legal counsel, whether the case warrants submission to the OIG, or other investigatory organization.

**3003.204 Treatment of violations.**

(a) The HCA is the individual to determine whether a Gratuities clause violation has occurred. If the HCA has been personally and substantially

involved in the specific procurement, the advice of Government legal counsel should be sought to determine whether an alternate decision maker should be designated.

(b) The COCO shall ensure that the hearing procedures required by (FAR) 48 CFR 3.204(b) are afforded to the contractor. Government legal counsel shall be consulted regarding the appropriateness of the hearing procedures that are established.

(c) If the HCA determines that the alleged gratuities violation occurred during the "conduct of an agency procurement" the COCO shall consult with Government legal counsel regarding the approach for appropriate processing of either the Procurement Integrity Act violation or the Gratuities violation.

**Subpart 3003.3—Reports Of Suspected Antitrust Violations****3003.301 General.**

(b) The procedures at (HSAR) 48 CFR 3003.203 shall be followed for suspected antitrust violations, except reports of suspected antitrust violations shall be coordinated with legal counsel for referral to the Department of Justice, if deemed appropriate.

**Subpart 3003.4—Contingent Fees****3003.405 Misrepresentations or violations of the Covenant Against Contingent Fees.**

(a) The procedures at (HSAR) 48 CFR 3003.203 shall be followed for misrepresentation or violations of the covenant against contingent fees.

(b)(4) The procedures at (HSAR) 48 CFR 3003.203 shall be followed for misrepresentation or violations of the covenant against contingent fees, except reports of misrepresentation or violations of the covenant against contingent fees shall be coordinated with legal counsel for referral to the Department of Justice, if deemed appropriate.

**Subpart 3003.5—Other Improper Business Practices****3003.502 Subcontractor kickbacks.****3003.502-2 Subcontractor kickbacks.**

(g) The DHS OIG shall receive the prime contractor or subcontractors written report.

**Subpart 3003.9—Whistleblower Protections for Contractor Employees****3003.901 Definitions.**

*Authorized official of an agency* means the Department of Homeland Security's CPO.

**PART 3004—ADMINISTRATIVE MATTERS****Subpart 3004.1—Contract Execution**

Sec.  
3004.103 Contract clause.

**Subpart 3004.4—Contract Clause**

3004.470-4 Contract clause.

**Subpart 3004.8—Government Contract Files**

3004.804 Closeout of contract files.  
3004.804-1 Closeout by the office administering the contract.  
3004.804-5 Procedures for closing out contract files.  
3004.804-570 Supporting closeout documents.

**Subpart 3004.1—Contract Execution****3004.103 Contract clause.**

Insert the clause at (FAR) 48 CFR 52.204-1, Approval of Contract, in each solicitation where approval to award the resulting contract is required above the contracting officer level.

**Subpart 3004.4—Contract Clause****3004.470-4 Contract clause.**

The contracting officer shall insert a clause substantially the same as the clause at (HSAR) 48 CFR 3052.204-70, Security Requirements for Unclassified Information Technology Resources, in solicitations and contracts which require submission of an IT Security Plan.

**Subpart 3004.8—Government Contract Files****3004.804 Closeout of contract files.****3004.804-1 Closeout by the office administering the contract.**

(b) The quick closeout procedures under (FAR) 48 CFR 42.708 may be used for the settlement of indirect costs under contracts when the estimated amount (excluding any fixed fee) of the contract is \$3 million or less if determined appropriate by the contracting officer.

**3004.804-5 Procedures for closing out contract files.****3004.804-570 Supporting closeout documents.**

(a) When applicable and prior to contract closure, the contracting officer shall obtain the listed DHS and Department of Defense (DOD) forms from the contractor for closeout.

(1) DHS Form 0700-03, Contractor's Release (*e.g.*, see (FAR) 48 CFR 52.216-7);

(2) DHS Form 0700-02, Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts (*e.g.*, see (FAR) 48 CFR 52.216-7);

(3) DHS Form 0700-01, Cumulative Claim and Reconciliation Statement (e.g., see (FAR) 48 CFR 4.804-5(a)(13); and

(4) DD Form 882, Report of Inventions and Subcontracts (e.g., see (FAR) 48 CFR 52.227-14).

(b) The forms listed in this section (see (HSAR) 48 CFR part 3053) are used primarily for the closeout of cost-reimbursement, time-and-materials, and labor-hour contracts. The forms may also be used for closeout of other contract types to protect the Government's interest.

## **PART 3005—PUBLICIZING CONTRACT ACTIONS**

### **Subpart 3005.4—Release of Information**

Sec.  
3005.402 General public.

### **Subpart 3005.90—Publicizing Contract Actions for Personal Services Contracting**

3005.9000 Applicability (USCG).

### **Subpart 3005.4—Release of Information**

**3005.402 General public.**

Requests for other specific records information shall be processed according to the DHS Freedom of Information Act rules and regulations (HSAR) 48 CFR 3024.203.

### **Subpart 3005.90—Publicizing Contract Actions for Personal Services Contracting.**

**3005.9000 Applicability (USCG).**

Contracts awarded by the U.S. Coast Guard using the procedures in (HSAR) 48 CFR 3037.104-91 are expressly authorized under section 1091 of Title 10 U.S.C. as amended by Public Law 107-296, for the Coast Guard and are exempt from the requirements of (FAR) 48 CFR part 5.

## **PART 3006—COMPETITION REQUIREMENTS**

### **Subpart 3006.2—Full and Open Competition After Exclusion of Sources**

Sec.  
3006.202 Establishing or maintaining alternative sources.

### **Subpart 3006.3—Other Than Full and Open Competition**

3006.302 Circumstances permitting other than full and open competition.  
3006.302-7 Public interest.

### **Subpart 3006.5—Competition Advocates**

3006.501 Requirement.  
3006.502 Duties and responsibilities.

### **Subpart 3006.90—Competition Requirements for Personal Services Contracting**

3006.9000 Applicability (USCG).

### **Subpart 3006.2—Full and Open Competition After Exclusion of Sources**

#### **3006.202 Establishing or maintaining alternative sources.**

(b)(1) The HCA is delegated authority to approve a D&F in support of a contract action award under the authority of (FAR) 48 CFR 6.202(a). Submit D&F in the format per (HSAR) 48 CFR 3001.704.

### **Subpart 3006.3—Other Than Full and Open Competition**

#### **3006.302 Circumstances permitting other than full and open competition.**

#### **3006.302-7 Public interest.**

(c)(1)(ii) Requests shall be prepared in writing by the contracting officer, using the format found in (HSAR) 48 CFR 3001.704, and submitted through the HCA to the CPO for review and transmittal to the Secretary for approval.

### **Subpart 3006.5—Competition Advocates**

#### **3006.501 Requirement.**

The DHS Senior Competition Advocate (SCA) is located in the Office of the Chief Procurement Officer (OCPO).

#### **3006.502 Duties and responsibilities.**

(a) OE competition advocates will submit an annual report to the Departmental Advocate for Competition.

### **Subpart 3006.90—Competition Requirements For Personal Services Contracting**

#### **3006.9000 Applicability (USCG).**

Contracts awarded by the U.S. Coast Guard using the procedures in (HSAR) 48 CFR 3037.104-91 are expressly authorized under Section 1091 of Title 10 U.S.C. as amended, for the Coast Guard and are exempt from the competition requirements of (FAR) 48 CFR part 6.

## **PART 3007—ACQUISITION PLANNING [RESERVED]**

## **PART 3008—REQUIRED SOURCES OF SUPPLIES AND SERVICES [RESERVED]**

## **PART 3009—CONTRACTOR QUALIFICATIONS**

### **Subpart 3009.1—Responsible Prospective Contractors**

Sec.  
3009.104-70 Prohibition on contracts with corporate expatriates.  
3009.104-71 General.  
3009.104-72 Definitions.  
3009.104-73 Special rules.  
3009.104-74 Waiver.  
3009.104-75 Clause.

### **Subpart 3009.4—Debarment, Suspension, and Ineligibility**

3009.470 Reserve Officer Training Corps and military recruiting on campus.  
3009.470-1 Definition.  
3009.470-2 Policy.  
3009.470-3 Procedures.  
3009.470-4 Contract clause.

### **Subpart 3009.5—Organizational and Consultant Conflicts of Interest**

3009.507 Solicitation provisions.

### **Subpart 3009.1—Responsible Prospective Contractors**

#### **3009.104-70 Prohibition on contracts with corporate expatriates.**

#### **3009.104-71 General.**

DHS may not enter into any contract with a foreign incorporated entity, which is treated as an inverted domestic corporation under subsection (b) of section 835 of the Homeland Security Act, Pub. L. 107-296.

#### **3009.104-72 Definitions.**

As used in this subpart—  
*Expanded Affiliated Group* means an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except that section 1504 of such Code shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

*Foreign Incorporated Entity* means any entity which is, or but for subsection (b) of section 835 of the Homeland Security Act, Pub. L. 107-296, would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

*Inverted Domestic Corporation.* A foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) The entity completes after the date of enactment of this Act, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership;

(2) After the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

(i) In the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation; or

(ii) In the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership; and

(3) The expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

*Person, domestic, and foreign* have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701(a) of the Internal Revenue Code of 1986, respectively.

#### **3009.104-73 Special rules.**

The following special rules shall apply when determining whether a foreign incorporated entity should be treated as an inverted domestic corporation.

(a) *Certain stock disregarded.* For the purpose of treating a foreign incorporated entity as an inverted domestic corporation these shall not be taken into account in determining ownership:

(1) Stock held by members of the expanded affiliated group which includes the foreign incorporated entity; or

(2) Stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1) of section 835 of the Homeland Security Act (the Act), Pub. L. 107-296.

(b) *Plan deemed in certain cases.* If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is after the date of enactment of this Act and which is 2 years before the ownership requirements of subsection (b)(2) of the Act are met, such actions shall be treated as pursuant to a plan.

(c) *Certain transfers disregarded.* The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(d) *Special rule for related partnerships.* For purposes of applying subsection (b) to the acquisition of a domestic partnership, except as provided in regulations, all domestic partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as a partnership.

(e) *Treatment of certain rights.* (1) Certain rights shall be treated as stocks to the extent necessary to reflect the present value of all equitable interests incident to the transaction, as follows:

- (i) Warrants;
- (ii) Options;
- (iii) Contracts to acquire stock;
- (iv) Convertible debt instruments;
- (v) Others similar interests.

(2) Rights labeled as stocks shall not be treated as stocks whenever it is deemed appropriate to do so to reflect the present value of the transaction or to disregard transactions whose recognition would defeat the purpose of section 835 of the Act.

#### **3009.104-74 Waiver.**

(a) The Secretary shall waive subsection (a) of section 835 of Pub. L. 107-296 with respect to any specific contract if the Secretary determines that the waiver is required in the interest of homeland security, or to prevent the loss of any jobs in the United States or prevent the Government from incurring any additional costs that otherwise would not occur.

(b) Contractors shall submit waiver requests to the CPO. If a waiver is granted, a copy of the approved waiver shall be attached with the bid or proposal.

#### **3009.104-75 Clause.**

Insert the provision (HSAR) 48 CFR 3052.209-70, Prohibition on Contracts with Corporate Expatriates, in all solicitations and contracts.

#### **Subpart 3009.4—Debarment, Suspension, and Ineligibility**

##### **3009.470 Reserve Officer Training Corps and military recruiting on campus.**

#### **3009.470-1 Definition.**

*Institution of higher education* as used in this section, means an institution that meets the requirements of 20 U.S.C. 1001 and includes all subelements of such an institution.

#### **3009.470-2 Policy.**

(a) Except as provided in paragraph (b) of this subsection, 10 U.S.C. 983 prohibits the Department of Homeland Security from providing funds by contract or grant to an institution of higher education if the Secretary of Defense determines that the institution has a policy or practice that prohibits or in effect prevents—

(1) The Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (ROTC) at that institution;

(2) A student at that institution from enrolling in a unit of the Senior ROTC at another institution of higher education;

(3) The Secretary of a military department or the Secretary of Homeland Security from gaining entry to campuses, or access to students on campuses, for purposes of military recruiting; or

(4) Military recruiters from accessing certain information pertaining to students enrolled at that institution.

(b) The prohibition in paragraph (a) of this subsection does not apply to an institution of higher education if the Secretary of Defense determines that—

(1) The institution (and each subelement of that institution) has ceased the policy or practice described in paragraph (a) of this subsection; or

(2) The institution involved has a long-standing policy of pacifism based on historical religious affiliation.

#### **3009.470-3 Procedures.**

Whenever the Secretary of Defense determines that an institution of higher education (including any subelement of such institution) is ineligible and the provisions of 10 U.S.C. 983 apply:

(a) The Secretary of Defense will list the institution on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs published by the General Services Administration (also see (FAR) 48 CFR 9.404 and 32 CFR part 216); and

(b) The Department of Homeland Security—

(1) Shall not solicit offers from, award contracts to, or consent to subcontracts with the institution;

(2) Shall make no further payments under existing contracts with the institution; and

(3) Shall terminate existing contracts with the institution.

#### **3009.470-4 Contract clause.**

Insert the clause at (HSAR) 48 CFR 3052.3009-71, Reserve Officer Training Corps and Military Recruiting on Campus, in all solicitations and

contracts with institutions of higher education.

### **Subpart 3009.5—Organizational and Consultant Conflicts of Interest**

#### **3009.507 Solicitation provisions.**

The contracting officer may insert the provision at (HSAR) 48 CFR 3052.209–72, “Disclosure of Conflicts of Interest” in all solicitations for negotiated acquisitions, and when simplified acquisitions procedures in (FAR) 48 CFR Part 13, are not used. The contracting officer shall ensure the conditions enumerated in (FAR) 48 CFR 9.507–2 warrant inclusion.

## **PART 3010—MARKET RESEARCH [RESERVED]**

### **PART 3011—DESCRIBING AGENCY NEEDS**

#### **Subpart 3011.1—Selecting and Developing Requirements Documents**

Sec.

3011.103 Market acceptance.

#### **Subpart 3011.2—Using and Maintaining Requirements Documents**

3011.204–70 Solicitation provisions and contract clauses.

3011.204–90 Solicitation provisions and contract clause (USCG).

#### **Subpart 3011.5—Liquidated Damages**

3011.501 Policy.

#### **Subpart 3011.6—Priorities and Allocations**

3011.602 General.

#### **Subpart 3011.1—Selecting and Developing Requirements Documents**

##### **3011.103 Market acceptance.**

(a) Contracting officers may act on behalf of the head of the agency in this subpart only. Contracting officers may, under appropriate circumstances, require offerors to make the required demonstrations.

#### **Subpart 3011.2—Using and Maintaining Requirements Documents**

##### **3011.204–70 Solicitation provisions and contract clauses.**

The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.211–70, Index for Specifications, when an index or table of contents may be furnished with the specification.

##### **3011.204–90 Solicitation provision and contract clause (USCG).**

(a) For U.S. Coast Guard contracts, the contracting officer shall insert the USCG clause at (HSAR) 48 CFR 3052.211–90, Bar Coding Requirement, (also see (HSAR) 48 CFR 3013.302–70) when the bar coding of supplies is necessary.

(b) See (HSAR) 48 CFR 3013.302–590 for a provision which is required when the USCG clause at (HSAR) 3052.211–90, Bar Coding Requirement, is used with simplified acquisition procedures.

### **Subpart 3011.5—Liquidated Damages**

#### **3011.501 Policy.**

(d) The HCA may reduce or waive the amount of liquidated damages assessed under a contract, if the Commissioner, Financial Management Service, or designee approves.

### **Subpart 3011.6—Priorities and Allocations**

#### **3011.602 General.**

(c) The following DHS OEs may assign priority ratings on contracts and orders placed with contractors to acquire products, materials, and services under the Defense Priorities and Allocations System (DPAS) regulations (15 CFR part 700):

(1) The U.S. Coast Guard in support of certified national defense related programs; and

(2) The Federal Emergency Management Agency in support of emergency preparedness activities.

## **PART 3012—ACQUISITION OF COMMERCIAL ITEMS [RESERVED]**

### **PART 3013—SIMPLIFIED ACQUISITION PROCEDURES**

#### **Subpart 3013.1—Procedures**

Sec.

3013.106 Soliciting competition, evaluation of quotations or offers, award and documentation.

3013.106–190 Soliciting competition (USCG).

#### **Subpart 3013.3—Simplified Acquisition Methods**

3013.302 Purchase orders.  
3013.302–590 Clauses (USCG).

#### **Subpart 3013.70—Special Streamlined Acquisition Authority**

3013.7000 General.  
3013.7001 Delegations.  
3013.7002 Reporting requirements.  
3013.7003 Micro-purchase authority.  
3013.7004 Simplified acquisition authority.  
3013.7005 Test program for certain commercial items.

#### **Subpart 3013.1—Procedures**

##### **3013.106 Soliciting competition, evaluation of quotations or offers, award and documentation.**

##### **3013.106–190 Soliciting competition (USCG).**

For the U.S. Coast Guard, the contracting officer shall insert the USCG provision at (HSAR) 48 CFR 3052.213–

90, Evaluation Factor for Coast Guard Performance of Bar Coding Requirement, in requests for quotations when the USCG clause at (HSAR) 48 CFR 3052.211–90, Bar Coding Requirement, is used with simplified acquisition procedures.

### **Subpart 3013.3—Simplified Acquisition Methods**

#### **3013.302 Purchase orders.**

##### **3013.302–590 Clauses (USCG).**

For the U.S. Coast Guard, the contracting officer shall insert the USCG clause at (HSAR) 48 CFR 3052.211–90, Bar Coding Requirement, in requests for quotations and purchase orders issued by the Inventory Control Points when bar coding of supplies is necessary.

### **Subpart 3013.70—Special Streamlined Acquisition Authority**

#### **3013.7000 General.**

(a) The Secretary may use special streamlined acquisition authority set forth in Public Law 107–296, section 833, with respect to any procurement made during the period beginning on November 25, 2002 and ending September 30, 2007 where if the Secretary determines in writing the mission of the Department (described in Pub. L. 107–296, section 101) would be seriously impaired without the use of such authorities.

(b) The Secretary may deem any item or service to be a commercial item for the purpose of federal procurement laws for procurements described in (HSAR) 48 CFR 3013.7005.

#### **3013.7001 Delegations.**

The Secretary may delegate this authority to an officer of the Department who is appointed by the President with the advice and consent of the Senate. Delegations of this authority are discussed in HSAM 3013.

#### **3013.7002 Reporting requirements.**

(a) The Secretary shall submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate—

(1) Notification of such determination; and

(2) The justification for such determination.

(b) This report shall be submitted no later than seven days after the date of any determination. Reporting requirements and procedures are discussed in HSAM 3013.

**3013.7003 Micro-purchase authority.**

(a) When the streamlined acquisition authority is exercised, the micro-purchase threshold is raised to \$7,500.

(b) The authority in this section may be exercised only by individuals designated by the Secretary. The number of employees shall be—

(1) Fewer than the number of employees of the Department that are authorized to make purchases without obtaining competitive quotations.

(2) Sufficient to ensure the geographic dispersal of the availability of the use of the procurement authority under such paragraph at locations reasonably considered to be potential terrorist targets; and

(3) Sufficiently limited to allow for careful monitoring of employees designated under each paragraph.

(c) Procurements made under this authority shall be subject to review by a designated supervisor on not less than a monthly basis. The supervisor responsible for the review shall be responsible for no more than seven employees making procurements under this authority.

**3013.7004 Simplified acquisition authority.**

When the streamlined acquisition authority is exercised, the simplified acquisition threshold shall be:

(a) \$200,000 in the case of a contract to be awarded and performed, or purchase to be made, within the United States; and

(b) \$300,000 in the case of a contract to be awarded and performed, or purchase to be made, outside of the United States.

**3013.7005 Test program for certain commercial items.**

When the streamlined authority is exercised, the \$5,000,000 limitation provided in (FAR) 48 CFR subpart 13.5 is increased to \$7,500,000.

**PART 3014—SEALED BIDDING [RESERVED]****PART 3015—CONTRACTING BY NEGOTIATION****Subpart 3015.2—Solicitation and Receipt of Proposals and Information**

Sec.

3015.204–3 Contract clauses.

3015.207–70 Handling proposals and information.

**Subpart 3015.4—Contract Pricing**

3015.404–470 Payment of profit or fee.

**Subpart 3015.6—Unsolicited Proposals**

3015.602 Policy.

3015.603 General.

3015.604 Agency points of contact.

3015.606 Agency procedures.

3015.606–1 Receipt and initial review.

3015.606–2 Evaluation.

**Subpart 3015.2—Solicitation and Receipt of Proposals and Information****3015.204–3 Contract clauses.**

The contracting officer shall insert clause (HSAR) 48 CFR 3052.215–70, Key Personnel or Facilities, in solicitations and contracts when the selection for award is substantially based on the offeror's possession of special capabilities regarding personnel or facilities.

**3015.207–70 Handling proposals and information.**

(b) Proposals and information may be released outside the Government for evaluation and similar purposes if qualified personnel are not available to thoroughly evaluate or analyze proposals or information. The contracting officer shall document the file in such cases.

**Subpart 3015.4—Contract Pricing****3015.404–470 Payment of profit or fee.**

The contracting officer shall not pay profit or fee on undefinitized contracts or undefinitized contract modifications. Any profit or fee earned shall be paid after the contract or modification is definitized.

**Subpart 3015.6—Unsolicited Proposals****3015.602 Policy.**

The Department of Homeland Security (DHS) encourages new and innovative proposals and ideas that will sustain or enhance the DHS mission, which is stipulated in the Homeland Security Act of 2002, Pub. L. 107–296.

**3015.603 General.**

(a) Costs associated with the time and effort to prepare a proposal are solely the responsibility of and assumed by the offeror that is submitting the proposal.

**3015.604 Agency points of contact.**

(a) The DHS does not have a central clearinghouse for distributing information or assistance regarding unsolicited proposals. Each HCA is responsible for disseminating the information required at (FAR) 48 CFR 15.604(a). General information concerning DHS's scope of responsibilities and functions is available at <http://www.dhs.gov/dhspublic/>.

**3015.606 Agency procedures.**

(a) The agency authority to establish procedures for receiving, reviewing and evaluating, and timely disposing of unsolicited proposals, consistent with

the requirements of (FAR) 48 CFR 15.6 and this subpart, is delegated to each HCA.

(b) The agency authority to establish points of contact (see (FAR) 48 CFR 15.604) to coordinate the receipt and handling of unsolicited proposals is delegated to each HCA. Contracting offices are designated as the receiving point for unsolicited proposals. Persons within DHS (e.g., technical personnel) who receive proposals shall forward them to their cognizant contracting office.

**3015.606–1 Receipt and initial review.**

(a) The agency contact point shall make an initial review determination within seven calendar days after receiving a proposal.

(b) If the proposal meets the requirements at (FAR) 48 CFR 15.606–1(a), the agency contact point shall acknowledge receipt within three calendar days after making the initial review determination and advise the offeror of the general timeframe for completing the evaluation.

(c) If the proposal does not meet the requirements of (FAR) 48 CFR 15.606–1(a), the agency contact point shall return the proposal within three calendar days after making the determination. The offeror shall be informed, in writing, of the reasons for returning the proposal.

**3015.606–2 Evaluation.**

(a) Comprehensive evaluations should be completed within sixty calendar days after making the initial review determination. If additional time is needed, then the agency contact point shall advise the offeror accordingly and provide a new evaluation completion date. The evaluating office shall neither reproduce nor disseminate the proposal to other offices without the consent of the contracting office from which the proposal was received for evaluation. If the evaluating office requires additional information from the offeror, the evaluator shall convey this request to the responsible contracting office. The evaluator shall not directly contact the proposal originator.

(b) If the evaluators recommend accepting the proposal, the responsible contracting officer shall ensure compliance with all of the requirements of (FAR) 48 CFR 15.607.

**PART 3016—TYPES OF CONTRACTS****Subpart 3016.2—Fixed-Price Contracts**

Sec.

3016.203 Fixed-price contracts with economic price adjustment.

3016.203–4 Contract clauses.

3016.203–470 Solicitation provision.

**Subpart 3016.4—Incentive Contracts**

3016.406 Contract clauses.

**Subpart 3016.5—Indefinite-Delivery Contracts**

3016.505 Ordering.

**Subpart 3016.6—Time-and-Materials, Labor-Hour, and Letter Contracts**

3016.603 Letter contracts.

3016.603-4 Contract clauses.

**Subpart 3016.2—Fixed-Price Contracts****3016.203 Fixed price contracts with economic price adjustments.****3016.203-4 Contract clauses.**

(d)(2) Any clause using this method shall be prepared and approved by the contracting officer.

**3016.203-470 Solicitation provision.**

The contracting officer shall insert a provision substantially the same as (HSAR) 48 CFR 3052.216-70, Evaluation of Offers Subject to an Economic Price Adjustment Clause, in solicitations containing an economic price adjustment clause.

**Subpart 3016.4—Incentive Contracts****3016.406 Contract clauses.**

(e)(1)(i) The contracting officer shall insert a clause substantially the same as (HSAR) 48 CFR 3052.216-71, Determination of Award Fee, in solicitations and contracts that includes an award fee.

(ii) The contracting officer shall insert a clause substantially the same as (HSAR) 48 CFR 3052.216-72, Performance Evaluation Plan, in all solicitations and contracts that includes an award fee.

(iii) The contracting officer shall insert a clause substantially the same as (HSAR) 48 CFR 3052.216-73, Distribution of Award Fee, in all solicitations and contracts that includes an award fee.

**Subpart 3016.5—Indefinite-Delivery Contracts****3016.505 Ordering.**

(b)(5) The OE Competition Advocate is designated as the OE Task and Delivery Order Ombudsman, unless otherwise provided in OE procedures.

(i) If any corrective action is needed after reviewing complaints from contractors on task and delivery order contracts, the OE Ombudsman shall provide a written determination of such action to the contracting officer.

(ii) Issues that cannot be resolved within the OE, shall be forwarded to the DHS Task and Delivery Order Ombudsman for review and resolution.

**Subpart 3016.6—Time-and-Materials, Labor-Hour, and Letter Contracts****3016.603 Letter contracts.****3016.603-4 Contract clauses.**

The contracting officer shall insert a clause substantially the same as (HSAR) 48 CFR 3052.216-74, Settlement of Letter Contract, in all definitized letter contracts.

**PART 3017—SPECIAL CONTRACTING METHODS****Subpart 3017.2—Options**

Sec.

3017.202 Use of options.

**Subpart 3017.4—Leader Company Contracting**

3017.402 Limitations.

**Subpart 3017.70—Energy Savings Performance Contracts**

3017.7000 Policy.

**Subpart 3017.90—Fixed Price Contracts for Vessel Repair, Alteration or Conversion**

3017.9000 Clauses (USCG).

**Subpart 3017.2—Options.****3017.202 Use of options.**

(a) Contracting officers shall not use unpriced options.

**Subpart 3017.4—Leader Company Contracting****3017.402 Limitations.**

(a)(4) Submit requests per (HSAR) 48 CFR 3001.7000(a).

**Subpart 3017.70—Energy Savings Performance Contracts****3017.7000 Policy.**

DHS and its OEs may enter into Energy Savings Performance Contracts under 42 U.S.C. 8287, as amended subject to the requirements of 10 CFR part 436. Proposed contracts under this section shall be coordinated with the CPO.

**Subpart 3017.90—Fixed Price Contracts for Vessel Repair, Alteration or Conversion****3017.9000 Clauses (USCG).**

For the U.S. Coast Guard, the following clauses are to be used in specific solicitations and contracts:

(a) The clauses in (HSAR) 48 CFR 3052.217-90 through (HSAR) 48 CFR 3052.217-93 and (HSAR) 48 CFR 3052.217-95 through (HSAR) 48 CFR 3052.217-99 shall be included and clause (HSAR) 48 CFR 3052.217-94 may be included in sealed bid fixed-price solicitations and contracts for vessel repair, alteration, or conversion which

are to be performed within the United States, its possessions, or Puerto Rico. The contracting officer may, in whole or in part (such as after incidents), increase the dollar amounts in the clause at (HSAR) 48 CFR 3052.217-95(b)(6) and (c)(1) consistent with contract size, inflation, and other circumstances.

(b) Unless inappropriate, the clauses in (HSAR) 48 CFR 3052.217-90 through (HSAR) 48 CFR 3052.217-93 and (HSAR) 48 CFR 3052.217-95 through (HSAR) 48 CFR 3052.217-99 should be included and (HSAR) 48 CFR 3052.217-94 may be included in negotiated solicitations and contracts to be performed outside the United States. The contracting officer may, in whole or in part (such as after incidents), increase the dollar amounts in the clause at (HSAR) 48 CFR 3052.217-95(b)(6) and (c)(1) consistent with contract size, inflation, and other circumstances.

(c) The clause at (HSAR) 48 CFR 3052.217-100, Guarantee, shall be used where general guarantee provisions are deemed desirable by the contracting officer.

(1) When inspection and acceptance tests will afford full protection to the Government in ascertaining conformance to specifications and the absence of defects and deficiencies, no guarantee clause for that purpose shall be included in the contract.

(2) The customary guarantee period, to be inserted in the first sentence of the clause at (HSAR) 48 CFR 3052.217-100, Guarantee, is 60 days. However, in certain instances, the contracting officer may desire to include a clause in a contract for a guarantee period of more than 60 days. In such instances:

(i) Where, after full inquiry, it has been determined that such longer guarantee period will not involve increased costs, a longer guarantee period may be substituted by the contracting officer for the usual 60 days; or

(ii) Where the full inquiry discloses that such longer guarantee period will involve, or is reasonably expected to involve, increased costs, such facts and the reasons for the need for such longer period shall be set forth in letter form to the COCO, requesting approval for use of guarantee period in excess of 60 days. Upon approval, the longer period may be inserted by the contracting officer in the first sentence of the clause at (HSAR) 48 CFR 3052.217-100, Guarantee.

**PART 3018—[RESERVED]****PART 3019—SMALL BUSINESS PROGRAMS****Subpart 3019.2—Policies**

Sec.

3019.201 General policy.

**Subpart 3019.7—The Small Business Subcontracting Program**

3019.705 Responsibilities of the contracting officer under the subcontracting assistance program.

3019.705-1 General support for the program.

3019.708 Contract clauses.

3019.708-70 DHS solicitation and contract clauses.

**Subpart 3019.2—Policies****3019.201 General policy.**

(d) The Director, Office of Small and Disadvantaged Business Utilization is responsible for the implementation and execution of the small and small disadvantaged business programs required by the Small Business Act.

**Subpart 3019.7—The Small Business Subcontracting Program**

**3019.705 Responsibilities for the contracting officer under the subcontracting program.**

**3019.705-1 General support for the program.**

Contracting officers will consider making the submission of a subcontracting plan part of the evaluation criteria. Contracting officers may also consider an offeror's past performance in previous subcontracting plan goals and efforts to achieve those goals.

**3019.708 Contract clauses.**

**3019.708-70 DHS solicitation and contract clauses.**

(a) The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.219-70, Small Business and Small Disadvantaged Business Subcontracting Reporting, in solicitations and contracts containing the clause at (FAR) 48 CFR 52.219-9.

(b) The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.219-71, DHS Mentor-Protégé Program in all solicitations that anticipate the need for a subcontracting plan.

(c) The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.219-72, Evaluation of Prime Contractor Participation in the Mentor-Protégé Program, in all solicitations containing (HSAR) 48 CFR 3052.219-71, Mentor-Protégé Program and (FAR) 48 CFR

52.219-9 Small Business Subcontracting Plan.

**PART 3020—[RESERVED]****PART 3021—[RESERVED]****PART 3022—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS****Subpart 3022.1—Basic Labor Policies**

Sec.

3022.101 Labor relations.

3022.101-70 Admittance of union representatives to DHS installations.

3022.101-71 Contract clauses.

**Subpart 3022.4—Labor Standards for Contracts Involving Construction**

3022.406 Administration and enforcement.

3022.406-9 Withholding from or suspension of contract payments.

**Subpart 3022.90—Local Hire (USCG)**

3022.9000 Policy (USCG).

3022.9001 Contract clause (USCG).

**Subpart 3022.1—Basic Labor Policies**

3022.101 Labor relations.

3022.101-70 Admittance of union representatives to DHS installations.

(a) It is the policy of DHS to admit labor union representatives of contractor employees to DHS installations to visit work sites and transact labor union business with contractors, their employees, or union stewards pursuant to existing union collective bargaining agreements. Their presence shall not interfere with the contractor's work progress under a DHS contract nor violate safety or security regulations that may be applicable to persons visiting the installation. Union representatives will not be permitted to conduct meetings, collect union dues, or make speeches concerning union matters while visiting a work site.

(b) Whenever a union representative is denied entry to a work site, the person denying entry shall make a written report to the DHS labor coordinator and OE labor advisor, if any, within two working days after the request for entry is denied. The report shall include the reason(s) for the denial, the name of the representative denied entry, the union affiliation and number, and the name and title of the person that denied the entry.

3022.101-71 Contract clauses.

(a) The contracting officer, when applicable, insert the clause at (HSAR) 48 CFR 3052.222-70, Strikes or Picketing Affecting Timely Completion of the Contract Work, in solicitations and contracts.

(b) The contracting officer may, when applicable, insert the clause at (HSAR) 48 CFR 3052.222-71, Strikes or Picketing Affecting Access to a DHS Facility, in solicitations and contracts.

**Subpart 3022.4—Labor Standards for Contracts Involving Construction**

3022.406 Administration and enforcement.

3022.406-9 Withholding from or suspension of contract payments.

(c) Disposition of contract payments withheld or suspended.

(1) Forwarding wage underpayments to the Comptroller General. The contracting officer shall ensure that a completed DHS Form 0700-04, Employee Claim for Wage Restitution, is obtained from each employee claiming restitution under the contract. The Comptroller General (Claims Division) shall receive this form with a completed SF 1093, Schedule of Withholding Under the Davis-Bacon Act and/or the Contract Work Hours and Safety Standards Act, before payment can be made to the employee.

**Subpart 3022.90—Local Hire (USCG)**

3022.9000 Policy (USCG).

As required by 14 U.S.C. 666, the U.S. Coast Guard shall include a provision for local hire in each contract for construction or services to be performed in whole or in part in a State that has an unemployment rate in excess of the national average rate of unemployment as determined by the Secretary of Labor.

3022.9001 Contract clause (USCG).

For the U.S. Coast Guard, the contracting officer shall insert the USCG clause at (HSAR) 48 CFR 3052.222-90, Local Hire Provision, in all solicitations and contracts as stated in (HSAR) 48 CFR 3022.9000.

**PART 3023—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE****Subpart 3023.3—Hazardous Material Identification and Material Safety Data**

Sec.

3023.303 Contract clause.

**Subpart 3023.5—Drug-Free Workplace**

3023.501 Applicability.

**3023.506 Suspension of payments, termination of contract, and debarment and suspension actions.**

**Subpart 3023.10—Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements**

3023.1002 Applicability.

**Subpart 3023.90—Safety Requirements for USCG Contracts**

3023.9000 Contract Clause (USCG).

**Subpart 3023.3—Hazardous Material Identification and Material Safety Data**

**3023.303 Contract clause.**

The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.223–70, Removal or Disposal of Hazardous Substances—Applicable Licenses and Permits, in solicitations and contracts involving the removal or disposal of hazardous waste material.

**Subpart 3023.5—Drug-Free Workplace**

**3023.501 Applicability.**

(d) The head of the law enforcement organizational element may determine that (FAR) 48 CFR 23.501 does not apply. This authority may not be redelegated.

**3023.506 Suspension of payments, termination of contract, and debarment and suspension actions.**

(e) Submit requests per (HSAR) 48 CFR 3001.7000(b).

**Subpart 3023.10—Federal Compliance With Right-to-Know Laws and Pollution Requirements**

**3023.1002 Applicability.**

DHS MD 5110, Environmental Compliance, provides guidance and direction for compliance with environmental laws.

**Subpart 3023.90—Safety Requirements for USCG Contracts**

**3023.9000 Contract clause (USCG).**

For the U.S. Coast Guard, where all or part of a contract will be performed on Government-owned or leased property, the contracting officer shall insert the clause at (HSAR) 48 CFR 3052.223–90, Accident and Fire Reporting.

## **PART 3024—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION**

**Subpart 3024.1—Protection of Individual Privacy**

Sec.  
3024.102–70 General.

**Subpart 3024.2—Freedom of Information Act**

3024.203 Policy.

**Subpart 3024.1—Protection of Individual Privacy**

**3024.102–70 General.**

Procedures for implementing the Privacy Act of 1974 are contained in Departmental regulations under 6 CFR part 5, subpart B, Privacy Act.

**Subpart 3024.2—Freedom of Information Act**

**3024.203 Policy.**

(a) The Department's implementation of the Freedom of Information Act is codified in regulations 6 CFR part 5, subpart B, FOIA. Information request concerning awards beyond those routinely handled by contracting officers (*e.g.*, identification of successful offerors, public announcements, debriefings, surety notices under HSAR 3028.106–6) shall be submitted to the FOIA Office of the Organizational Element making the award. The FOIA office for the DHS Office of Operations only, is Departmental Disclosure Officer (DDO), DHS, Washington, DC 20528 or [foia@dhs.gov](mailto:foia@dhs.gov).

(b) *See* (FAR) 48 CFR 15.207(b) on safeguarding proposals.

## **PART 3025—FOREIGN ACQUISITION—[RESERVED]**

## **PART 3026—OTHER SOCIOECONOMIC PROGRAMS—[RESERVED]**

## **PART 3027—PATENTS, DATA, AND COPYRIGHTS**

**Subpart 3027.2—Patents**

Sec.  
3027.205 Adjustment of royalties.  
3027.208 Use of patented technology under the North American Free Trade Agreement.

**Subpart 3027.3—Patent Rights Under Government Contracts**

3027.304–1 General.  
3027.304–5 Appeals.  
3027.305–4 Administration of Patent Rights Clause.  
3027.306 Licensing background patent rights to third parties.

**Subpart 3027.4—Rights in Data and Copyrights**

3027.404 Basic Rights in Data clause.  
3027.409 Solicitation provisions and contract clauses.

**Subpart 3027.2—Patents**

**3027.205 Adjustment of royalties.**

(a) Reports shall be made to OE legal counsel. Contracting Officers shall coordinate actions with the COCO and HCA.

**3027.208 Use of patented technology under the North American Free Trade Agreements.**

(f) Contracting officers shall ensure compliance.

**Subpart 3027.3—Patent Rights under Government Contracts**

**3027.304–1 General.**

Interim and final invention reports and notification of all subcontracts for experimental, developmental, or research work (FAR) 48 CFR 27.304–1(e)(2)(ii) may be submitted on DD Form 882, Report of Inventions and Subcontracts.

**3027.304–5 Appeals.**

(a) Contracting officers are authorized to take the specified actions.

(b) Appeals shall be made to the CPO.

**3027.305 Administration of Patent Rights Clauses.**

**3027.305–4 Conveyance of invention rights acquired by the Government.**

The contracting officer shall ensure that solicitations and contracts which include a patent rights clause include a means for the contractor to report inventions made in the course of contract performance and at contract completion. This requirement may be fulfilled by requiring the contractor to submit a DD Form 882, Report of Inventions and Subcontract.

**3027.306 Licensing background patent rights to third parties.**

(b) The CPO shall make the required determinations and notifications under this subpart.

**Subpart 3027.4—Rights in Data and Copyrights**

**3027.404 Basic rights in data clause.**

(f)(1)(iii) The DHS will use Alternate IV of the (FAR) 48 CFR clause 52.227–14 in all contracts containing the basic clause, unless the HCA approves an exclusion. Approval at a level above the contracting officer is required for the contract to exclude items or categories of data from Alternative IV.

**3027.409 Solicitation provisions and contract clauses.**

Alternate IV of the (FAR) 48 CFR clause 52.227–14 shall be included in solicitations and contracts containing the basic clause unless the HCA approves an exclusion. Additional non-conflicting alternates may be used.

## **PART 3028—BONDS AND INSURANCE**

**Subpart 3028.1—Bonds and Other Financial Protections**

Sec.

- 3028.106 Administration.  
 3028.106-6 Furnishing information.  
 3028.106-70 Execution and administration of bonds.  
 3028.106-490 Contract clause (USCG).

**Subpart 3028.3—Insurance**

- 3028.306 Insurance under fixed-price contracts.  
 3028.306-90 Contracts for lease of aircraft (USCG).  
 3028.307 Insurance under cost-reimbursement contracts.  
 3028.307-1 Group insurance plans.  
 3028.310 Contract clause for work on a Government installation.  
 3028.310-70 Contract clause.  
 3028.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.  
 3028.311-1 Contract clause.

**Subpart 3028.1—Bonds and Other Financial Protections**

**3028.106 Administration.**

**3028.106-6 Furnishing information.**

(b) The contracting officer shall, upon request, furnish the name and address of the prime contractor's surety or sureties to employees, suppliers, and subcontractors having a contractual or employment relationship with prime contractors, subcontractors or suppliers. When furnishing surety information, the inquirer may also be informed that:

(1) Persons believing that they have legal remedies under the Miller Act are cautioned to consult their own legal advisor regarding the proper steps to take to obtain remedies.

(2) On construction contracts exceeding \$2,000, if the contracting officer is informed (through routine compliance checking, a complaint, or a request for information) that a laborer, mechanic, apprentice, trainee, watchman, or guard employed by the contractor or subcontractor at any tier may have been paid wages less than those required by the applicable labor standards provisions of the contract, the contracting officer shall promptly initiate an investigation in accordance with (FAR) 48 CFR Subpart 22.4, irrespective of the employee's rights under the Miller Act. When an employee's request for information is involved, the contracting officer shall inform the inquirer that such investigation will be made. Such investigation is required pursuant to the provisions of the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, and Copeland (Anti-Kickback) Act for assuring proper payment to such employees.

(c) When furnishing a copy of a payment bond and contract in accordance with (FAR) 48 CFR 28.106-6(c), the requirement for a copy of the

contract may be satisfied by furnishing a machine-duplicate copy of the contractor's first pages which show the contract number and date, the contractor's name and signature, the contracting officer's signature, and the description of the contract work. The contracting officer furnishing the copies shall place the statement "Certified to be a true and correct copy" followed by a signature, title and name of the OE. The fee for furnishing the requested certified copies shall be determined according to the DHS Freedom of Information Act regulation, 6 CFR part 5, subpart B, FOIA.

**3028.106-70 Execution and administration of bonds.**

(a) The contracting officer shall notify the surety within 30 days, of the contractor's failure to perform in accordance with the terms of the contract.

(b) When a partnership is a principal on a bond, the names of all the members of the firm shall be listed in the bond following the name of the firm, and the phrase "a partnership composed of." If a principal is a corporation, the state of incorporation shall also appear on the bond.

(c) Performance or payment bond(s) other than an annual bond shall not predate the contract to which it pertains.

(d) Bonds may be filed with the original contract to which they apply, or all bonds can be separately maintained and reviewed quarterly for validity. If separately maintained, each contract file shall cross-reference the applicable bonds.

**3028.106-490 Contract clause (USCG).**

For the U.S. Coast Guard, the contracting officer shall insert the USCG clause at (HSAR) 48 CFR 3052.228-90. Notification of Miller Act Payment Bond Protection, in solicitation and contracts, and shall require its first-tier subcontractors to insert the clause in all of their subcontracts, when payment bonds are required.

**Subpart 3028.3—Insurance**

**3028.306 Insurance under fixed-price contracts.**

**3028.306-90 Contracts for lease of aircraft (USCG).**

(a) For the U.S. Coast Guard, the contracting officer shall insert the clauses at (HSAR) 48 CFR 3052.228-91 through 3052.228-93, unless otherwise indicated by the specific instructions for their use, in any contract for the lease of aircraft (including aircraft used in out-service flight training).

(b) For the U.S. Coast Guard, the contracting officer shall insert the clause at (HSAR) 48 CFR 3052.228-91, Loss of or Damage to Leased Aircraft, in any contract for the lease of aircraft, except in the following circumstances:

(1) When the hourly rental rate does not exceed \$250 and the total rental cost for any single transaction is not in excess of \$2,500:

(2) When the cost of hull insurance does not exceed 10 percent of the contract rate; or

(3) When the lessor's insurer does not grant a credit for uninsured hours, thereby preventing the lessor from granting the same to the Government.

(c) For the U.S. Coast Guard, the contracting officer shall insert the clause at (HSAR) 48 CFR 3052.228-92, Fair Market Value of Aircraft, when fair market value of the aircraft can be determined.

(d) 49 U.S.C. 44112, as amended, provides that no lessor of an aircraft under a *bona fide* lease of 30 days or more shall be liable by reason of his interest as lessor or title-holder of the aircraft for any injury to or death of persons, or damage to or loss of property, unless such aircraft is in the actual possession or control of such person at the time of such injury, death, damage or loss. On short-term or intermittent-use leases, however, the owner may be liable for damage caused by operation of the aircraft. It is usual for the aircraft owner to retain insurance covering this liability during the term of such lease. Such insurance can, often for little or no increase in premium, be made to cover the Government's exposure to liability as well. In order to take advantage of this coverage, the Risks and Indemnities clause at (HSAR) 48 CFR 3052.228-93 prescribed in paragraph (d)(1) of this section shall be used.

(1) For the U.S. Coast Guard, the contracting officer shall insert the clause at (HSAR) 48 CFR 3052.228-93, Risk and Indemnities, in any contract for out-service flight training or for the lease of aircraft when the Government will have exclusive use of the aircraft for a period of less than thirty days.

(2) For the U.S. Coast Guard, any contract for out-service flight training shall include a clause in the contract schedule stating substantially that the contractor's personnel shall at all times during the course of the training be in command of the aircraft and that at no time shall other personnel be permitted to take command of the aircraft.

**3028.307 Insurance under cost-reimbursement contracts.****3028.307-1 Group insurance plans.**

Plans shall be submitted to the contracting officer, who must obtain the advice of legal counsel.

**3028.310 Contract clause for work on a Government installation.****3028.310-70 Contract clause.**

Insert a clause substantially similar to (HSAR) 48 CFR 3052.228-70, "Insurance," in all solicitations and contracts that contain the clause at (FAR) 47 CFR 52.228-5.

**3028.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.****3028.311-1 Contract clause.**

Insert a clause substantially similar to (HSAR) 48 CFR 3052.228-70, "Insurance," in all solicitations and contracts that contain the clause at (FAR) 48 CFR 52.228-7, unless waived by an official one level above the contracting officer.

**PART 3029—TAXES—[RESERVED]****PART 3030—COST ACCOUNTING STANDARDS ADMINISTRATION****Subpart 3030.2—CAS Program Requirements**

Sec.

- 3030.201 Contract requirements.  
3030.201-5 Waiver.

**Subpart 3030.2—CAS Program Requirements****3030.201 Contract requirements.****3030.201-5 Waiver.**

(b)(1) The CPO is authorized to waive the application of the Cost Accounting Standards to individual firm fixed-price contracts for the acquisition of commercial items. This authority may not be redelegated.

(2) Submit waiver requests per (HSAR) 48 CFR 3001.7000(a), for review and transmittal by the CPO to the Cost Accounting Standard Board.

**PART 3031—CONTRACT COST PRINCIPLES AND PROCEDURES****Subpart 3031.2—Contracts with Commercial Organizations**

Sec.

- 3031.205 Selected costs.  
3031.205-32 Precontract costs.

**Subpart 3031.2—Contracts with Commercial Organizations****3031.205 Selected costs.****3031.205-32 Precontract costs.**

(a) The decision to incur precontract costs is that of the contractor. DHS employees may not can authorize, demand, or require a contractor to incur precontract costs. The contracting officer must advise the prospective contractor that any costs incurred before contract award are incurred at the contractor's sole risk and that if negotiations fail to result in a binding contract, payment of these costs will not be made by the Government. See (HSAR) 48 CFR 3032.205-32(b) regarding exception due to reconciliation of costs.

(b) When the contracting officer determines that incurring precontract costs was necessary to meet the proposed contract delivery schedule of a cost-reimbursement contract, the clause at (HSAR) 48 CFR 3052.231-70, Precontract Costs, may be inserted in the resultant contract.

**PART 3032—CONTRACT FINANCING****Subpart 3032.000—Scope of Part**

Sec.

- 3032.003 Simplified acquisition procedures financing.  
3032.006 Reduction or suspension of contract payments upon finding of fraud.  
3032.006-2 Definition.  
3032.006-3 Responsibilities.

**Subpart 3032.11—Electronic Funds Transfer****3032.1110 Solicitation provision and contract clauses.****Subpart 3032.000—Scope of Part****3032.003 Simplified acquisition procedures financing.**

Contract financing may be permitted for purchases made under the authority of (FAR) 48 CFR Part 13. This authority is delegated to COCO and may not be redelegated.

**3032.006 Reduction or suspension of contract payments upon finding of fraud.****3032.006-2 Definition.**

The CPO is the DHS remedy coordination official (RCO).

**3032.006-3 Responsibilities.**

(a) The CPO is authorized to establish specific procedures.

(b) Reports shall be made through the HCA to the CPO.

**Subpart 3032.11—Electronic Funds Transfer****3032.1110 Solicitation provision and contract clauses.**

(a)(1) Contracting officer shall insert FAR 48 CFR 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration, in all proposed solicitations and contracts.

**PART 3033—PROTESTS, DISPUTES, AND APPEALS****Subpart 3033.2—Disputes and Appeals**

Sec.

- 3033.201 Definitions.  
3033.211 Contracting officer's decision.  
3033.214 Alternative disputes resolution (ADR).

**Subpart 3033.2—Disputes and Appeals****3033.201 Definitions.**

*Agency Board of Contract Appeals* means the Department of Transportation Board of Contract Appeals (DOTBCA).

**3033.211 Contracting officer's decision.**

For DHS contracts, the Board of Contract Appeals (BCA) noted in (FAR) 48 CFR 33.211 is the Department of Transportation Board of Contract Appeals (DOTBCA) (S-20), 400 7th Street, S.W., Washington, DC, 20590. The DOTBCA Rules of Procedure are contained in 48 CFR Chapter 63, Part 6301. TSA shall use the DOTBCA for only Contract Disputes Act (CDA) requirements.

**3033.214 Alternative dispute resolution (ADR).**

(c) The Administrative Dispute Resolution Act (ADRA) of 1996, as amended, 5 U.S.C. 571, *et seq.*, authorizes and encourages agencies to use mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes, and for other purposes. The DOTBCA ADR procedures are contained in 48 CFR chapter 63, section 6302.30, ADR Methods (Rule 30), and will be distributed to the parties, if ADR procedures are used. These procedures may be obtained from the DOTBCA upon request. ADR procedures may be used when—

(1) There is mutual consent by the parties to participate in the ADR process (with consent being obtained either before or after an issue in controversy has arisen);

(2) Prior to the submission of a claim; and

(3) In resolution of a formal claim.

**PART 3034—MAJOR SYSTEM ACQUISITION [RESERVED]**

**PART 3035—RESEARCH AND DEVELOPMENT CONTRACTING**

**Subpart 3035.000—Scope of Part**

Sec.  
3035.003 Policy.

**Subpart 3035.000—Scope of Part**

**3035.003 Policy.**

(b) Cost sharing shall be determined on a case by case basis. OEs may establish procedures for cost sharing.

(c) Recoupment shall be determined on a case-by-case basis. Recoupment not otherwise required by law should be structured to address factors such as recovering the Department's fair share of its investment in nonrecurring costs related to the items acquired. Advice of legal counsel shall be obtained prior to establishing cost sharing policies and recoupment mechanisms under (FAR) 48 CFR 35.003(b) and (c).

**PART 3036—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

**Subpart 3036.2—Special Aspects of Contracting for Construction**

Sec.  
3036.201 Evaluation of contractor performance.

**Subpart 3036.5—Contract Clauses**

3036-570 Special precautions for work at operating airports.

**Subpart 3036.2—Special Aspects of Contracting for Construction**

**3036.201 Evaluation of contractor performance.**

(a)(2) Performance reports shall be prepared and entered into the Contractor Performance System (CPS) on an annual basis for contracts exceeding one year, or as otherwise required by (FAR) 48 CFR 36.201. Access to reports is through the CPS or the government-wide system, Past Performance Information Retrieval System (PPIRS).

**Subpart 3036.5—Contract Clauses**

**3036.570 Special precautions for work at operating airports.**

Where any acquisition will require work at an operating airport, insert the clause at (HSAR) 48 CFR 3052.236-70, Special Precautions for Work at Operating Airports, in solicitations and contracts.

**PART 3037—SERVICE CONTRACTING**

**Subpart 3037.1—Service Contracts—General**

Sec.  
3037.103 Contracting officer responsibility.  
3037.103-70 Contractor personnel access application.  
3037.103-71 Conditional access to sensitive but unclassified information.  
3037.104 Personal services contracts.  
3037.104-70 Personal services contracts.  
3037.104-90 Personal services contracts (USCG).  
3037.104-91 Personal services with individuals under the authority of 10 U.S.C. 1091 (USCG).  
3037.110-70 Solicitation provisions and contract clauses.

**Subpart 3037.1—Service Contracts—General**

**3037.103 Contracting officer responsibility.**

**3037.103-70 Contractor personnel access application.**

Contractor personnel who will require recurring access to DHS facilities as part of contract performances shall complete HSIF Form 3237, Contractor Personnel Access Application, before starting work under the contract. The completed form shall be submitted to the appropriate DHS office as designated in the contract. Contractor personnel may be required to complete additional forms, as necessary.

**3037.103-71 Conditional access to sensitive but unclassified information.**

Contractor personnel who will require access to sensitive but unclassified information as part of contract performances shall complete HSIF Form 4024, Sensitive Information Non-Disclosure Agreement, before starting work under the contract. The completed form shall be submitted to the appropriate DHS office as designated in the contract. Additional requirements are established in clause (HSAR) 48 CFR 3052.237-71, Information Technology Systems Access for Contractors.

**3037.104 Personal services contracts.**

**3037.104-70 Personal services contracts.**

(b)(i) Authorization to acquire the personal services of experts and consultants is included in Public Law 107-296, sections 832(1) and (2). This section includes authority to use personal service contracts without regard to the pay limitation of 5 U.S.C. 3109 when the services are necessary due to an urgent homeland security need.

(A) Prepare each D&F in accordance with (FAR) 48 CFR 1.7 and include a determination that—

(1) The duties are of a temporary or intermittent nature and not to exceed one year;

(2) DHS personnel with necessary skills are not available;

(3) Excepted appointment cannot be obtained;

(4) A nonpersonal services contract is not practicable;

(5) Statutory authority, Public Law 107-297, section 832(1) or section 832(2) and other legislation, apply;

(6) If the pay limitation of 5 U.S.C. 3109 is exceeded, the D&F supports the rationale; and

(7) Any other determination required by statute has been made.

(B)(1) Except as provided in paragraph (b)(i)(B)(2) of this subsection, the COCO shall approve the D&F required by paragraph (b)(i)(A).

(2) The HCA shall approve the D&F for personal service contracts for experts and consultant services that are acquired without regard to the pay limitation of 5 U.S.C. 3109. This determination shall include a finding that the services are necessary due to urgent homeland security needs.

(i) The contract may provide for the same per diem and travel expenses authorized for a Government employee, including actual transportation and per diem in lieu of subsistence for travel between home or place of business and official duty station and only for travel outside the local area in support of the statement of work.

(ii) Coordinate benefits, taxes, personnel ceilings, and maintenance of records with the appropriate office(s).

**3037.104-90 Personal services contracts (USCG).**

(a) The U.S. Coast Guard HCA may enter into medical personal services contracts according to 10 U.S.C. 1091.

(b) The authority of 10 U.S.C. 1091(a)(2) expires December 31, 2003.

**3037.104-91 Personal services contracts with individuals under the authority of 10 U.S.C. 1091 (USCG).**

(a) Health care personal services contracts awarded to individuals shall be selected through procedures established in this section. Selections made using the procedures in this section are exempt by statute from (HSAR) 48 CFR part 3006 competition requirements (see (HSAR) 48 CFR 3006.9000 (USCG)) and from (FAR) 48 CFR Part 6 competition requirements.

(b) The contracting officer shall provide adequate advance notice of contracting opportunities to individuals residing in the area of the facility. The notice should include the qualification criteria against which individuals

responding shall be evaluated. Contracting officers shall solicit offerors through the most effective means of seeking competition, such as a local publication, which serves the area of the facility. Acquisitions of health care services using personal services contracts are exempt from posting and synopsis requirements of (FAR) 48 CFR Part 5.

(c) The contracting officer shall provide the qualifications of individuals responding to the notice to the representative(s) responsible for evaluation and ranking according to the evaluation procedures. Individuals shall be considered solely on the professional qualifications established for the particular health care services being acquired and the Government's estimate of reasonable rates, fees, or costs. The representative(s) responsible for the evaluation and ranking shall provide the contracting officer with rationale for the ranking of the individuals consistent with the required qualifications.

(d) Upon receipt of the ranked listing of offerors, the contracting officer shall either:

(1) Enter into negotiations with the highest ranked offeror. If a mutually satisfactory contract cannot be negotiated, the contracting officer shall terminate negotiations with the highest ranked offeror and enter into negotiations with the next highest, or;

(2) Enter into negotiations with all qualified offerors and select on the basis of qualifications and rates, fees, or other costs.

(e) In the event only one individual responds to an advertised requirement, the contracting officer is authorized to negotiate the contract award. In this case, the individual must still meet the minimum qualifications of the requirement and the contracting officer must be able to make a determination that the price is fair and reasonable.

(f) If a fair and reasonable price cannot be obtained from a qualified individual, the requirement should be canceled and acquired using procedures other than those set forth in this section.

(g) The total amount paid to an individual in any year for health care services under a personal services contract shall not exceed the paycap in COMDTINST M4200.19 (series), Coast Guard Acquisition Procedures.

(h) The contract may provide for the same per diem and travel expenses authorized for a Government employee, including actual transportation and per diem in lieu of subsistence for travel between home or place of business and official duty station and only for travel outside the local area in support of the statement of work.

(i) Coordinate benefits, taxes and maintenance of records with the appropriate office(s).

(j) The contracting officer shall insure that contract funds are sufficient to cover all contingency items that may be cited in the statement of work for health care services.

#### **3037.110-70 Solicitation provisions and contract clauses.**

(a) Contracting officers shall insert the clause at (HSAR) 48 CFR 3052.237-70, Qualifications of Contractor Employees, in all solicitations and contracts for services, which require contract employees to have recurring access to Government facilities, sensitive information, including proprietary data or resources. This may include Information Technology (IT) requirements for design, development, or operation and maintenance of sensitive application in non-DHS or DHS facilities.

(b) In addition to the (HSAR) clause 48 CFR 3052.237-70, the contracting officer shall also include the contract clauses, (HSAR) clause 48 CFR 3052.237-71, "Information Systems Access for Contractors" and (HSAR) clause 48 CFR 3052.237-72, "Contractor Personnel Screening for Unclassified Information Technology".

(c) The contracting officer shall also include (HSAR) clause 48 CFR 3052.204-70, "Information Technology Security Plan" in solicitations and contracts when the prescription at paragraph (a) above applies.

#### **PART 3038—FEDERAL SUPPLY SCHEDULE CONTRACTING—[RESERVED]**

#### **PART 3039—ACQUISITION OF INFORMATION TECHNOLOGY—[RESERVED]**

#### **PART 3040—[RESERVED]**

#### **PART 3041—ACQUISITION OF UTILITY SERVICES—[RESERVED]**

#### **PART 3042—CONTRACT ADMINISTRATION AND AUDIT SERVICES**

##### **Subpart 3042.2—Contract Administration Services**

Sec.

3042.202 Assignment of contract administration.

3042.202-70 Contract clauses.

##### **Subpart 3042.15—Contractor Performance Information**

3042.1502 Policy.

##### **Subpart 3042.70—Contracting Officer's Technical Representative**

3042.7000 Contract clause.

##### **Subpart 3042.2—Contract Administration Services**

##### **3042.202 Assignment of contract administration.**

##### **3042.202-70 Contract clauses.**

(a) The contracting officer may use the clause at (HSAR) 48 CFR 3052.242-70, Dissemination of Information—Educational Institutions, in lieu of the clause at (HSAR) 48 CFR 3052.242-71, Dissemination of Contract Information, in DHS research contracts with educational institutions, except contracts that require the release or coordination of information.

(b) The contracting officer may insert the clause at (HSAR) 48 CFR 3052.242-71, Dissemination of Contract Information, in all DHS contracts except contracts that require the release or coordination of information.

##### **Subpart 3042.15—Contractor Performance Information**

##### **3042.1502 Policy.**

(a) OEs shall use the Contractor Performance System (CPS) for evaluating contractor performance in accordance with (FAR) 48 CFR 42.1502 and part 1503.

##### **Subpart 3042.70—Contracting Officer's Technical Representative**

##### **3042.7000 Contract clause.**

The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.242-72, Contracting Officer's Technical Representative, in solicitations and contracts when it is intended that a representative will be assigned to the contract to perform functions of a technical nature.

##### **PART 3043—CONTRACT MODIFICATIONS—[RESERVED]**

##### **PART 3044—SUBCONTRACTING POLICIES AND PROCEDURES—[RESERVED]**

##### **PART 3045—GOVERNMENT PROPERTY**

##### **Subpart 3045.5—Management of Government Property in the Possession of Contractors**

Sec.

3045.505 Records and reports of Government property.

3045.505-14 Reports of Government property.

3045.505-70 Solicitation provisions and contract clauses.

3045.508 Physical inventories.

- 3045.508-2 Reporting results of inventories.  
 3045.508-3 Quantitative and monetary control.  
 3045.511 Audit of property control system.

### Subpart 3045.5—Management of Government Property in the Possession of Contractors

#### 3045.505 Records and reports of Government property.

#### 3045.505-14 Reports of Government property.

(a) When Government property is furnished to or acquired by the contractor to perform the contract, the contract shall require the contractor to submit annual reports (see (FAR) 48 CFR 45.505-14) to the contracting officer not later than September 15 of each year. The contractor's report shall be submitted on DHS Form 0700-05, Contractor Report of Government Property.

#### 3045.505-70 Solicitation provisions and contract clauses.

Contracting officers shall insert the clause at (HSAR) 48 CFR 3052.245-70 in solicitations and contracts when the contract will require Government provided or contractor acquired property.

#### 3045.508 Physical inventories.

#### 3045.508-2 Reporting results of inventories.

The inventory report shall also include the following:

- (a) Name and title of the individual(s) that performed the physical inventory;  
 (b) An itemized, categorized listing of all property capitalized:  
 (1) Land and rights therein;  
 (2) Other real property;  
 (3) Plant equipment;  
 (4) Special test equipment; and  
 (5) Special tooling;  
 (c) An itemized listing of the property lost, damaged, destroyed, or stolen, the circumstances surrounding each incident, and the resolution of the incident; and  
 (d) Any discrepancies between the physical inventory and the contractor's record of Government property.

#### 3045.508-3 Quantitative and monetary control.

Contracting officers shall require the contractor to provide the quantity and unit cost of each item of Government property reported under (HSAR) 48 CFR 3045.508-2(b) and (c).

#### 3045.511 Audit of property control system.

(a) The property administrator (or other Government official authorized by the contracting officer) shall audit the contractor's property control system

whenever there are indications that the contractor's property control system may be deficient. Examples of deficiencies are:

- (1) Failure of the contractor to acknowledge receipt of GFP;
  - (2) Failure of the contractor to submit the annual property reports required by (HSAR) 48 CFR 3045.505-14;
  - (3) Failure of the contractor to reconcile its physical inventory with its property control record; or
  - (4) Failure of the contractor to submit a Government property listing when requested by the property administrator.
- (b) When it is determined that the contractor's property control system is deficient, the property administrator, in coordination with the contracting officer, shall discuss the deficiencies with the contractor. If the contractor does not take action to correct the deficiencies, the contracting officer shall provide the contractor with a written notice of the deficiencies and the date all deficiencies shall be corrected.

## PART 3046—QUALITY ASSURANCE

### Subpart 3046.7—Warranties

Sec.

- 3046.702 General.  
 3046.702-70 Additional definitions.  
 3046.703 Criteria for use of warranties.  
 3046.705 Limitations.  
 3046.706 Warranty terms and conditions.  
 3046.790 Additional USCG definitions (USCG).  
 3046.791 Use of warranties in major systems acquisitions by the USCG (USCG).  
 3046.791-1 Policy (USCG).  
 3046.791-2 Tailoring warranty terms and conditions. (USCG).  
 3046.791-3 Warranties on Government-furnished property (USCG).  
 3046.792 Cost benefit analysis (USCG).  
 3046.793 Waiver and notification procedures (USCG).

### Subpart 3046.7—Warranties

#### 3046.702 General.

#### 3046.702-70 Additional definitions.

*At no additional cost to the Government*, means without an increase in price for firm-fixed-price contracts, without an increase in target or ceiling price for fixed price incentive contracts (see (FAR) 48 CFR 46.707), or without an increase in estimated cost or fee for cost-reimbursement contracts.

*Defect* means any condition or characteristic in any supplies or services furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

*Design and manufacturing requirements* means structural and engineering plans and manufacturing particulars, including precise

measurements, tolerances, materials and finished product tests for the major system being produced.

*Major system* means a system or major subsystem used directly by the Department of Homeland Security (DHS) to carry out its mission(s), as defined by HSAM Chapter 1234, Major Acquisition Policies and Procedures (for dollar threshold applicable to U.S. Coast Guard, See Coast Guard guidance at (HSAR) 48 CFR 3046.701-90). The term does not include:

- (1) Related support equipment, such as ground-handling equipment, training devices and accessories thereto, unless a cost effective warranty for the system would require inclusion of such items; or
- (2) Commercial items sold in substantial quantities to the general public as described in (FAR) 48 CFR part 2.

*Performance requirements* means the operating capabilities, maintenance, and reliability characteristics of a system that are determined to be necessary for it to fulfill the requirement for which the system is designed.

#### 3046.703 Criteria for use of warranties.

(a) *Major Systems*. The use of warranties in the procurement of major systems by the USCG is mandatory, unless waived (see USCG guidance at (HSAR) 48 CFR 3046.792). Other OEs may use the procedures in USCG guidance in this part as a guideline for major systems acquisitions.

#### 3046.705 Limitations.

(a) The following restrictions are applicable to DHS contracts:

(1) The USCG is required to include a warranty in cost reimbursement contracts for the production of major systems acquisitions.

(2) Any warranty on major system acquisitions shall not apply in the case of any system or component thereof which has been furnished by the Government to a contractor except as indicated in the USCG guidance at (HSAR) 48 CFR 3046.791-3.

(3) Any warranty obtained shall specifically exclude coverage of damage in time of war or national emergency.

#### 3046.706 Warranty terms and conditions.

(a) The contracting officer, in developing the warranty terms and conditions, shall consider the following, and, where appropriate and cost beneficial, shall:

- (1) Identify the affected line item(s) and the applicable specification(s);
- (2) Require that the line item's design and manufacture will conform to:
  - (i) An identified revision of a top-level drawing; and/or

(ii) An identified specification or revision thereof;

(3) Require that the system conform to the specified Government performance requirements;

(4) Require that all systems and components delivered under the contract will be free from defects in materials and workmanship;

(5) State that in the event of failure due to nonconformance with specification and/or defects in material and workmanship, the contractor will bear the cost of all work necessary to achieve the specified performance requirements, including repair and/or replacement of all parts;

(6) Require the timely replacement/repair of warranted items and specify lead times for replacement/repair where possible;

(7) Identify the specific paragraphs containing Government performance requirements which must be met;

(8) Ensure that any performance requirements identified as goals or objectives in excess of specification requirements are excluded from the warranty provision;

(9) Define what constitutes the start of the warranty period (*e.g.*, delivery, acceptance, in-service date), the ending of the warranty (*e.g.*, passing a test or demonstration, or operation without failure for a specified time period), and circumstances requiring an extension of warranty duration (*e.g.*, extending the warranty period as a result of mass defect correction during warranty period);

(10) Identify what transportation costs will be paid by the contractor in conjunction with warranty coverage;

(11) Identify any conditions which will not be covered by the warranty, other than the exclusion of combat damage; and

(12) Identify any limitation on the total dollar amount of the contractor's warranty exposure, or agreement to share costs after a certain dollar threshold to avoid unnecessary warranty returns.

(b) Any contract that contains a warranty clause shall contain warranty implementation procedures, including warranty notification content and procedures, and identify the individuals responsible for implementation of warranty provisions. The contract may also permit the contractor's participation in investigation of system failures, providing that the contractor is reimbursed at established rates for fault isolation work, and that the Government receives credit for any payments where equipment failure is covered by warranty provisions.

#### **3046.790 Additional USCG definitions (USCG).**

For the USCG, in accordance with Public Law 99-190, the dollar threshold as it pertains to the inclusion of a warranty in major systems acquisitions is \$10 million.

#### **3046.791 Use of warranties in major systems acquisitions by the USCG (USCG).**

This subpart provides the policy for the USCG to use in obtaining warranties from contractors when contracting for the acquisition of a major system.

##### **3046.791-1 Policy (USCG).**

The USCG shall include a warranty in all contracts for major systems acquisitions. When drafting warranty provisions/clauses for major systems acquisitions, the contracting officer shall ensure that the items listed at (HSAR) 48 CFR 3046.706 have been considered. The warranty shall also meet the following requirements:

(a) For systems or components which are commercially available, such warranty as is normally provided by the manufacturer or supplier shall be obtained in accordance with (FAR) 48 CFR 46.703(d) and (FAR) 48 CFR 46.710(b)(2).

(b) For systems or components provided in accordance with either design and manufacturing or performance requirements as specified in the contract or any modification to that contract, a warranty of compliance with the stated requirements shall be obtained.

(c) The warranty provided under paragraph (b) of this section shall provide that in the event the major system or any component thereof fails to meet the terms of the warranty provided, the contracting officer may:

(1) Require the contractor to promptly take such corrective action as the contracting officer determines to be necessary at no additional cost to the Government, including repairing or replacing all parts necessary to achieve the requirements set forth in the contract;

(2) Require the contractor to pay costs reasonably incurred by the United States in taking necessary corrective action; or

(3) Equitably reduce the contract price.

(d) Any warranty shall specifically exclude coverage of combat damage.

##### **3046.791-2 Tailoring warranty terms and conditions (USCG).**

(a) As the objectives and circumstances vary considerably among major systems acquisition programs, contracting officers shall appropriately

tailor the warranty on a case-by-case basis, including remedies, exclusions, limitations and durations, provided the tailoring is consistent with the specific requirements of this subpart and (FAR) 48 CFR 46.706.

(b) Contracting officers of major systems acquisitions may exclude from the terms of the warranty certain defects for specified supplies (exclusions) and may limit the contractor's liability under the terms of the warranty (limitations), as appropriate, if necessary to derive a cost-effective warranty in light of the technical risk, contractor financial risk, or other program uncertainties.

(c) Contracting officers are encouraged to structure a broader and more comprehensive warranty where such is advantageous. Likewise, the contracting officer may narrow the scope of a warranty when appropriate (*e.g.*, where it would be inequitable to require a warranty of all performance requirements because a contractor had not designed the system).

(d) Contracting officers shall not include in a warranty clause any terms that require the contractor to incur liability for loss, damage, or injury to third parties.

##### **3046.791-3 Warranties on Government-furnished property (USCG).**

A contractor for a major systems acquisition shall not be required to provide the warranties specified in (HSAR) 48 CFR 3046.790-1 on any property furnished to that contractor by the Government except for:

(a) Defects in installation; and  
(b) Installation or modification in such a manner that invalidates a warranty provided by the manufacturer of the property.

##### **3046.792 Cost benefit analysis (USCG).**

If a specific warranty is considered not to be cost beneficial by the contracting officer, a waiver request shall be initiated in accordance with guidance at (HSAR) 48 CFR 3046.793.

##### **3046.793 Waiver and notification procedures (USCG).**

(a) The Secretary of Homeland Security, without delegation, may waive the requirement for a warranty for USCG major system acquisitions when the waiver is in the interest of national defense or if the warranty obtained would not be cost beneficial. A waiver may be granted provided that the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Commerce, Science and Transportation of the Senate, and the Committee on

Merchant Marine and Fisheries of the House of Representatives are notified, in writing, of the Secretary's intention to waive the warranty requirements and the reasons supporting such a determination prior to granting the waiver. The request for Secretarial waiver shall include, as a minimum:

(1) A brief description of the major system and its stage of production (*e.g.*, the number of units delivered and anticipated to be delivered during the life of the program);

(2) The specific waiver requested, the duration of the waiver if it is to involve more than one contract, and the rationale for the waiver; and

(3) All documentation supporting the request for waiver, such as a cost-benefit analysis.

(b) The waiver request shall be forwarded to the Secretary, via the CPO. The USCG shall maintain a written record of each waiver granted and the Congressional notification and report made, together with supporting documentation.

## **PART 3047—TRANSPORTATION**

### **Subpart 3047.3—Transportation in Supply Contracts**

Sec.

- 3047.305 Solicitation provisions, contract clauses, and transportation factors.  
3047.305-70 Solicitation provision.

### **Subpart 3047.3—Transportation in Supply Contracts**

#### **3047.305 Solicitation provisions, contract clauses, and transportation factors.**

#### **3047.305-70 Solicitation provisions.**

The contracting officer shall insert the following provisions in solicitations, as applicable:

(a) (HSAR) 48 CFR 3052.247-70, F.o.b. Origin Information, with Alternates I or II, as applicable, shall be inserted in accordance with (FAR) 48 CFR 47.305-3(b);

(b) (HSAR) 48 CFR 3052.247-71, F.o.b. Origin Only, shall be inserted in accordance with (FAR) 48 CFR 47.305-3(e); and

(c) (HSAR) 48 CFR 3052.247-72, F.o.b. Destination Only, shall be inserted in accordance with (FAR) 48 CFR 47.305-4(b).

## **PART 3048—VALUE ENGINEERING—[RESERVED]**

## **PART 3049—TERMINATION OF CONTRACTS—[RESERVED]**

## **PART 3050—EXTRAORDINARY CONTRACTUAL ACTIONS—[RESERVED]**

## **PART 3051—USE OF GOVERNMENT SOURCES BY CONTRACTORS—[RESERVED]**

## **PART 3052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

### **Subpart 3052.1—Instructions for Using Provisions and Clauses**

Sec.

- 3052.101 Using part 3052.

### **Subpart 3052.2—Texts of Provisions and Clauses**

- 3052.204-70 Security requirements for unclassified information technology resources.  
3052.209-70 Prohibition on contracts with corporate expatriates.  
3052.209-71 Reserve Officer Training Corps and military recruiting on campus.  
3052.209-72 Disclosure of conflicts of interest.  
3052.211-70 Index for specifications.  
3052.211-90 Bar coding requirement (USCG).  
3052.213-90 Evaluation factor for Coast Guard performance of bar coding requirement (USCG).  
3052.215-70 Key personnel or facilities.  
3052.216-70 Evaluation of offers subject to an economic price adjustment clause.  
3052.216-71 Determination of award fee.  
3052.216-72 Performance evaluation plan.  
3052.216-73 Distribution of award fee.  
3052.216-74 Settlement of letter contract.  
3052.217-90 Delivery and shifting of vessel (USCG).  
3052.217-91 Performance (USCG).  
3052.217-92 Inspection and manner of doing work (USCG).  
3052.217-93 Subcontracts (USCG).  
3052.217-94 Lay days (USCG).  
3052.217-95 Liability and insurance (USCG).  
3052.217-96 Title (USCG).  
3052.217-97 Discharge of liens (USCG).  
3052.217-98 Delays (USCG).  
3052.217-99 Department of Labor safety and health regulations for ship repair (USCG).  
3052.217-100 Guarantee (USCG).  
3052.219-70 Small business subcontracting program reporting.  
3052.219-71 DHS mentor-protégé program.  
3052.219-72 Evaluation of prime contractor participation in the DHS mentor-protégé program.  
3052.222-70 Strikes or picketing affecting timely completion of the contract work.  
3052.222-71 Strikes or picketing affecting access to a DHS facility.  
3052.222-90 Local hire (USCG).

- 3052.223-70 Removal or disposal of hazardous substances—applicable licenses and permits.  
3052.223-90 Accident and fire reporting (USCG).  
3052.228-70 Insurance.  
3052.228-90 Notification of Miller Act payment bond protection (USCG).  
3052.228-91 Loss of or damage to leased aircraft (USCG).  
3052.228-92 Fair Market value of aircraft (USCG).  
3052.228-93 Risk and indemnities (USCG).  
3052.231-70 Precontract costs.  
3052.236-70 Special provisions for work at operating airports.  
3052.237-70 Qualifications of contractor employees.  
3052.237-71 Information technology systems access for contractors.  
3052.237-72 Contractor personnel screening for unclassified information technology access.  
3052.242.70 Dissemination of information—educational institutions.  
3052.242-71 Dissemination of contract information.  
3052.242-72 Contracting officer's technical representative.  
3052.245-70 Government property reports.  
3052.247-70 F.o.b. origin information.  
3052.247-71 F.o.b. origin only.  
3052.247-72 F.o.b. destination only.

### **Subpart 3052.1—Instructions for Using Provisions and Clauses**

#### **3052.101 Using part 3052.**

(b) Numbering.

(2)(i) Provisions or clauses that supplement the FAR.

(A) Agency-prescribed provisions and clauses permitted by HSAR and used on a standard basis (*i.e.*, normally used in two or more solicitations or contracts regardless of contract type) shall be prescribed and contained in the HSAR. OEs desiring to use a provision or a clause on a standard basis shall submit a request containing a copy of the clause(s), justification for its use, and evidence of legal counsel review to the CPO in accordance with (HSAR) 48 CFR 3001.304 for possible inclusion in the HSAR.

(B) Provisions and clauses used on a one-time basis (*i.e.*, non-standard provisions and clauses) may be approved by the contracting officer, unless a higher level is designated by the OE. This authority is subject to:

(1) Evidence of legal counsel review in the contract file;

(2) Inserting these clauses in the appropriate sections of the uniform contract format; and

(3) Ensuring the provisions and clauses do not deviate from the requirements of the FAR and HSAR.

**Subpart 3052.2—Text of Provisions and Clauses****3052.204–70 Security requirements for unclassified information—technology resources.**

As prescribed in (HSAR) 48 CFR 3004.470–4 Contract clauses, and (HSAR) 48 CFR 3037.110–70 (a) and (b), insert a clause substantially the same as follows:

Security Requirements for Unclassified Information Technology Resources (Dec. 2003)

(a) The Contractor shall be responsible for Information Technology (IT) security for all systems connected to a DHS network or operated by the Contractor for DHS, regardless of location. This clause applies to all or any part of the contract that includes information technology resources or services for which the Contractor must have physical or electronic access to sensitive information contained in DHS unclassified systems that directly support the agency's mission. The security requirements include, but are not limited to, how the Department of Homeland Security's sensitive information is to be handled and protected at the Contractor's site, (including any information stored, processed, or transmitted using the Contractor's computer systems), the background investigation and/or clearances required, and the facility security required. This requirement includes information technology, hardware, software, and the management, operation, maintenance, programming, and system administration of computer systems, networks, and telecommunications systems. Examples of tasks that require security provisions include—

(1) Acquisition, transmission or analysis of data owned by DHS with significant replacement cost should the contractor's copy be corrupted; and

(2) Access to DHS networks or computers at a level beyond that granted the general public, (e.g. such as bypassing a firewall).

(b) At the expiration of the contract, the contractor shall return all sensitive DHS information and IT resources provided to the contractor during the contract, and a certification that all DHS information has been purged from any contractor-owned system used to process DHS information. Organizational elements shall conduct reviews to ensure that the security requirements in the contract are implemented and enforced.

(c) The Contractor shall provide, implement, and maintain an IT Security Plan. This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this contract. The plan shall describe those parts of the contract to which this clause applies. The Contractor's IT Security Plan shall be compliant with Federal laws that include, but are not limited to, the Computer Security Act of 1987 (40 U.S.C. 1441 *et seq.*), and the Government Information Security Reform Act of 2000, and the Federal Information Security Management Act of

2002. The plan shall meet IT security requirements in accordance with Federal policies and procedures that include, but are not limited to OMB Circular A–130, Management of Federal Information Resources, Appendix III, and Security of Federal Automated Information Resources;

(d) Within \_\_\_ days after contract award, the contractor shall submit for approval an IT Security Plan. This plan shall be consistent with and further detail the approach contained in the offeror's proposal or quote that resulted in the award of this contract and in compliance with the requirements stated in this clause. The plan, as approved by the Contracting Officer, shall be incorporated into the contract as a compliance document.

(e) Within 6 months after contract award, the contractor shall submit written proof of IT Security accreditation to DHS for approval by the DHS Contracting Officer. Accreditation will be according to the criteria of the Homeland Security Information Technology Security program Publication, DHS MD 4300.Pub., Volume I, Policy Guide, Part A, Sensitive Systems, which is available from the Contracting Officer upon request. This accreditation will include a final security plan, risk assessment, security test and evaluation, and disaster recovery plan/continuity of operations plan. This accreditation, when accepted by the Contracting Officer, shall be incorporated into the contract as a compliance document, and shall include a final security plan, a risk assessment, security test and evaluation, and disaster recovery/continuity of operations plan. The contractor shall comply with the approved accreditation documentation.

(End of clause)

**3052.209–70 Prohibition on contracts with corporate expatriates.**

As prescribed at (HSAR) 48 CFR 3009.104–75, insert the following clause:

Prohibition on Contracts With Corporate Expatriates (Dec. 2003)

(a) Prohibitions.

Section 835 of Public Law 107–296, prohibits the Department of Homeland Security from entering into any contract with a foreign incorporated entity after November 25, 2002, which is treated as an inverted domestic corporation as defined in this clause.

The Secretary shall waive the prohibition with respect to any specific contract if the Secretary determines that the waiver is required in the interest of homeland security, or to prevent the loss of any jobs in the United States or prevent the Government from incurring any additional costs that otherwise would not occur.

(b) Definitions. As used in this clause:

*Expanded Affiliated Group* means an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except that section 1504 of such Code shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

*Foreign Incorporated Entity* means any entity which is, or but for subsection (b) of

section 835 of the Homeland Security Act, Public Law 107–296, would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

*Inverted Domestic Corporation.* A foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) The entity completes after November 25, 2002, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership;

(2) After the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

(i) In the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation; or

(ii) In the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership; and

(3) The expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

*Person, domestic, and foreign* have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701(a) of the Internal Revenue Code of 1986, respectively.

(c) Special rules. The following definitions and special rules shall apply when determining whether a foreign incorporated entity should be treated as an inverted domestic corporation.

(1) *Certain stock disregarded.* For the purpose of treating a foreign incorporated entity as an inverted domestic corporation these shall not be taken into account in determining ownership:

(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity; or

(ii) stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1) of Section 835 of the Homeland Security Act, Public Law 107–296.

(2) *Plan deemed in certain cases.* If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is after the date of enactment of this Act and which is 2 years before the ownership requirements of subsection (b)(2) are met, such actions shall be treated as pursuant to a plan.

(3) *Certain transfers disregarded.* The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(d) *Special rule for related partnerships.* For purposes of applying section 835(b) of Public Law 107–296 to the acquisition of a

domestic partnership, except as provided in regulations, all domestic partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as a partnership.

(e) Treatment of Certain Rights.

(1) Certain rights shall be treated as stocks to the extent necessary to reflect the present value of all equitable interests incident to the transaction, as follows:

- (i) Warrants;
- (ii) Options;
- (iii) Contracts to acquire stock;
- (iv) Convertible debt instruments;
- (v) Others similar interests.

(2) Rights labeled as stocks shall not be treated as stocks whenever it is deemed appropriate to do so to reflect the present value of the transaction or to disregard transactions whose recognition would defeat the purpose of section 835.

(f) *Disclosure.* By signing and submitting its offer, an offeror under this solicitation represents that it not a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of Section 835 of the Homeland Security Act, Public Law 107-296 of November 25, 2002.

(g) If a waiver has been granted, a copy of the approved waiver shall be attached to the bid or proposal.

(End of provision)

**3052.209-71 Reserve Officer Training Corps and military recruiting on campus.**

As prescribed in (HSAR) 48 CFR 3009.470-4, use the following clause:

Reserve Officer Training Corps and Military Recruiting on Campus (Dec 2003)

(a) Definitions. *Institution of higher education*, as used in this clause, means an institution that meets the requirements of 20 U.S.C. 1001 and includes all subelements of such an institution.

(b) Limitation on contract award. Except as provided in paragraph (c) of this clause, an institution of higher education is ineligible for contract award if the Secretary of Defense determines that the institution has a policy or practice (regardless of when implemented) that prohibits or in effect prevents—

(1) The Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (ROTC) (in accordance with 10 U.S.C. 654 and other applicable Federal laws) at that institution;

(2) A student at that institution from enrolling in a unit of the Senior ROTC at another institution of higher education;

(3) The Secretary of a military department or the Secretary of Homeland Security from gaining entry to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting; or

(4) Military recruiters from accessing, for purposes of military recruiting, the following information pertaining to students (who are 17 years of age or older) enrolled at that institution:

- (i) Name.
- (ii) Address.
- (iii) Telephone number.

(iv) Date and place of birth.

(v) Educational level.

(vi) Academic major.

(vii) Degrees received.

(viii) Most recent educational institution enrollment.

(c) Exception. The limitation in paragraph (b) of this clause does not apply to an institution of higher education if the Secretary of Defense determines that—

(1) The institution has ceased the policy or practice described in paragraph (b) of this clause; or

(2) The institution has a long-standing policy of pacifism based on historical religious affiliation.

(d) Agreement. The Contractor represents that it does not now have, and agrees that during performance of this contract it will not adopt, any policy or practice described in paragraph (b) of this clause, unless the Secretary of Defense has granted an exception in accordance with paragraph (c)(2) of this clause.

(e) Notwithstanding any other clause of this contract, if the Secretary of Defense determines that the Contractor misrepresented its policies and practices at the time of contract award or has violated the agreement in paragraph (d) of this clause—

(1) The Contractor will be ineligible for further payments under this and any other contracts with the Department of Homeland Security; and

(2) The Government will terminate this contract for default for the Contractor's material failure to comply with the terms and conditions of award.

(End of clause)

**3052.209-72 Disclosure of conflicts of interest.**

As prescribed in (HSAR) 48 CFR 3009.507, insert the following provision: Disclosure of Conflicts of Interest (Dec 2003)

The Department of Homeland Security (DHS) will award contracts only to those offerors whose objectivity is not impaired by conflicting interests. Based on this policy—

(a) The offeror shall provide a statement in its proposal which describes in a concise manner all past, present or planned organizational, financial, contractual or other interest(s) with an organization whose interests may be substantially affected by Departmental activities, and which is related to the work under this solicitation. The interest(s) described shall include those of the proposer, its affiliates, proposed consultants, proposed subcontractors for more than 20% of the work and key personnel of the offeror and any subcontractor accounting for more than 20% of the contract. Past interest shall be limited to within one year of the date of the offeror's technical proposal. Key personnel, for purposes of this clause, shall include any person owning more than 20% interest in the company, and the company's corporate officers, its senior managers and any employees responsible for making a decision or taking an action on this contract where the decision or action can have an economic or other impact on the interests of a regulated or affected organization.

(b) The offeror shall describe in detail why it believes, in light of the interest(s) identified in (a) above, that performance of the proposed contract can be accomplished in an impartial and objective manner.

(c) In the absence of any relevant interest identified in (a) above, the offeror shall submit in its proposal a statement certifying that to its best knowledge and belief no affiliation exists relevant to possible conflicts of interest. The offeror must obtain the same information from potential subcontractors prior to award of a subcontract.

(d) The Contracting Officer will review the statement submitted and may require additional relevant information from the offeror. All such information, and any other relevant information known to DHS, will be used to determine whether an award to the offeror may create a conflict of interest. If any such conflict of interest is found to exist, the Contracting Officer may (1) disqualify the offeror, or (2) determine that it is otherwise in the best interest of the United States to contract with the offeror and include appropriate provisions to mitigate or avoid such conflict in the contract awarded.

(e) The refusal to provide the disclosure or representation, or any additional information required, may result in disqualification of the offeror for award. If nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated. If, after award, the Contractor discovers a conflict of interest with respect to the contract awarded as a result of this solicitation, which could not reasonably have been known prior to award, an immediate and full disclosure shall be made in writing to the Contracting Officer. The disclosure shall include a full description of the conflict, a description of the action the contractor has taken, or proposes to take, to avoid or mitigate such conflict. The Contracting Officer may, however, terminate the contract for convenience if he or she deems that termination is in the best interest of the Government.

(End of clause)

**3052.211-70 Index for specifications.**

As prescribed in (HSAR) 48 CFR 3011.204-70 insert the following clause: Index for Specifications (Dec 2003)

If an index or table of contents is furnished in connection with specifications, it is understood that such index or table of contents is for convenience only. Its accuracy and completeness is not guaranteed, and it is not to be considered as part of the specifications. In case of discrepancy between the index or table of contents and the specifications, the specifications shall govern.

(End of clause)

**3052.211-90 Bar coding requirement (USCG).**

As prescribed in USCG guidance at (HSAR) 48 CFR 3011.204-90(a) and 3013.302-590, insert the following clause:

Bar Coding Requirements (Dec 2003)

Item markings shall include bar coding in accordance with MIL-STD-1189 as clarified below:

(a) The stock number shall be bar coded with no prefixes, dashes, spaces, or suffixes encoded. The contract number, the delivery order, or call order number, when used, shall be bar coded with no spaces or dashes encoded.

(b) Prefixes and suffixes to the stock number may be included in the OCR-A in-the-clear markings, but not in the bar code.

(c) Preferred Bar Code Density (characters per inch as defined in MIL-STD-1189) is "standard," but densities from "standard" to "low" are acceptable.

(d) OCR-A characters do not have to be machine-readable.

(e) Bar coding shall be machine-readable.

(f) Unless otherwise specified herein, minimum bar code height shall be 0.25 inch (6.4 mm) or 15 percent of the bar code length, whichever is greater.

(g) The preferred position of the OCR-A characters is below the bar codes, but the OCR-A characters may be above the bar codes.

(h) On outer containers contractors shall either:

(1) Encode the stock numbers and contract number in one line of bar code with the stock number appearing first; or

(2) Encode the item stock number and contract number on two labels, with the top label containing the stock number and the lower label containing the contract number.

(i) On unit and intermediate containers, the item stock number in bar code with OCR-A below may be on the same label as the other data (identification markings) required by MIL-STD-129H. However, the bar code stock number shall appear on the top line with OCR-A characters on the second line; the OCR-A characters may include the stock number prefix and suffix, or alternatively, the complete stock number including any prefix and suffix, shall be repeated as part of the identification markings.

(j) Exclusions from bar code markings are:

(1) Multi-packs/consolidation containers (containers with two or more different stock numbers within).

(2) Reusable shipping containers used for multiple/ different stock number applications.

(3) Items consigned to a prime contractor's plant for installation in production.

(End of clause)

#### **3052.213-90 Evaluation factor for Coast Guard performance of bar coding requirement (USCG).**

As prescribed in USCG guidance at (HSAR) 48 CFR 3013.106-190, insert the following provision:

Evaluation Factor for Coast Guard

Performance of Bar Coding Requirement (Dec 2003)

If a small business cannot provide the bar coding requirement, as indicated elsewhere in the schedule, the contracting officer will apply the following formula to the quoted amounts:

(a) Unit price quoted by small business \$ \_\_\_\_\_

(b) Add unit cost to the USCG to provide bar coding \$ \_\_\_\_\_

(c) Adjusted unit price (add lines a. and b.) \$ \_\_\_\_\_

The line (c) amount will become the amount the contracting officer considered when determining the lowest quoted amount.

(End of provision)

#### **3052.215-70 Key personnel or facilities.**

As prescribed in (HSAR) 48 CFR 3015.204-3, insert the following clause:

Key Personnel or Facilities. (Dec 2003)

(a) The personnel or facilities specified below are considered essential to the work being performed under this contract and may, with the consent of the contracting parties, be changed from time to time during the course of the contract by adding or deleting personnel or facilities, as appropriate.

(b) Before removing or replacing any of the specified individuals or facilities, the Contractor shall notify the Contracting Officer, in writing, before the change becomes effective. The Contractor shall submit sufficient information to support the proposed action and to enable the Contracting Officer to evaluate the potential impact of the change on this contract. The Contractor shall not remove or replace personnel or facilities until the Contracting Officer approves the change.

The Key Personnel or Facilities under this Contract:

(specify key personnel or facilities)

(End of clause)

#### **3052.216-70 Evaluation of offers subject to an economic price adjustment clause.**

As prescribed in (HSAR) 48 CFR 3016.203-470, insert a provision substantially the same as the following:

Evaluation of Offers Subject to an Economic Price Adjustment Clause (Dec 2003)

Offers shall be evaluated without adding an amount for an economic price adjustment. Offers will be rejected which: (1) Increase the stipulated ceiling; (2) limit the downward adjustment; or (3) delete the economic price adjustment clause. If the offer stipulates a ceiling lower than that included in the solicitation, the lower ceiling will be incorporated into any resulting contract.

(End of provision)

#### **3052.216-71 Determination of award fee.**

As prescribed in (HSAR) 48 CFR 3016.406(e)(1)(i), insert a clause substantially the same as the following:

Determination of Award Fee (Dec 2003)

(a) The Government shall evaluate contractor performance at the end of each specified evaluation period(s) to determine the amount of award. The contractor agrees that the amount of award and the award fee methodology are unilateral decisions to be made at the sole discretion of the Government.

(b) Contractor performance shall be evaluated according to a Performance Evaluation Plan. The contractor shall be

periodically informed of the quality of its performance and areas in which improvements are expected.

(c) The contractor shall be promptly advised, in writing, of the determination and reasons why the award fee was or was not earned. The contractor may submit a performance self-evaluation for each evaluation period. The amount of award is at the sole discretion of the Government but any self-evaluation received within \_\_\_\_\_ (insert number) days after the end of the current evaluation period will be given such consideration, as may be deemed appropriate by the Government.

(d) The Government may specify that a fee not earned during a given evaluation period may be accumulated and be available for allocation to one or more subsequent periods. In that event, the distribution of award fee shall be adjusted to reflect such allocations. (End of clause)

#### **3052.216-72 Performance evaluation plan.**

As prescribed in (HSAR) 48 CFR 3016.406(e)(i)(ii), insert a clause substantially the same as the following:

Performance Evaluation Plan (Dec 2003)

(a) A Performance Evaluation Plan shall be unilaterally established by the Government based on the criteria stated in the contract and used for the determination of award fee. This plan shall include the criteria used to evaluate each area and the percentage of award fee (if any) available for each area. A copy of the plan shall be provided to the contractor \_\_\_\_\_ (insert number) calendar days prior to the start of the first evaluation period.

(b) The criteria contained within the Performance Evaluation Plan may relate to: (1) Technical (including schedule) requirements if appropriate; (2) Management; and (3) Cost.

(c) The Performance Evaluation Plan may, consistent with the contract, be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the contractor \_\_\_\_\_ (insert number) calendar days prior to the start of the evaluation period to which the change will apply.

(End of clause)

#### **3052.216-73 Distribution of award fee.**

As prescribed in (HSAR) 48 CFR 3016.406(e)(1)(iii), insert a clause substantially the same as the following:

Distribution of Award Fee (Dec 2003)

(a) The total amount of award fee available under this contract is assigned according to the following evaluation periods and amounts:

Evaluation Period:

Available Award Fee:

(insert appropriate information)

(b) Payment of the base fee and award fee shall be made, provided that after payment of 85 percent of the base fee and potential award fee, the Government may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that

the Government considers necessary to protect its interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee or \$100,000, whichever is less.

(c) In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a pro rata distribution associated with evaluation period activities or events as determined by the Government.

(d) The Government will promptly make payment of any award fee upon the submission by the contractor to the contracting officer's authorized representative, of a public voucher or invoice in the amount of the total fee earned for the period evaluated. Payment may be made without using a contract modification.

(End of clause)

#### **3052.216-74 Settlement of letter contract.**

As prescribed in (HSAR) 48 CFR 3016.603-4, insert a clause substantially the same as the following:

Settlement of Letter Contract (Dec 2003)

(a) This contract constitutes the definitive contract contemplated by letter contract \_\_\_\_\_ (insert number) issued on \_\_\_\_\_ (insert effective date). It supersedes the letter contract and its modification numbered \_\_\_\_\_ (insert number(s)). To the extent there are inconsistencies between the definitive contract and the letter contract, the former governs.

(b) The cost(s) and fee(s), or price(s), established in this definitive contract represents full and complete settlement of letter contract \_\_\_\_\_ (insert number) and modification numbered \_\_\_\_\_ (insert number(s)). Payment of the fee agreed upon or profit withheld pending definitization of the letter contract, may start immediately at the rate and times stated within this contract.

(End of clause)

#### **3052.217-90 Delivery and Shifting of Vessel (USCG).**

As prescribed in the USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Delivery and Shifting of Vessel (Dec 2003)

The Government shall deliver the vessel to the Contractor at his place of business. Upon completion of the work, the Government shall accept delivery of the vessel at the Contractor's place of business. The Contractor shall provide, at no additional charge, upon 24 hours' advance notice, a tug or tugs and docking pilot, acceptable to the Contracting Officer, to assist in handling the vessel between (to and from) the Contractor's plant and the nearest point in a waterway regularly navigated by vessels of equal or greater draft and length. While the vessel is in the hands of the Contractor, any necessary towage, cartage, or other transportation between ship and shop or elsewhere, which may be incident to the work herein specified, shall be furnished by the Contractor without additional charge to the Government.

(End of clause)

#### **3052.217-91 Performance (USCG).**

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Performance (Dec 2003)

(a) Upon the award of the contract, the Contractor shall promptly start the work specified and shall diligently prosecute the work to completion. The Contractor shall not start work until the contract has been awarded except in the case of emergency work ordered by the Contracting Officer in writing.

(b) The Government shall deliver the vessel described in the contract at the time and location specified in the contract. Upon completion of the work, the Government shall accept delivery of the vessel at the time and location specified in the contract.

(c) The Contractor shall without charge,—

(1) Make available to personnel of the vessel while in dry dock or on a marine railway, sanitary lavatory and similar facilities at the plant acceptable to the Contracting Officer;

(2) Supply and maintain suitable brows and gangways from the pier, dry dock, or marine railway to the vessel;

(3) Treat salvage, scrap or other ship's material of the Government resulting from performance of the work as items of Government-furnished property, in accordance with the Government Property (Fixed Price Contracts) clause;

(4) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the Contractor of any of the vessel's machinery, equipment or fittings, including, but not limited to, winches, pumps, rigging, or pipe lines; and

(5) Furnish suitable offices, office equipment and telephones at or near the site of the work for the Government's use.

(d) The contract will state whether dock and sea trials are required to determine whether or not the Contractor has satisfactorily performed the work.

(1) If dock and sea trials are required, the vessel shall be under the control of the vessel's commander and crew.

(2) The Contractor shall not conduct dock and sea trials not specified in the contract without advance approval of the Contracting Officer. Dock and sea trials not specified in the contract shall be at the Contractor's expense and risk.

(3) The Contractor shall provide and install all fittings and appliances necessary for dock and sea trials. The Contractor shall be responsible for care, installation, and removal of instruments and apparatus furnished by the Government for use in the trials.

(End of clause)

#### **3052.217-92 Inspection and manner of doing work (USCG).**

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Inspection and Manner of Doing Work (Dec 2003)

(a) The Contractor shall perform work in accordance with the contract, any drawings

and specifications made a part of the job order, and any change or modification issued under the Changes clause.

(b)(1) Except as provided in paragraph (b)(2) of this clause, and unless otherwise specifically provided in the contract, all operational practices of the Contractor and all workmanship, material, equipment, and articles used in the performance of work under this contract shall be in accordance with the best commercial marine practices and the rules and requirements of all appropriate regulatory bodies including, but not limited to the American Bureau of Shipping, the U.S. Coast Guard, and the Institute of Electrical and Electronic Engineers, in effect at the time of Contractor's submission of offer, and shall be intended and approved for marine use.

(2) When Navy specifications are specified in the contract, the Contractor shall follow Navy standards of material and workmanship.

(c) The Government may inspect and test all material and workmanship at any time during the Contractor's performance of the work.

(1) If, prior to delivery, the Government finds any material or workmanship is defective or not in accordance with the contract, in addition to its rights under the Guarantee clause, the Government may reject the defective or nonconforming material or workmanship and require the Contractor to correct or replace it at the Contractor's expense.

(2) If the Contractor fails to proceed promptly with the replacement or correction of the material or workmanship, the Government may replace or correct the defective or nonconforming material or workmanship and charge the Contractor the excess costs incurred.

(3) As specified in the contract, the Contractor shall provide and maintain an inspection system acceptable to the Government.

(4) The Contractor shall maintain complete records of all inspection work and shall make them available to the Government during performance of the contract and for 90 days after the completion of all work required.

(d) The Contractor shall not permit any welder to work on a vessel unless the welder is, at the time of the work, qualified to the standards established by the U.S. Coast Guard, American Bureau of Shipping, or Department of the Navy for the type of welding being performed. Qualifications of a welder shall be as specified in the contract.

(e) The Contractor shall—

(1) Exercise reasonable care to protect the vessel from fire;

(2) Maintain a reasonable system of inspection over activities taking place in the vicinity of the vessel's magazines, fuel oil tanks, or storerooms containing flammable materials.

(3) Maintain a reasonable number of hose lines ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in dry dock or on a marine railway;

(4) Unless otherwise provided in the contract, provide sufficient security patrols to reasonably maintain a fire watch for

protection of the vessel when it is in the Contractor's custody;

(5) To the extent necessary, clean, wash, and steam out or otherwise make safe, all tanks under alteration or repair.

(6) Furnish the Contracting Officer a "gas-free" or "safe-for-hotwork" certificate before any hot work is done on a tank;

(7) Treat the contents of any tank as Government property in accordance with the Government Property (Fixed-Price Contracts) clause; and

(8) Dispose of the contents of any tank only at the direction, or with the concurrence, of the Contracting Officer.

(9) Be responsible for the proper closing of all openings to the vessel's underwater structure upon which work has been performed. The contractor additionally must advise the COTR of the status of all valves closures and openings for which the contractor's workers were responsible.

(f) Except as otherwise provided in the contract, when the vessel is in the custody of the Contractor or in dry dock or on a marine railway and the temperature is expected to go as low as 35 Fahrenheit, the Contractor shall take all necessary steps to—

(1) Keep all hose pipe lines, fixtures, traps, tanks, and other receptacles on the vessel from freezing; and

(2) Protect the stern tube and propeller hubs from frost damage.

(g) The Contractor shall, whenever practicable—

(1) Perform the required work in a manner that will not interfere with the berthing and messing of Government personnel attached to the vessel; and

(2) Provide Government personnel attached to the vessel access to the vessel at all times.

(h) Government personnel attached to the vessel shall not interfere with the Contractor's work or workers.

(i)(1) The Government does not guarantee the correctness of the dimensions, sizes, and shapes set forth in any contract, sketches, drawings, plans, or specifications prepared or furnished by the Government, unless the contract requires that the Contractor perform the work prior to any opportunity to inspect.

(2) Except as stated in paragraph (i)(1) of this clause, and other than those parts furnished by the Government, and the Contractor shall be responsible for the correctness of the dimensions, sizes, and shapes of parts furnished under this agreement.

(j) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by its employees or the work. At the completion of the work, unless the contract specifies otherwise, the Contractor shall remove all rubbish from the site of the work and leave the immediate vicinity of the work area "broom clean."

(End of clause)

### 3052.217-93 Subcontracts (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Subcontracts (Dec 2003)

(a) Nothing contained in the contract shall be construed as creating any contractual

relationship between any subcontractor and the Government. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by any trade.

(b) The Contractor shall be responsible to the Government for acts and omissions of its own employees, and of subcontractors and their employees. The Contractor shall also be responsible for the coordination of the work of the trades, subcontractors, and material men.

(c) The Contractor shall, without additional expense to the Government, employ specialty subcontractors where required by the specifications.

(d) The Government or its representatives will not undertake to settle any differences between the Contractor and its subcontractors, or between subcontractors. (End of clause)

### 3052.217-94 Lay days (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Lay Days (Dec 2003)

(a) Lay day time will be paid by the Government at the Contractor's stipulated bid price for this item of the contract when the vessel remains on the dry dock or marine railway as a result of any change that involves work in addition to that required under the basic contract.

(b) No lay day time shall be paid until all items of the basic contract for which a price was established by the Contractor and for which docking of the vessel was required have been satisfactorily completed and accepted.

(c) Days of hauling out and floating, whatever the hour, shall not be paid as lay day time, and days when no work is performed by the Contractor shall not be paid as lay day time.

(d) Payment of lay day time shall constitute complete compensation for all costs, direct and indirect, to reimburse the Contractor for use of dry dock or marine railway.

(End of clause)

### 3052.217-95 Liability and insurance (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Liability and Insurance (Dec 2003)

(a) The Contractor shall exercise its best efforts to prevent accidents, injury, or damage to all employees, persons, and property, in and about the work, and to the vessel or part of the vessel upon which work is done.

(b) Loss or damage to the vessel, materials, or equipment. (1) Unless otherwise directed or approved in writing by the Contracting Officer, the Contractor shall not carry insurance against any form of loss or damage to the vessel(s) or to the materials or equipment to which the Government has title or which have been furnished by the Government for installation by the Contractor. The Government assumes the risks of loss of and damage to that property.

(2) The Government does not assume any risk with respect to loss or damage compensated for by insurance or otherwise or resulting from risks with respect to which the Contractor has failed to maintain insurance, if available, as required or approved by the Contracting Officer.

(3) The Government does not assume risk of and will not pay for any costs of the following:

(i) Inspection, repair, replacement, or renewal of any defects in the vessel(s) or material and equipment due to—

(A) Defective workmanship performed by the Contractor or its subcontractors;

(B) Defective materials or equipment furnished by the Contractor or its subcontractors; or

(C) Workmanship, materials, or equipment which do not conform to the requirements of the contract, whether or not the defect is latent or whether or not the nonconformance is the result of negligence.

(ii) Loss, damage, liability, or expense caused by, resulting from, or incurred as a consequence of any delay or disruption, willful misconduct or lack of good faith by the Contractor or any of its representatives that have supervision or direction of—

(A) All or substantially all of the Contractor's business; or

(B) All or substantially all of the Contractor's operation at any one plant.

(4) As to any risk that is assumed by the Government, the Government shall be subrogated to any claim, demand or cause of action against third parties that exists in favor of the Contractor. If required by the Contracting Officer, the Contractor shall execute a formal assignment or transfer of the claim, demand, or cause of action.

(5) No party other than the Contractor shall have any right to proceed directly against the Government or join the Government as a codefendant in any action.

(6) Notwithstanding the foregoing, the Contractor shall bear the first \$5,000 of loss or damage from each occurrence or incident, the risk of which the Government would have assumed under the provision of this paragraph (b).

(c) *Indemnification.* The Contractor indemnifies the Government and the vessel and its owners against all claims, demands, or causes of action to which the Government, the vessel or its owner(s) might be subject as a result of damage or injury (including death) to the property or person of anyone other than the Government or its employees, or the vessel or its owner, arising in whole or in part from the negligence or other wrongful act of the Contractor, or its agents or employees, or any subcontractor, or its agents or employees.

(1) The Contractor's obligation to indemnify under this paragraph shall not exceed the sum of \$300,000 as a consequence of any single occurrence with respect to any one vessel.

(2) The indemnity includes, without limitation, suits, actions, claims, costs, or demands of any kind, resulting from death, personal injury, or property damage occurring during the period of performance of work on the vessel or within 90 days after redelivery of the vessel. For any claim, etc.,

made after 90 days, the rights of the parties shall be as determined by other provisions of this contract and by law. The indemnity does apply to death occurring after 90 days where the injury was received during the period covered by the indemnity.

(d) *Insurance.* (1) The Contractor shall, at its own expense, obtain and maintain the following insurance—

(i) Casualty, accident, and liability insurance, as approved by the Contracting Officer, insuring the performance of its obligations under paragraph (c) of this clause.

(ii) Workers Compensation Insurance (or its equivalent) covering the employees engaged on the work.

(2) The Contractor shall ensure that all subcontractors engaged on the work obtain and maintain the insurance required in paragraph (d)(1) of this clause.

(3) Upon request of the Contracting Officer, the Contractor shall provide evidence of the insurance required by paragraph (d) of this clause.

(e) The Contractor shall not make any allowance in the contract price for the inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) The Contractor shall give the Contracting Officer written notice as soon as practicable after the occurrence of a loss or damage for which the Government has assumed the risk.

(1) The notice shall contain full details of the loss or damage.

(2) If a claim or suit is later filed against the Contractor as a result of the event, the Contractor shall immediately deliver to the Government every demand, notice, summons, or other process received by the Contractor or its employees or representatives.

(3) The Contractor shall cooperate with the Government and, upon request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits. The Government shall reimburse the Contractor for expenses incurred in this effort, other than the cost of maintaining the Contractor's usual organization.

(4) The Contractor shall not, except at its own expense, voluntarily make any payments, assume any obligation, or incur any expense other than what would be imperative for the protection of the vessel(s) at the time of the event.

(g) In the event of loss of or damage to any vessel(s), material, or equipment which may result in a claim against the Government under the insurance provisions of this contract, the Contractor shall promptly notify the Contracting Officer of the loss or damage. The Contracting Officer may, without prejudice to any right of the Government, either—

(1) Order the Contractor to proceed with replacement or repair, in which event the Contractor shall effect the replacement or repair;

(i) The Contractor shall submit to the Contracting Officer a request for reimbursement of the cost of the replacement

or repair together with whatever supporting documentation the Contracting Officer may reasonably require, and shall identify the request as being submitted under the Insurance clause of this contract.

(ii) If the Government determines that the risk of the loss or damage is within the scope of the risks assumed by the Government under this clause, the Government will reimburse the Contractor for the reasonable allowable cost of the replacement or repair, plus a reasonable profit (if the work or replacement or repair was performed by the Contractor) less the deductible amount specified in paragraph (b) of this clause.

(iii) Payments by the Government to the Contractor under this clause are outside the scope of and shall not affect the pricing structure of the contract, and are additional to the compensation otherwise payable to the Contractor under this contract; or

(2) Decide that the loss or damage shall not be replaced or repaired and in that event, the Contracting Officer shall—

(i) Modify the contract appropriately, consistent with the reduced requirements reflected by the unreplaced or unrepaired loss or damage; or

(ii) Terminate the repair of any part or all of the vessel(s) under the Termination for Convenience of the Government clause of this contract.

(End of clause)

#### **3052.217-96 Title (USCG).**

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Title (Dec 2003)

(a) Unless otherwise provided, title to all materials and equipment to be incorporated in a vessel in the performance of this contract shall vest in the Government upon delivery at the location specified for the performance of the work.

(b) Upon completion of the contract, or with the approval of the Contracting Officer during performance of the contract, all Contractor-furnished materials and equipment not incorporated in, or placed on, any vessel, shall become the property of the Contractor, unless the Government has reimbursed the Contractor for the cost of the materials and equipments.

(c) The vessel, its equipment, movable stores, cargo, or other ship's materials shall not be considered Government-furnished property.

(End of clause)

#### **3052.217-97 Discharge of liens (USCG).**

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Discharge of Liens (Dec 2003)

(a) The Contractor shall immediately discharge or cause to be discharged, any lien or right *in rem* of any kind, other than in favor of the Government, that exists or arises in connection with work done or materials furnished under this contract.

(b) If any such lien or right *in rem* is not immediately discharged, the Government, at the expense of the Contractor, may discharge, or cause to be discharged, the lien or right.

(End of clause)

#### **3052.217-98 Delays (USCG).**

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Delays (Dec. 2003)

When during the performance of this contract the Contractor is required to delay work on a vessel temporarily, due to orders or actions of the Government respecting stoppage of work to permit shifting the vessel, stoppage of hot work to permit bunkering, stoppage of work due to embarking or debarking passengers and loading or discharging cargo, and the Contractor is not given sufficient advance notice or is otherwise unable to avoid incurring additional costs on account thereof, an equitable adjustment shall be made in the price of the contract pursuant to the "Changes" clause.

(End of clause)

#### **3052.217-99 Department of Labor safety and health regulations for ship repairing (USCG).**

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Department of Labor Safety and Health Regulations for Ship Repair (Dec. 2003)

Nothing contained in this contract shall relieve the Contractor of any obligations it may have to comply with—

(a) The Occupational Safety and Health Act of 1970 (29 U.S.C. 651, *et seq.*);

(b) The Safety and Health Regulations for Ship Repairing (29 CFR part 1915); or

(c) Any other applicable Federal, State, and local laws, codes, ordinances, and regulations.

(End of clause)

#### **3052.217-100 Guarantee (USCG).**

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(c), insert the following clause:

Guarantee (Dec. 2003)

(a) In the event any work performed or materials furnished by the contractor prove defective or deficient within 60 days from the date of redelivery of the vessel(s), the Contractor, as directed by the Contracting Officer and at its own expense, shall correct and repair the deficiency to the satisfaction of the Contracting Officer.

(b) If the Contractor or any subcontractor has a guarantee for work performed or materials furnished that exceeds the 60 day period, the Government shall be entitled to rely upon the longer guarantee until its expiration.

(c) With respect to any individual work item identified as incomplete at the time of redelivery of the vessel(s), the guarantee period shall run from the date the item is completed.

(d) If practicable, the Government shall give the Contractor an opportunity to correct the deficiency.

(1) If the Contracting Officer determines it is not practicable or is otherwise not

advisable to return the vessel(s) to the Contractor, or the Contractor fails to proceed with the repairs promptly, the Contracting Officer may direct that the repairs be performed elsewhere, at the Contractor's expense.

(2) If correction and repairs are performed by other than the Contractor, the Contracting Officer may discharge the Contractor's liability by making an equitable deduction in the price of the contract.

(e) The Contractor's liability shall extend for an additional 90-day guarantee period on those defects or deficiencies that the Contractor corrected.

(f) At the option of the Contracting officer, defects and deficiencies may be left uncorrected. In that event, the Contractor and Contracting Officer shall negotiate an equitable reduction in the contract price. Failure to agree upon an equitable reduction shall constitute a dispute under the Disputes clause of this contract.

(End of clause)

**3052.219-70 Small Business subcontracting program reporting.**

As prescribed in (HSAR) 48 CFR 3019.708-70(a), insert the following clause:

The Small Business Subcontracting Program Reporting (Dec. 2003)

(a) The Contractor shall submit the Summary Subcontract Report (Standard Form 295 (SF-295)) to the Department of Homeland Security, Office of Small and Disadvantaged Business Utilization, Washington, DC, 20528.

(b) The Contractor shall include this clause in all subcontracts that include the clause at (FAR) 48 CFR 52.219-9.

(End of Clause)

**3052.219-71 DHS mentor-protégé program.**

As prescribed in (HSAR) 48 CFR 3019.708-70(b), insert the following clause:

DHS Mentor-Protégé Program (Dec. 2003)

(a) Large businesses are encouraged to participate in the DHS Mentor-Protégé program for the purpose of providing developmental assistance to eligible small business protégé entities to enhance their capabilities and increase their participation in DHS contracts.

(b) The program consists of:

(1) Mentor firms, which are large prime contractors capable of providing developmental assistance;

(2) Protégé firms, which are small businesses, veteran-owned small businesses, service-disabled veteran-owned small businesses, HUBZone small businesses, small disadvantaged businesses, and women-owned small business concerns; and

(3) Mentor-Protégé agreements, approved by the DHS OSDBU.

(c) Mentor participation in the program means providing business developmental assistance to aid Protégés in developing the requisite expertise to effectively compete for and successfully perform DHS contracts and subcontracts.

(d) Large business prime contractors, serving as mentors in the DHS mentor-protégé program, are eligible for a post-award incentive for subcontracting plan credit by recognizing costs incurred by a mentor firm in providing assistance to a protégé firm and using this credit for purposes of determining whether the mentor firm attains a subcontracting plan participation goal applicable to the mentor firm under a DHS contract. The amount of credit given to a mentor firm for these protégé developmental assistance costs shall be calculated on a dollar for dollar basis and reported via the SF-295; for example, the mentor/large business prime contractor reports a \$10,000 subcontract to the protégé/small business subcontractor and \$5,000 of developmental assistance to the protégé/small business subcontractor as \$15,000 (\$10,000 traditional subcontract plus \$5,000 in developmental assistance for a total of \$15,000).

(e) Contractors interested in participating in the program are encouraged to contact the DHS OSDBU for more information.

(End of clause)

**3052.219-72 Evaluation of prime contractor participation in the DHS mentor-protégé program.**

As prescribed in (HSAR) 48 CFR 3019.708-70(c), insert the following clause:

Evaluation of Prime Contractor Participation in the DHS Mentor-Protégé Program (Dec 2003)

This solicitation contains a source selection factor or subfactor regarding participation in the DHS Mentor-Protégé Program. In order to receive credit under the source selection factor or subfactor, the offeror shall provide a signed letter of mentor-protégé agreement approval from the DHS OSDBU.

(End of clause)

**3052.222-70 Strikes or picketing affecting timely completion of the contract work.**

As prescribed in (HSAR) 48 CFR 3022.101-71(a), insert the following clause:

Strikes or Picketing Affecting Timely Completion of the Contract Work (Dec 2003)

Notwithstanding any other provision hereof, the Contractor is responsible for delays arising out of labor disputes, including but not limited to strikes, if such strikes are reasonably avoidable. A delay caused by a strike or by picketing which constitutes an unfair labor practice is not excusable unless the Contractor takes all reasonable and appropriate action to end such a strike or picketing, such as the filing of a charge with the National Labor Relations Board, the use of other available Government procedures, and the use of private boards or organizations for the settlement of disputes.

(End of clause)

**3052.222-71 Strikes or picketing affecting access to a DHS facility.**

As prescribed in (HSAR) 48 CFR 3022.101-71(b), insert the following clause:

Strikes or Picketing Affecting Access to a DHS Facility (Dec 2003)

If the Contracting Officer notifies the Contractor in writing that a strike or picketing: (a) is directed at the Contractor or subcontractor or any employee of either; and (b) impedes or threatens to impede access by any person to a DHS facility where the site of the work is located, the Contractor shall take all appropriate action to end such strike or picketing, including, if necessary, the filing of a charge of unfair labor practice with the National Labor Relations Board or the use of other available judicial or administrative remedies.

(End of clause)

**3052.222-90 Local hire (USCG).**

As prescribed in USCG guidance at (HSAR) 48 CFR 3022.9001, insert the following clause:

Local Hire (Dec 2003)

(a) When performing a contract in a State with an unemployment rate in excess of the national average determined by the Secretary of Labor, the Contractor shall employ individuals who are local residents and who, in the case of any craft or trade, possess or would be able to acquire promptly, the necessary skills.

(b) Local resident defined. As used in this section, "local resident" means a resident of, or an individual who commutes daily to a State described in subsection (a).

(c) The Secretary of Homeland Security may waive the requirements of this subsection in the interest of national security or economic efficiency.

(End of clause)

**3052.223-70 Removal or disposal of hazardous substances—applicable licenses and permits.**

As prescribed in (HSAR) 48 CFR 3023.303, insert the following clause:

Removal or Disposal of Hazardous Substances—Applicable Licenses and Permits (Dec 2003)

The Contractor certifies that it has \_\_\_ does not have \_\_\_ all licenses and permits required by Federal, State, and local laws to perform hazardous substance(s) removal or disposal services. If the Contractor does not currently possess these documents, it shall obtain all requisite licenses and permits within \_\_\_ days after date of award. The Contractor shall provide evidence of said documents to the Contracting Officer or designated Government representative prior to commencement of work under the contract.

(End of clause)

**3052.223-90 Accident and fire reporting (USCG).**

As prescribed in USCG guidance at (HSAR) 48 CFR 3023.9000(a), insert the following clause:

#### Accident and Fire Reporting (Dec 2003)

(a) The Contractor shall report to the Contracting Officer any accident or fire occurring at the site of the work that causes:

(1) A fatality or the loss of at least one lost workday on the part of any employee of the Contractor or subcontractor at any tier;

(2) Damage of \$1,000 or more to Federal real or personal property; either real or personal;

(3) Damage of \$1,000 or more to Contractor or subcontractor owned or leased motor vehicles or mobile equipment; or

(4) Damage for which a contract time extension may be requested.

(b) Accident and fire reports required by paragraph (a) above shall be accomplished by the following means:

(1) Accidents or fires resulting in a death, hospitalization of five or more persons, or destruction of Federal real or personal property, the total value of which is estimated at \$100,000 or more, shall be reported immediately by telephone to the Contracting Officer or his/her authorized representative and shall be confirmed by telegram, facsimile or e-mail transmission within 24 hours to the Contracting Officer. Such telegram or facsimile transmission shall state all known facts as to extent of injury and damage and as to cause of the accident or fire.

(2) Other accident and fire reports required by paragraph (a) above may be reported by the Contractor using a state, private insurance carrier, or Contractor accident report form which provides for the statement of:

(i) The extent of injury; and

(ii) The damage and cause of the accident or fire.

Such report shall be mailed or otherwise delivered to the Contracting Officer within 48 hours of the occurrence of the accident or fire.

(c) The Contractor shall assure compliance by subcontractors at all tiers with the requirements of this clause.

(End of clause)

#### 3052.228-70 Insurance.

As prescribed in (HSAR) 48 CFR 3028.310-70 and 3028.311-1, insert a clause substantially the same as follows. The contracting officer may specify additional kinds (e.g., aircraft public and passenger liability, vessel liability) or increased amounts of insurance.

#### Insurance (Dec 2003)

In accordance with the clause entitled "Insurance—Work on a Government Installation" [or *Insurance—Liability to Third Persons*] in Section I, insurance of the following kinds and minimum amounts shall be provided and maintained during the period of performance of this contract:

(a) Worker's compensation and employer's liability. The contractor shall, as a minimum, meet the requirements specified at (FAR) 48 CFR 28.307-2(a).

(b) General liability. The contractor shall, as a minimum, meet the requirements specified at (FAR) 48 CFR 28.307-2(b).

(c) Automobile liability. The contractor shall, as a minimum, meet the requirements specified at (FAR) 48 CFR 28.307-2(c).

(End of clause)

#### 3052.228-90 Notification of Miller Act payment bond protection (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3028.106-490, insert the following clause:

#### Notification of Miller Act Payment Bond Protection (Dec 2003)

This notice clause shall be inserted by first tier subcontractors in all their subcontracts and shall contain information pertaining to the surety that provided the payment bond under the prime contract.

(a) The prime contract is subject to the Miller Act (40 U.S.C. 270), under which the prime contractor has obtained a payment bond. This payment bond may provide certain unpaid employees, suppliers, and subcontractors a right to sue the bonding surety under the Miller Act for amounts owned for work performed and materials delivery under the prime contract.

(b) Persons believing that they have legal remedies under the Miller Act should consult their legal advisor regarding the proper steps to take to obtain these remedies. This notice clause does not provide any party any rights against the Federal Government, or create any relationship, contractual or otherwise, between the Federal Government and any private party.

(c) The surety which has provided the payment bond under the prime contract is:

(Name)

(Street Address)

(City, State, Zip Code)

(Contact & Tel. No.)

(End of clause)

#### 3052.228-91 Loss of or damage to leased aircraft (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3028.306-90(a) and (b), insert the following clause:

#### Loss of or Damage to Leased Aircraft (Dec 2003)

(a) The Government assumes all risk of loss of, or damage (except normal wear and tear) to, the leased aircraft during the term of this lease while the aircraft is in the possession of the Government.

(b) In the event of damage to the aircraft, the Government, at its option, shall make the necessary repairs with its own facilities or by contract, or pay the Contractor the reasonable cost of repair of the aircraft.

(c) In the event the aircraft is lost or damaged beyond repair, the Government shall pay the Contractor a sum equal to the fair market value of the aircraft at the time of such loss or damage, which value may be specifically agreed to in clause 3052.228-92, "Fair Market Value of Aircraft," less the salvage value of the aircraft. However, the

Government may retain the damaged aircraft or dispose of it as it wishes. In that event, the Contractor will be paid the fair market value of the aircraft as stated in the clause.

(d) The Contractor agrees that the contract price does not include any cost attributable to hull insurance or to any reserve fund it has established to protect its interest in the aircraft. If, in the event of loss or damage to the leased aircraft, the Contractor receives compensation for such loss or damage in any form from any source, the amount of such compensation shall be:

(1) Credited to the Government in determining the amount of the Government's liability; or

(2) For an increment of value of the aircraft beyond the value for which the Government is responsible.

(e) In the event of loss of or damage to the aircraft, the Government shall be subrogated to all rights of recovery by the Contractor against third parties for such loss or damage and the Contractor shall promptly assign such rights in writing to the Government.

(End of clause)

#### 3052.228-92 Fair market value of aircraft (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3028.306-90(a) and (c), insert the following clause:

#### Fair Market Value of Aircraft (Dec 2003)

For purposes of the clause entitled "Loss of or Damage to Leased Aircraft," the fair market value of the aircraft to be used in the performance of this contract shall be the lesser of the two values set out in paragraphs (a) and (b) below:

(a) \$ \_\_\_\_\_; or

(b) If the contractor has insured the same aircraft against loss or destruction in connection with other operations, the amount of such insurance coverage on the date of the loss or damage for which the Government may be responsible under this contract.

(End of clause)

#### 3052.228-93 Risk and indemnities (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3028.306-90(a) and (d), insert the following clause:

#### Risk and Indemnities (Dec 2003)

The Contractor hereby agrees to indemnify and hold harmless the Government, its officers and employees from and against all claims, demands, damages, liabilities, losses, suits and judgments (including all costs and expenses incident thereto) which may be suffered by, accrue against, be charged to or recoverable from the Government, its officers and employees by reason of injury to or death of any person other than officers, agents, or employees of the Government or by reason of damage to property of others of whatsoever kind (other than the property of the Government, its officers, agents or employees) arising out of the operation of the aircraft. In the event the Contractor holds or obtains insurance in support of this covenant, evidence of insurance shall be delivered to the Contracting Officer.

(End of clause)

**3052.231-70 Precontract costs.**

As prescribed in (HSAR) 48 CFR 3031.205-32, insert the following clause:

Precontract Costs (Dec 2003)

The Contractor shall be entitled to reimbursement for pre-contract costs incurred on or after \_\_\_\_\_ in an amount not to exceed \$ \_\_\_\_\_ that, if incurred after this contract had been entered into, would have been reimbursable under this contract.

(End of clause)

**3052.236-70 Special precautions for work at operating airports.**

As prescribed in (HSAR) 48 CFR 3036.570, insert the following clause:

Special Precautions for Work at Operating Airports (Dec 2003)

(a) When work is to be performed at an operating airport, the Contractor must arrange its work schedule so as not to interfere with flight operations. Such operations will take precedence over construction convenience. Any operations of the Contractor which would otherwise interfere with or endanger the operations of aircraft shall be performed only at times and in the manner directed by the Contracting Officer. The Government will make every effort to reduce the disruption of the Contractor's operation.

(b) Unless otherwise specified by local regulations, all areas in which construction operations are underway shall be marked by yellow flags during daylight hours and by red lights at other times. The red lights along the edge of the construction areas within the existing aprons shall be the electric type of not less than 100 watts intensity placed and supported as required. All other construction markings on roads and adjacent parking lots may be either electric or battery type lights. These lights and flags shall be placed so as to outline the construction areas and the distance between any two flags or lights shall not be greater than 25 feet. The Contractor shall provide adequate watch to maintain the lights in working condition at all times other than daylight hours. The hour of beginning and the hour of ending of daylight will be determined by the Contracting Officer.

(c) All equipment and material in the construction areas or when moved outside the construction area shall be marked with airport safety flags during the day and when directed by the Contracting Officer, with red obstruction lights at nights. All equipment operating on the apron, taxiway, runway, and intermediate areas after darkness hours shall have clearance lights in conformance with instructions from the Contracting Officer. No construction equipment shall operate within 50 feet of aircraft undergoing fuel operations. Open flames are not allowed on the ramp except at times authorized by the Contracting Officer.

(d) Trucks and other motorized equipment entering the airport or construction area shall do so only over routes determined by the Contracting Officer. Use of runways, aprons, taxiways, or parking areas as truck or

equipment routes will not be permitted unless specifically authorized for such use. Flag personnel shall be furnished by the Contractor at points on apron and taxiway for safe guidance of its equipment over these areas to assure right of way to aircraft. Areas and routes used during the contract must be returned to their original condition by the Contractor. Airport management shall establish the maximum speed allowed at the airport. Vehicles shall be operated so as to be under safe control at all times, weather and traffic conditions considered. Vehicles must be equipped with head and taillights during the hours of darkness.

(End of clause)

**3052.237-70 Qualifications of contractor employees.**

As prescribed in (HSAR) 48 CFR 3037.110-70(a), insert the following clause:

Qualifications of Contractor Employees (Dec 2003)

(a) "Sensitive Information" is any information or proprietary data which if subject to unauthorized access, modification, loss, or misuse could adversely affect the national interest, the conduct of Federal programs, or the privacy to which individuals are entitled under 5 U.S.C. 552a (The Privacy Act), but that has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept classified in the interest of national defense or foreign policy.

(b) Work under this contract may involve access to sensitive information. Therefore, the Contractor shall not disclose, orally or in writing, any sensitive information to any person unless authorized in writing by the Contracting Officer. For those contractor employees authorized access to sensitive information, the contractor shall ensure that these persons receive training concerning the protection and disclosure of sensitive information both during and after contract performance.

(c) Contractor employees working on this contract must complete such forms, as may be necessary for security or other reasons, including the conduct of background investigations to determine suitability. Completed forms shall be submitted as directed by the Contracting Officer. Upon the Contracting Officer's request, the Contractor's employees shall be fingerprinted, or subject to other investigations as required.

(d) The Contracting Officer may require dismissal from work those employees deemed incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment is deemed contrary to the public interest or inconsistent with the best interest of national security.

(e) Each employee of the Contractor shall be a citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence as evidenced by an Alien Registration Receipt Card Form I-151. An alien authorized to work shall present evidence from the Bureau of Citizenship and Immigration Services that employment will not affect his or her immigration status.

(f) The Contractor shall include the substance of this clause in all subcontracts at

any tier where the subcontractor may have access to Government facilities, sensitive information, or resources.

(End of clause)

**3052.237-71 Information technology systems access for contractors.**

As prescribed in (HSAR) 48 CFR 3037.110-70(a) and (b), insert a clause substantially as follows. The contracting officer may specify additional IT security requirements unique to an OE.

Information Technology Systems Access for Contractors (Dec 2003)

(a) No contractor personnel shall start work under this contract that involves actual or potential access to sensitive information until (1) approved for access, (2) they have received a security briefing, or current refresher, about Information Technology (IT) security, from the appropriate Organizational Element (OE) Information Systems Security Officer (ISSO); and (3) have signed a non-disclosure agreement form. This user security agreement is provided as an Attachment to this solicitation. By signing the user security agreement, the individual will be acknowledging their responsibility to properly use and safeguard all DHS OE information technology resources and information related thereto. The Contracting Officer Technical Representative (COTR) for this contract shall arrange the aforementioned security briefing. The ISSO is responsible for retaining the non-disclosure documents signed and submitted by the contractor employees as well evidence of security training.

(b) The contractor shall have access only to those areas of DHS OE information technology resources explicitly stated in this contract or approved by the COTR in writing as necessary for performance of the work under this contract. Information technology assets includes computer equipment, networking equipment, telecommunications equipment, cabling, network drives, computer drives, network software, computer software, software programs, intranet sites, and Internet sites. Any attempts by contractor personnel to gain access to any information technology resources not expressly authorized by the statement of work, other terms and conditions in this contract, or as approved in writing by the COTR, is strictly prohibited. In the event of violation of this provision, DHS will take appropriate actions with regard to the contract.

(c) Contractor access to DHS networks from a remote location is a temporary privilege for mutual convenience while the contractor performs business for the DHS OE. It is not a right, a guarantee of access, a condition of the contract, nor is it Government Furnished Equipment (GFE).

(d) Contractor access will be terminated for unauthorized use. The contractor agrees to hold and save DHS harmless from any unauthorized use and agrees not to request additional time or money under the contract for any delays resulting from unauthorized use or access.

(End of clause)

**3052.237-72 Contractor personnel screening for unclassified information technology access.**

As prescribed in 3037.110-70(a) and (b), insert a clause substantially as follows:

Contractor Personnel Screening for Unclassified Information Technology Access (Dec 2003)

(a) Contractor personnel requiring privileged access or limited risk assessment level. Guidance for selecting the appropriate level of screening is based on the risk of adverse impact to DHS missions, as indicated in FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems (Initial Public Draft).

(b) The Contractor shall afford DHS, including the Office of Inspector General, access to the Contractor's and subcontractors' facilities, installations, operations, documentation, databases and personnel used in performance of the contract. Access shall be provided to the extent required to carry out a program of IT inspection, investigation and audit to safeguard against threats and hazards to the integrity, availability and confidentiality of DHS data or to the function of computer systems operated on behalf of DHS, and to preserve evidence of computer crime.

(c) The Contractor shall incorporate the substance of this clause in all subcontracts that meet the conditions in paragraph (a) of this clause.

(End of clause)

**3052.242-70 Dissemination of information—educational institutions.**

As prescribed in (HSAR) 48 CFR 3042.203-70(a), insert the following clause:

Dissemination of Information—Educational Institutions (Dec 2003)

(a) The Department of Homeland Security (DHS) desires widespread dissemination of the results of funded non-sensitive research. The Contractor, therefore, may publish (subject to the provisions of the "Data Rights" and "Patent Rights" clauses of the contract) research results in professional journals, books, trade publications, or other appropriate media (a thesis or collection of theses should not be used to distribute results because dissemination will not be sufficiently widespread). All costs of publication pursuant to this clause shall be borne by the Contractor and shall not be charged to the Government under this or any other Federal contract.

(b) Any copy of material published under this clause shall contain acknowledgment of DHS's sponsorship of the research effort and a disclaimer stating that the published material represents the position of the author(s) and not necessarily that of DHS. Articles for publication or papers to be presented to professional societies do not require the authorization of the Contracting Officer prior to release. However, a printed or electronic copy of each article shall be transmitted to the Contracting Officer at least two weeks prior to release or publication.

(c) Press releases concerning the results or conclusions from the research under this

contract shall not be made or otherwise distributed to the public without prior written approval of the Contracting Officer.

(d) Publication under the terms of this clause does not release the Contractor from the obligation of preparing and submitting to the Contracting Officer a final report containing the findings and results of research, as set forth in the schedule of the contract.

(End of clause)

**3052.242-71 Dissemination of contract information.**

As prescribed in (HSAR) 48 CFR 3042.203-70(b), insert the following clause:

Dissemination of Contract Information (Dec. 2003)

The Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to the performance of this contract, without the prior written consent of the Contracting Officer. An electronic or printed copy of any material proposed to be published or distributed shall be submitted to the Contracting Officer.

(End of clause)

**3052.242-72 Contracting officer's technical representative.**

As prescribed in (HSAR) 48 CFR 3042.7000, insert the following clause:

Contracting Officer's Technical Representative (Dec. 2003)

(a) The Contracting Officer may designate Government personnel to act as the Contracting Officer's Technical Representative (COTR) to perform functions under the contract such as review or inspection and acceptance of supplies, services, including construction, and other functions of a technical nature. The Contracting Officer will provide a written notice of such designation to the Contractor within five working days after contract award or for construction, not less than five working days prior to giving the contractor the notice to proceed. The designation letter will set forth the authorities and limitations of the COTR under the contract.

(b) The Contracting Officer cannot authorize the COTR or any other representative to sign documents, such as contracts, contract modifications, etc., that require the signature of the Contracting Officer.

(End of clause)

**3052.245-70 Government property reports.**

As prescribed in (HSAR) 48 CFR 3045.505-70, insert the following clause:

Government Property Reports (Dec. 2003)

(a) The Contractor shall prepare an annual report of Government property in its possession and the possession of its subcontractors.

(b) The report shall be submitted to the Contracting Officer not later than September

15 of each calendar year on Form DHS F 4220.43, Contractor Report of Government Property.

(End of clause)

**3052.247-70 F.o.b. origin information.**

As prescribed in (HSAR) 48 CFR 3047.305-70(a), insert the following provision:

F.O.B. Origin Information (Dec. 2003)

The offeror shall furnish information with the offer:

(a) Location of the offeror's actual shipping point(s) (street address, city, state, and zip code) from which supplies will be delivered to the Government;

(b) Whether the offered shipping point has a private railroad siding, and the name of the rail carrier serving it;

(c) When the offered shipping point does not have a private siding, the names and addresses of the nearest public rail siding and of the carrier serving it; and

(d) The quantity of supplies to be shipped from each shipping point.

(End of provision)

Alternate I (Dec. 2003)

If delivery is "f.o.b. origin, contractor's facility," and the designated facility is not covered by the line-haul transportation rate, add the following paragraph to the basic provision:

(e) The charges required to deliver the shipment to the point where the line-haul rate is applicable.

Alternate II (Dec. 2003)

When delivery is "f.o.b. origin, freight allowed," add the following paragraph to the basic provision:

(e) The basis on which transportation charges will be allowed, including the origin and destination from and to which transportation charges will be allowed.

**3052.247-71 F.o.b. origin only.**

As prescribed in (HSAR) 48 CFR 3047.305-70(b), insert the following provision:

F.O.B. Origin Only (Dec. 2003)

Offers are invited on the basis of f.o.b. origin only. Offers submitted on any other basis will be rejected as nonresponsive.

(End of provision)

**3052.247-72 F.o.b. destination only.**

As prescribed in (HSAR) 48 CFR 3047.305-70(c), insert the following provision:

F.O.B. Destination Only (Dec. 2003)

Offers are invited on the basis of f.o.b. destination only. Offers submitted on any other basis will be rejected as nonresponsive.

**PART 3053—FORMS****Subpart 3053.1—General**

Sec.

3053.101 Requirements for use of forms.

3053.103 Exceptions.

**Subpart 3053.2—Prescription of Forms**

3053.204-70 Administrative matters.

3053.222-70 Application of labor laws to Government acquisitions.  
 3053.227-70 Conveyance of invention rights acquired by the Government.  
 3053.245-70 Contractor report of government property.

**Subpart 3053.3—Illustrations of Forms**

3053.303 Agency forms.

**Subpart 3053.1—General**

**3053.101 Requirements for use of forms.**

Unless excepted, forms prescribed in (FAR) 48 CFR part 53 and (HSAR) 48 CFR part 3053 are required for use by all OEs.

**3053.103 Exceptions.**

Requests for exceptions to forms contained in (FAR) 48 CFR part 53 and to DHS forms in (HSAR) 48 CFR part 3053 shall be submitted, as prescribed in (FAR) 48 CFR 53.103, to the CPO.

**Subpart 3053.2—Prescription of Forms**

**3053.204-70 Administrative matters.**

The following forms are prescribed for use in the closeout of applicable contracts, as specified in (HSAR) 48 CFR 3004.804-570:

(a) DHS Form 0700-01, Cumulative Claim and Reconciliation Statement. (See (HSAR) 48 CFR 3004.804-570(a)(1).)

(b) DHS Form 0700-02, Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts. (See (HSAR) 48 CFR 3004.570(a)(2).)

(c) DHS Form 0700-03, Contractor Release. (See (HSAR) 48 CFR 3004.804-570(a)(3).)

**3053.222-70 Application of labor laws to Government acquisitions.**

The following form is prescribed for use in connection with the application of labor laws, as specified in (HSAR) 48 CFR 3022.406-9: DHS Form 0070-04, Employee's Claim for Wage Restitution.

**3053.227-70 Conveyance of invention rights acquired by the Government.**

The following form is prescribed for including a means for contractors to report inventions made in the course of contract performance, as specified in (HSAR) 48 CFR 3027.305-4: DD Form 882, Report of Inventions and Subcontracts.

**3053.245-70 Report of Government property.**

The following form is prescribed for use by contractors to report Government property, as specified in (HSAR) 48 CFR 3045.505-14: DHS Form 0070-05, Contractor's Report of Government Property.

**Subpart 3053.3—Illustrations of Forms**

**3053.303 Agency forms.**

This section illustrates agency-specified forms. To access these forms go to: <http://www.dhs.gov/dhspublic/display?theme=37>.

Form name	Form No.
Cumulative Claim and Reconciliation Statement .....	DHS Form 0070-01
Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts .....	DHS Form 0070-02
Contractor Release .....	DHS Form 0070-03
Employee's Claim for Wage Restitution .....	DHS Form 0070-04
Contractor's Report of Government Property .....	DHS Form 0070-05
Report of Inventions and Subcontract .....	DD 882

**Appendix—HSAR Matrix**

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

BILLING CODE 4410-10-P









# Federal Register

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**Thursday,  
December 4, 2003**

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**Part III**

**Department of the  
Treasury**

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**Community Development Financial  
Institutions Fund**

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**CDFI Fund Native American Initiative;  
Notice of Funds Availability (NOFA)  
Inviting Applications for the Native  
American CDFI Assistance Program;  
Notices**

**DEPARTMENT OF THE TREASURY****Community Development Financial Institutions Fund****CDFI Fund Native American Initiative**

**AGENCY:** Community Development Financial Institutions Fund, Department of the Treasury.

**ACTION:** Preamble for the CDFI Fund's Native American Initiative, which includes: The Native American CDFI Assistance (NACA) Program; the Native American Technical Assistance (NATA) Component (part of the Technical Assistance Component) of the CDFI Program; and the Native American CDFI Development (NACD) Program.

**SUMMARY:****I. Legislative Background**

The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*) (the "Act") authorizes the Community Development Financial Institutions Fund (the "Fund") of the U.S. Department of the Treasury to promote economic revitalization and community development through investment in and assistance to Fund-certified community development financial institutions ("CDFIs") through the CDFI Program. The Consolidated Appropriations Resolution, 2003 (Pub. L. 108-7) authorizes the Fund to provide financial assistance ("FA") and technical assistance ("TA") to benefit Native American, Alaska Native and Native Hawaiian communities (hereafter referred to as "Native American Communities"), with such benefit being provided primarily through qualified community development lender organizations with experience and expertise in community development banking and lending in Indian country, Native American organizations, Tribes and tribal organizations and other suitable providers.

**II. The CDFI Fund's Overall Strategic Objectives**

Credit and investment capital are essential ingredients for developing affordable housing, starting or expanding businesses, meeting unmet market needs, and stimulating economic growth. Access to financial services is critical to helping bring more Americans into the economic mainstream. The

Fund's programs are designed to address the unique capitalization and/or technical capacity needs of CDFIs and other community development entities so that they may better meet the needs of their particular target markets through loans, investments, financial services and other related activities. This strategy builds strong institutions that make loans and investments and provide financial services in markets (including economically distressed investment areas and disadvantaged targeted populations) whose needs for loans, investments, and financial services have not been fully met by traditional financial institutions.

**III. The CDFI Fund's Native American Initiative**

Pursuant to the Act, in 2001, the Fund completed and published the Native American Lending Study ("the Study"), which identifies significant barriers to lending and investment in Native American Communities throughout the country and strategies for overcoming those barriers. One of the barriers identified by the Study is the fact that there are few CDFIs and other financial institutions that serve Native American Communities. Since CDFIs are important tools for developing self-sustaining economies in many underserved communities, the Fund seeks to assist Native American Communities to create CDFIs as well as to strengthen CDFIs already serving those communities.

The Fund seeks to accomplish these goals through its Native American Initiative. The primary objective of the Native American Initiative is to increase the market coverage and capacity of Native American CDFIs throughout the country. While the Fund also is undertaking other activities, such as its comprehensive training program, to further strengthen Native American CDFIs, the Native American Initiative principally comprises three facets:

(1) *Native American CDFI Assistance (NACA) Program:* Through the NACA Program, the Fund provides (i) FA and/or TA awards to Native American CDFIs and entities that can be certified as Native American CDFIs at time of award; and (ii) TA awards to entities that propose to become Native American CDFIs within two years and "Sponsoring Entities" (e.g., Native American organizations, Tribes, Tribal

organizations) that propose to create separate legal entities that will become Native American CDFIs within two years. A NOFA covering two annual funding rounds for the NACA Program is published in this issue of the **Federal Register**, subject to funding availability and Fiscal Year 2004 and Fiscal Year 2005 appropriations. Interested parties may obtain additional and detailed information on the NACA Program, including application materials, through the Fund's website at [www.cdfifund.gov](http://www.cdfifund.gov). Summary information on the NACA Program is provided in the chart, below.

(2) *Native American Technical Assistance (NATA) Component (part of the Technical Assistance Component of the CDFI Program):* Through the NATA Component, the Fund provides capacity-building TA grants to Native American CDFIs, entities that can be certified as Native American CDFIs at time of award, and entities that propose to become Native American CDFIs within two years. The FY 2003 and 2004 NOFA for the NATA Component/ Technical Assistance Component was published in the February 4, 2003 issue of the **Federal Register** (68 FR 5735). The Fund is accepting applications on a rolling basis (subject to funding availability) through May 31, 2004. Interested parties may obtain additional and detailed information on the NATA Component, including application materials, through the Fund's website at [www.cdfifund.gov](http://www.cdfifund.gov). Summary information on the NATA Component is provided in the chart, below.

(3) *Native American Community Development (NACD) Program:* Through the NACD Program, the Fund provides TA grants to Sponsoring Entities to facilitate the creation of separate legal entities that will become Native American CDFIs within two years. The FY 2003 and 2004 NOFA for the NACD Program was published in the February 4, 2003 issue of the **Federal Register** (68 FR 5731). The Fund is accepting applications on a rolling basis (subject to funding availability) through May 31, 2004. Interested parties may obtain additional and detailed information on the NACD Program, including application materials, through the Fund's website at [www.cdfifund.gov](http://www.cdfifund.gov). Summary information on the NACD Program is provided in the chart, below.

Component or program	Purpose; types and amounts of assistance available	Eligible applicants	Application deadlines
Native American CDFI Assistance Program.	<p>FA awards (grants, loans, equity investments, secondary capital accounts, deposits, credit union shares) to support financing needs, and/or TA grants to build capacity to serve target markets, including operating grants; up to \$500,000 per award.</p> <p>Eligible Uses of TA Funds: technology acquisition, training, consulting services, staff salary for certain purposes, and operating funds.</p>	<p>FA/TA awards. ....</p> <p><i>Type 1:</i> certified Native American CDFIs or certifiable Native American CDFIs (i.e., entities that can be certified as Native American CDFIs at time of award).</p> <p>TA awards only. ....</p> <p><i>Type 2:</i> emerging Native American CDFIs (i.e., entities that propose to become Native American CDFIs within two years of receiving the award); and.</p> <p><i>Type 3:</i> Sponsoring Entities (e.g., Native American organizations, Tribes and Tribal organizations) that propose to create an entity that will become a Native American CDFI within two years of receiving the award.</p> <p>Ineligible Applicants: Firms that provide training or TA in community developments finance (such organizations are eligible to apply through NACD).</p>	<p>Applications will be accepted and evaluated in two rounds: Round 1: application deadline is March 15, 2004; Round 2: application deadline is January 30, 2005 (subject to FY 2004 funding availability).</p>
NATA Component ...	<p>TA grants to build capacity to serve target markets; up to \$100,000 per award.</p> <p>Eligible Uses of TA Funds: technology acquisition, training, consulting services, staff salary for certain purposes.</p> <p>Ineligible Uses of TA Funds: operating funds.</p>	<p>Certified Native American CDFIs, certifiable Native American CDFIs (i.e., entities that can be certified as Native American CDFIs at time of award), emerging Native American CDFIs (i.e., entities that propose to become Native American CDFIs within two years of receiving the award).</p> <p>Ineligible Applicants: Sponsoring Entities (as described under NACD below), and entities that the Fund has previously selected to receive over \$250,000 in TA or FA (in aggregate).</p>	<p>Applications will be accepted and evaluated on a first-come, first reviewed basis, beginning February 4, 2003 through May 31, 2003 (subject to FY 2004 funding availability).</p>
NACD Program .....	<p>TA grants to build capacity to create Native American CDFIs; up to \$100,000 per award.</p> <p>The applying entity must use the TA award to assist in the establishment of a separately incorporated, new Native American CDFI.</p> <p>Eligible Uses of TA Funds: technology acquisition, training, consulting services, staff salary for certain purposes.</p> <p>Ineligible Use of TA Funds: operating funds.</p>	<p>Sponsoring Entities that will not themselves become Native American CDFIs but instead plan to create separate Native American CDFIs.</p> <p>Such entities include (a) <i>Category I:</i> Tribes, Tribal entities and nonprofit organizations that primarily serve Native American, Alaska Native and/or Native Hawaiian populations; and (b) <i>Category II:</i> firms that provide training or TA in community development finance or that specialize in economic development in Native American, Alaska Native and/or Native Hawaiian communities, and other suitable providers, including CDC, certified CDFIs, or organizations with experience and expertise in banking and lending in Native American, Alaska Native and/or Native Hawaiian communities.</p> <p>Ineligible Applicants: certified Native American CDFIs, certifiable Native American CDFIs (i.e., entities that can be certified as Native American CDFIs at time of award, emerging Native American CDFIs (i.e., entities that propose to become Native American CDFIs within two years of receiving the award).</p>	

In addition to the Native American Initiative, described above, the Fund administers the New Markets Tax Credit ("NMTC") Program, the Financial Assistance Component and the Technical Assistance Component of the CDFI Program, and the Bank Enterprise Award Program. Interested parties are encouraged to learn more about these programs, and how to apply, through the Fund's website at [www.cdfifund.gov](http://www.cdfifund.gov).

A Native American CDFI may apply for a FA award through either the FA Component or the NACA Program. While an applicant may receive only one FA award through either the FA Component or the NACA Program, an applicant, its subsidiaries or affiliates may apply for and receive: (i) A tax credit allocation through the NMTC Program; (ii) a TA award through the CDFI Program; (iii) an award through the NACD Program; or (iv) an award through the BEA Program, subject to certain restrictions described in the BEA Program regulations.

Catalog of Federal Domestic Assistance: 21.020

**Authority:** 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805, Pub. L. 107-73, Pub. L. 108-7.

Dated: November 21, 2003.

**Tony T. Brown,**

*Director, Community Development Financial Institutions Fund.*

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## DEPARTMENT OF THE TREASURY

### Community Development Financial Institutions Fund

#### Notice of Funds Availability (NOFA) Inviting Applications for the Native American CDFI Assistance Program

**AGENCY:** Community Development Financial Institutions Fund, Department of the Treasury.

**ACTION:** Notice of funds availability ("NOFA") inviting applications for the Native American CDFI Assistance ("NACA") Program.

**SUMMARY:** This NOFA is issued in connection with two annual funding rounds of the NACA Program, one using FY 2003 and FY 2004 appropriated funds ("Round One") and one using FY 2004 and FY 2005 appropriated funds ("Round Two"), if appropriated funds are available. Through the NACA Program and subject to appropriation of funding for the purposes enumerated in this NOFA, the Community Development Financial Institutions Fund (the "Fund") will provide

Financial Assistance ("FA") awards and/or Technical Assistance ("TA") grants to community development financial institutions ("CDFIs") that primarily serve Native American, Alaska Native and/or Native Hawaiian communities (hereafter referred to as "Native American CDFIs," serving "Native American Communities"). The NACA Program will also provide TA grants to entities proposing to become Native American CDFIs within a specified time frame and "Sponsoring Entities" (e.g., Native American organizations, Tribes and Tribal organizations that propose to create entities that will become Native American CDFIs).

The Fund expects to award approximately \$5 million for Round One awards, and approximately \$3 million for Round Two awards. Interested parties should be aware that electing to defer the submission of a NACA Program application in Round Two, rather than in Round One, entails some risk since Round Two funds have not yet been appropriated. If neither FY 2004 funds nor FY 2005 funds are appropriated for the purposes set forth in this NOFA, there will not be a Round Two. The Fund reserves the right to award in excess of said amounts under this NOFA provided that appropriated funds are available and the Fund deems it appropriate. The Fund reserves the right to re-allocate funds from the amounts that are anticipated to be available under this NOFA to other Native American programs administered by the Fund, particularly if the Fund determines that the number of awards made under this NOFA is fewer than projected.

Under this NOFA, an applicant may apply for a FA award, a TA grant, or a combination of the two (within certain limits, described below). The Fund expects that it will award up to \$150,000 per awardee receiving only TA and up to \$500,000 per awardee receiving only FA or a combination of FA and TA. The Fund, in its sole discretion, reserves the right to award amounts in excess of the anticipated maximum award amount if the Fund deems it appropriate; or to provide a TA grant for uses other than, or in an amount greater or less than that which is requested by an applicant, including to applicants requesting only FA. The Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA.

A certified Native American CDFI may apply for FA through either the FA Component or the NACA Program. While an applicant may receive only

one FA award through either the FA Component or the NACA Program, an applicant, its subsidiaries or affiliates may apply for and receive: (a) A tax credit allocation through the NMTC Program; (b) a TA award through the CDFI Program; (c) an award through the Bank Enterprise Award Program (subject to certain limitations); and/or (d) an award through the NACD Program. Terms not defined in this NOFA are as defined in the interim regulations for the CDFI Program, found at 12 CFR part 1805.

**DATES:** The Fund will make available the Round One NACA Program funding application on its website at <http://www.cdfifund.gov> in early January, 2004. At that time, interested parties may download the application form from the Fund's website or request application packages by contacting the Fund, as described below.

Round One applicants may submit applications after February 1, 2004. Round One applications must be received in the specific Bureau of the Public Debt (BPD) office designated below not later than 5:00 p.m. ET on March 15, 2004.

Subject to the availability of appropriated funds, Round Two applicants may submit applications after December 1, 2004. Round Two applications must be received in the BPD office designated below not later than 5:00 p.m. ET on February 1, 2005.

Late applications received in the specific BPD office designated below will be rejected and returned to the sender.

Applications sent by facsimile or e-mail will not be accepted; however, an electronic application may be made available for this NOFA at a later date. If so, its availability and related guidance will be announced on the Fund's website ([www.cdfifund.gov](http://www.cdfifund.gov)).

Applicants must submit one original and two (2) copies of their complete application. Applicants seeking CDFI certification with the funding application must submit one additional original and one additional copy of Section III (the CDFI certification section) of the application. Each copy should be placed in a three-ring binder, without staples or other forms of binding and each section should be separated by tabs. Each original should not be placed in a binder nor include tabs. To facilitate processing, please clearly identify originals and copies of applications as "Funding" and "Certification" applications.

**ADDRESSES:** Applications must be sent to: CDFI Fund Grants Management and Compliance Manager, Bureau of Public

Debt, 200 Third Street, Room 210, Parkersburg, WV 26101. The telephone number to be used in conjunction with overnight mailings to this address is (304) 480-5450. Applications will not be accepted at the Fund's offices in Washington, DC. Applications received in the Fund's offices will be rejected and returned to the sender.

**FOR FURTHER INFORMATION CONTACT:** If you wish to request an application package or if you have any questions about the programmatic requirements for this program, please contact the Fund by e-mail at [cdfihelp@cdfi.treas.gov](mailto:cdfihelp@cdfi.treas.gov); by telephone at (202) 622-6355; by facsimile at (202) 622-7754; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005.

If you have questions regarding application submission procedures, contact the Fund's Grants Management and Compliance Manager by e-mail at [gmc@cdfi.treas.gov](mailto:gmc@cdfi.treas.gov); by telephone at (202) 622-8662; by facsimile at (202) 622-6453; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005.

These are not toll free numbers. Allow at least one to two weeks from the date the Fund receives a request for receipt of the application package. Applications and other information regarding the Fund and its programs may be downloaded from the Fund's website at [www.cdfifund.gov](http://www.cdfifund.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Eligibility**

At the time an entity submits its application under this NOFA, it must be a duly organized and validly existing legal entity under the laws of the jurisdiction, including tribal jurisdiction, as applicable, in which it is incorporated or otherwise established. The following sets forth additional details and certain additional dates that relate to the submission of applications under this NOFA:

*Eligible Applicants; CDFI Certification:* Eligible applicants for the NACA Program consist of three types of entities:

*Type 1: Certified and Certifiable Native American CDFIs*

*Certified Native American CDFIs:* Native American CDFIs: Any certified CDFI that primarily serves a Native American Community and whose CDFI certification expires after July 31, 2004 (for Round One applicants) or after July 31, 2005 (for Round Two applicants); or

*Certifiable Native American CDFIs:* Any entity that primarily serves a Native American Community and that

submits a complete CDFI certification application, received by the Fund prior to or simultaneous with its NACA funding application, demonstrating, in the judgment of the Fund, that it is certifiable as a CDFI by the date of award.

Any Type 1 applicant whose CDFI certification will expire before July 31, 2004 (for Round One applicants) or before July 31, 2005 (for Round Two applicants) or that is not yet certified as of the date of submission of a NACA Program application must deliver a CDFI certification application (obtained through the Fund's website at [www.cdfifund.gov](http://www.cdfifund.gov)) in advance of the funding application due date for the NACA Program round to which the applicant is applying, or the applicant must deliver a CDFI certification application as part of the NACA Program application.

*Type 2: Emerging Native American CDFIs*

Any entity that primarily serves a Native American Community and demonstrates in its NACA Program application, in the judgment of the Fund, that it is certifiable as a CDFI by the following dates: a Round One applicant must deliver a complete CDFI certification application by October 1, 2006, evidencing that the applicant can be certified as a CDFI, and must be certified as a CDFI by December 31, 2006; a Round Two applicant must deliver a complete certification application by October 1, 2007, evidencing that the applicant can be certified as a CDFI, and must be certified as a CDFI by December 31, 2007.

*Type 3: Sponsoring Entities*

Any entity that proposes to create a separate legal entity that will become a Native American CDFI and demonstrates in its NACA Program application, in the judgment of the Fund, that it is certifiable as a CDFI by the following dates: a Round One applicant must deliver a complete CDFI certification application by October 1, 2007, evidencing that the applicant can be certified as a CDFI, and must be certified as a CDFI by December 31, 2007; a Round Two applicant must deliver a complete certification application by October 1, 2008, evidencing that the applicant can be certified as a CDFI, and must be certified as a CDFI by December 31, 2008. For purposes of this NOFA, Sponsoring Entities include: (a) Tribes, tribal entities, Alaska Native Villages, Village Corporations, Regional Corporations, Non-Profit Regional

Corporations/Associations, or Inter-Tribal or Inter-Village organizations; (b) organizations whose primary mission is to serve a Native American Community including but not limited to: Urban Indian Centers, Tribally-Controlled Community Colleges, community development corporations (CDCs), training or educational organizations, or Chambers of Commerce, that serve primarily a Native American Community.

*Prior Awardees:* Applicants must be aware that success in a prior round of the CDFI Program, including the NACTA and NATA Components, or the NACD Program is not indicative of success under this NOFA. Prior awardees are eligible to apply under this NOFA, except as follows:

The Fund is generally prohibited from obligating more than \$5 million in assistance, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period (further guidance on the calculation of the \$5 million cap is available on the Fund's website at [www.cdfifund.gov](http://www.cdfifund.gov));

The Fund will not consider an application submitted by an applicant that is a prior Fund awardee under any Fund program or component of the CDFI Program if the applicant has been barred from applying to the Fund through the applicable funding round, has outstanding reports due to the Fund as of the due date of the application, or is considered to be in default of its assistance agreement. Awardees whose assistance agreements terminate in default status will only be considered to be in default of their assistance agreements for one year from the date the final compliance status is determined; and

The Fund reserves the right to reject an application without consideration that has been submitted by an applicant that is a prior Fund awardee under any Fund program or component of the CDFI Program that has a balance of \$5,000 or more in undisbursed funds, under said previous award, as of the applicable application deadline of this NOFA.

Accordingly, applicants that are prior Fund awardees are advised to: (a) submit all required reports by the deadlines specified in the assistance or award agreements governing said prior awards and to comply with all requirements found therein, and (b) contact the Grants Management and Compliance Manager to ensure that actions are underway for the disbursement of any outstanding balance of \$5,000 or more for said prior award. All outstanding reports or compliance questions should be

directed to the Grants Management and Compliance Manager by e-mail at [gmc@cdfi.treas.gov](mailto:gmc@cdfi.treas.gov); by telephone at (202) 622-8662; by facsimile at (202) 622-6453; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005.

*Designation of Targeted Population:* For purposes of this NOFA, the Fund will use the following definitions for Native American, set forth in the Office of Management and Budget (OMB) Notice, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity (October 30, 1997): (a) American Indian, Native American or Alaska Native: a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment; and (b) Native Hawaiian: a person having origins in any of the original peoples of Hawaii.

## II. Types of Assistance

Through this NACA Program NOFA, the Fund offers two types of awards: FA and TA. A Type 1 (Certified and Certifiable Native American CDFIs) applicant may submit an application under this NOFA for an FA and/or a TA award. A Type 2 (Emerging Native American CDFIs) or a Type 3 (Sponsoring Entities) applicant may submit an application for a TA grant only. In no event will the Fund disburse FA to an awardee until the awardee is certified as a CDFI.

*Financial Assistance:* FA may be provided by the Fund in the form of an equity investment (including, in the case of certain insured credit unions, secondary capital accounts), a grant, loan, deposit, credit union shares, or any combination thereof. The Fund reserves the right, in its sole discretion, to provide FA in an amount, form and/or for uses other than that which is requested by an applicant.

*Technical Assistance:* A TA award is provided in the form of a grant for the purpose of enhancing the capacity of the entity to serve its target market. The Fund reserves the right, in its sole discretion, to provide TA in an amount and/or for uses other than that which is requested by an applicant. Eligible TA grant uses are limited to the following:

*Grants to Purchase Technology and/or Services,* which will enhance the capacity of the Native American CDFI or proposed Native American CDFI to serve its target market, including the following: (a) Acquiring consulting services; (b) paying staff salary for the limited purposes of completing tasks and/or fulfilling functions that are otherwise eligible TA uses under this

NOFA; (c) acquiring/enhancing technology items; and (d) acquiring training for staff, management, or board members. Grants to purchase technology and/or services are capped at \$50,000 per application. The Fund will not consider requests for grants to purchase technology and/or services under this NOFA for expenses that, in the determination of the Fund, are deemed to be ongoing operating expenses rather than non-recurring expenses (other than as provided below). The Fund will consider requests for TA to pay staff salary, other than as provided below for Operating Grants, only when the applicant demonstrates and represents to the satisfaction of the Fund that: (i) The staff salary relates directly to building the applicant's capacity to serve its target market; or (ii) the proposed staff time to be paid for by the TA grant will be used for a non-recurring activity that will build the applicant's capacity to achieve its objectives as set forth in its Application; (iii) the proposed capacity-building activity would otherwise be contracted to a consultant or not be undertaken; and (iv) the staff person assigned to the proposed task has the competence to successfully complete the activity.

*Grants to Cover Operating Expenses,* to cover recurring expenses including staff salary, rent, utilities and other key operating expenses, that will enhance the capacity of the entity to serve its target market. Grants to cover operating expenses are capped at \$100,000 per application. An applicant applying for a grant to cover operating expenses, including staff salary, may not also request TA for staff salary (described above). Type 1 (Certified and Certifiable Native American CDFIs) and Type 2 (Emerging Native American CDFIs) applicants are eligible for grants to cover operating expenses only if they began incurring operating expenses less than five years prior to the date of application.

Further guidance on the limited uses of TA grants for staff salary expenditures is available on the Fund's website at [www.cdfifund.gov](http://www.cdfifund.gov).

## III. Application

An applicant under this NOFA must submit all materials described in the application. An application must include a valid and current Employer Identification Number, issued by the Internal Revenue Service, or the application will be rejected as incomplete and returned to the sender.

## IV. Matching Funds

Applicants requesting FA under this NOFA must obtain matching funds from

sources other than the Federal government on the basis of not less than one dollar for each dollar of FA provided by the Fund. Matching funds are not required for TA grants. Matching funds must be at least comparable in form and value to the FA provided by the Fund (for example, if an applicant seeks an FA grant from the Fund, the applicant must obtain matching funds through grant(s) from non-Federal sources that are at least equal to the amount provided by the Fund).

For Round One applicants, 25 percent of the matching funds must be in-hand or firmly committed on or after January 1, 2002, and before the date of application, in order to be considered by the Fund. Any applicant seeking an FA award that does not meet these matching funds requirements will not be considered for an FA award. The Fund reserves the right to recapture and reprogram any Round One award if the awardee fails to have the remaining matching funds firmly committed by May 15, 2005 (with documentation of such received by the Fund not later than May 31, 2005), or to grant an extension of said matching funds deadline, if the Fund deems it appropriate.

For Round Two applicants, 25 percent of the matching funds must be in-hand or firmly committed on or after January 1, 2003 and before the date of application, in order to be considered by the Fund. Any applicant seeking an FA award that does not meet these matching funds requirements will not be considered for an FA award. The Fund reserves the right to recapture and reprogram any Round Two award if the awardee fails to have the remaining matching funds firmly committed by May 15, 2006 (with documentation of such received by the Fund not later than May 31, 2006), or to grant an extension of said matching funds deadline, if the Fund deems it appropriate.

For purposes of this NOFA, "in-hand" means that the applicant has actually received the matching funds and has documentation (such as a copy of a check) to evidence such receipt; "firmly committed" means that the applicant has entered into or received a legally binding commitment from the matching funds source that the matching funds have been committed to be disbursed to the applicant and the applicant has documentation (such as a copy of a loan agreement, promissory note or grant agreement) to evidence such firm commitment.

Funds used by an applicant as matching funds for a prior Fund award or under another Federal grant or award program cannot be used to satisfy the matching funds requirement. If an

applicant seeks to use as matching fund monies received from an organization that was a prior Fund awardee, the Fund will deem such funds to be Federal funds, unless the funding entity establishes to the reasonable satisfaction of the Fund, that such funds do not originate from other Fund or Federal sources, in part or in whole.

#### V. Evaluation

The Fund will determine whether an application is complete and the applicant meets the eligibility requirements set forth above. Any application that is incomplete or any applicant that does not meet the eligibility requirements will be rejected.

Following these determinations, the Fund will conduct the substantive review of each application in accordance with the criteria and procedures described in this NOFA and the application. The Fund will evaluate each application on a 100-point scale, comprising the four criteria categories set forth below, and assign numeric scores. Applicants whose applications are assigned 50 points or more in the aggregate, will receive additional consideration for an award under the NACA Program. The Fund does not anticipate making an award to an applicant whose score in any of the four criteria categories falls significantly short of the total points allowable in that category, defined here as less than 40 percent of the total points allowable.

**Market Analysis/Program Design and Implementation.** For FA-Only or FA/TA: A review of the applicant's (a) understanding of its market context, its current and prospective customers, the extent of economic distress within the designated Investment Area(s) and/or the extent of need within the designated Targeted Population(s), the extent of need for Equity Investments, loans, Development Services, and Financial Services within the designated Target Market, and the extent of demand within the Target Market for the applicant's current or proposed products and services, and (b) product design and implementation plan, including an assessment of its products and services, marketing and outreach efforts, and delivery strategy. For TA-Only: A review of the applicant's understanding of its market context (including a description of the nature of economic distress in the Target Market), its current and prospective customers, the extent of need for the Native American CDFI, the level of support for a CDFI in the Target Market, and the appropriateness of the proposed products, services, and delivery strategy to meet the needs in the market. To the

extent the applicant lacks one of the elements, the Fund will assess its plan to address the deficiencies including requesting TA. (Maximum 25 points);

**Management.** For FA-Only or FA/TA Applicants: A review of the applicant's current and proposed management team, governing board, and key staff, its policies and procedures for financial management, and its track record in underwriting and portfolio management, if applicable, and ability to achieve the objectives set forth in its application (including use of TA, as appropriate). For TA-Only Applicants: to the extent the applicant lacks one of the elements, the Fund will assess its plan to address the deficiencies including requesting TA. (Maximum 25 points);

**Financial Health and Resources.** For FA-Only or FA/TA Applicants: A review of the applicant's financial track record and financial projections and the strength and likelihood of obtaining resources to sustain projected levels of financing and operations, and a clear indication that the CDFI will not be fiscally dependent on the Fund. For TA-Only Applicants: to the extent the applicant lacks one of the elements, the Fund will assess its plan to address the deficiencies including requesting TA. (FA-Only and FA/TA applicants: maximum 20 points; TA-Only applicants: maximum 10 points); and

**Community Development Performance/Effective Use of Award.** For FA-Only or FA/TA Applicants: A review of the applicant's projected level of activity within the Target Market (in terms of Development Services, Financial Services, and financial products); the extent to which the proposed activities are expected to promote homeownership, affordable housing development, economic development, provision of affordable financial services, and other community development objectives; the extent to which the applicant needs the Fund's financial and/or technical assistance to achieve the objectives set forth in its application; and the likelihood that the Fund's assistance will enhance the applicant's capacity to effectively serve its Target Market and achieve community development impact. If requesting TA, the applicant should describe how improving the organization would translate to community development impact within its Target Market. For TA-Only Applicants: A review of the description of how improving the organization would translate to community development impact within its Target Market; the extent to which the applicant needs the Fund's technical

assistance to achieve the objectives set forth in its application and the likelihood that the Fund's assistance will enhance the applicant's capacity to effectively serve its Target Market and achieve community development impact. To the extent the applicant lacks one of the elements, the Fund will assess its plan to address the deficiencies including requesting TA. Prior Awardees (under CDFI or NACD Programs), must show how activities, new market served, and/or additional activities are over and above those previously funded by the Fund. (FA-Only and FA/TA applicants: maximum 30 points; TA-Only applicants: maximum 40 points).

**Technical Assistance Proposal:** Any applicant seeking a TA grant, either alone or in conjunction with a request for a FA award, must complete a Technical Assistance Proposal (TAP) as part of its application. The TAP consists of a summary of the organizational improvements needed to achieve the objectives of its application, a budget, and a description of the requested goods and/or services comprising the TA award request. The budget and accompanying narrative will be evaluated for the eligibility and appropriateness of proposed uses of the TA award (described above). The TAP is not scored.

Fund reviewers will evaluate and score each application and make recommendations for funding. As part of the substantive review process, applicants may receive a telephone interview or an on-site visit by Fund reviewers for the purpose of obtaining, clarifying, or confirming information. During the review process, the applicant may be required to submit additional information about its application in order to assist the Fund in its final evaluation process. Such requests must be responded to within the time parameters set by the Fund.

In the case of an applicant that has previously received funding from the Fund under the CDFI Program, including the Native American CDFI Technical Assistance (NACTA) Component, or the NACD Program, the Fund will consider, as appropriate: (a) the applicant's level of success and extent of compliance in meeting its performance goals, financial soundness covenants (if applicable) and other requirements contained in the assistance or award agreement(s) with the Fund (including timeliness of reporting); (b) the benefits that will be created with new Fund assistance over and above benefits created by previous Fund assistance; and (c) the extent and

effectiveness to which the applicant has used previous assistance from the Fund.

The Fund will make a final funding determination based on the applicant's file, reviewer score and recommendation, and the amount of funds available. In the case of regulated CDFIs and applicants proposing to create a regulated institution, the Fund will also take into consideration the views of the appropriate Federal Regulatory agencies. If the applicant's CAMEL rating is a "4" or "5" or the regulator otherwise indicates safety and soundness concerns, the Fund, in its sole discretion, will not make an award. The Fund's award decisions are final.

Each applicant will be informed of the Fund's award decision either through a Notice of Award if selected for an award (see Notice of Award section, below) or a declination letter, if not selected for an award, which may be for reasons of application incompleteness, ineligibility or substantive issues. Any applicant that is not selected for an award due to application incompleteness or ineligibility, and that believes that such decision was made in error, may appeal said decision by notifying the Fund's Grants Management and Compliance (GMC) Manager in writing or by e-mail (if by e-mail, send to [appeals@cdfi.treas.gov](mailto:appeals@cdfi.treas.gov), with the subject line stating "Eligibility Appeal" and the award control number assigned by the Fund to the particular award). Such appeals must be received by the Fund within five business days of the date of the declination letter.

All applicants that are not selected for awards based on substantive issues, will be given the opportunity to request feedback on the strengths and weaknesses of their applications. This feedback will be provided in a format and within a timeframe to be determined by the Fund, based on available resources.

The Fund reserves the right to change these evaluation procedures if the Fund deems it appropriate; if said procedural changes materially affect the Fund's award decisions, the Fund will provide information regarding the procedural changes through the Fund's website.

#### VI. Notice of Award

The Fund will signify its selection of an applicant as an awardee by delivering a signed Notice of Award to the applicant. The Notice of Award will contain the general terms and conditions underlying the Fund's provision of assistance including, but not limited to, the requirement that an awardee and the Fund enter into an Assistance Agreement. The applicant shall execute the Notice of Award and

return it to the Fund. By executing a Notice of Award, the awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, information comes to the attention of the Fund that either adversely affects the awardee's eligibility for an award, or adversely affects the Fund's evaluation of the awardee's application, or indicates fraud or mismanagement on the part of the awardee, the Fund may, in its discretion and without advance notice to the awardee, terminate the Notice of Award or take such other actions as it deems appropriate. Moreover, by executing a Notice of Award, an awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, the Fund determines that the awardee or its Affiliates are not in compliance with the terms of any previous Assistance Agreement or award agreement entered into with the Fund, the Fund may, in its discretion and without advance notice to the awardee, either terminate the Notice of Award or take such other actions as it deems appropriate. The Fund reserves the right, in its sole discretion, to rescind its award if the awardee fails to return the Notice of Award, signed by the authorized representative of the awardee, along with any other requested documentation, within the deadline set by the Fund.

#### VII. Assistance Agreement

Each applicant that is selected to receive an award under this NOFA must enter into an Assistance Agreement with the Fund. The Assistance Agreement will set forth certain required terms and conditions of the award, which may include, but not be limited to, (a) the amount of the award; (b) the approved uses of the award; (c) the approved Target Market to which the award must be targeted; (d) performance goals and measures; and (e) reporting requirements for all awardees. Assistance Agreements under this NOFA will have two-year terms. The Fund reserves the right, in its sole discretion, to rescind its award if the awardee fails to return the Assistance Agreement, signed by the authorized representative of the awardee, along with any other requested documentation, within the deadline set by the Fund.

In addition to entering into an Assistance Agreement, each awardee that receives an award either (a) in the form of a loan, equity investment, credit union shares/deposits, or secondary capital, in any amount, or (b) a FA grant in an amount greater than \$500,000, must furnish to the Fund an opinion

from its legal counsel, the content of which will be specified in the Assistance Agreement, to include, among other matters, an opinion that the awardee: (i) Is duly formed and in good standing in the jurisdiction in which it was formed and/or operates; (ii) has the authority to enter into the Assistance Agreement and undertake the activities that are specified therein; and (iii) has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Assistance Agreement.

#### VIII. Reporting and Monitoring

The Fund will collect information, on at least an annual basis, from all NACA awardees, including: (a) Annual reports related to, among other matters, awardee compliance with the performance goals and measures and financial soundness covenants and CAMEL ratings (as applicable) as set forth in the Assistance Agreement; (b) audited financial statements; (c) annual surveys; and (d) such other information as the Fund may require, including loan level data. The Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after due notice to the awardee.

The Fund reserves the right, in accordance with applicable Federal law and if authorized, to charge award reservation and/or compliance monitoring fees to all entities receiving CDFI Program awards. Prior to imposing any such fee, the Fund will publish additional information concerning the nature and amount of the fee.

#### IX. Information Sessions

In connection with this NOFA, the Fund may conduct Information Sessions to disseminate information to organizations contemplating applying to, and other organizations interested in learning about, the NACA Program as well as the NATA Component and the NACD Program. For further information on the Fund's Information Sessions, dates and locations, or to register online to attend an Information Session, please visit the Fund's website at [www.cdfifund.gov](http://www.cdfifund.gov). If you do not have Internet access, you may register by calling the Fund at (202) 622-8401.

Catalog of Federal Domestic Assistance: 21.020

**Authority:** 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805, Pub. L. 108-7.

Dated: November 25, 2003.

**Tony T. Brown,**

*Director, Community Development Financial  
Institutions Fund.*

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# Federal Register

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Thursday,  
December 4, 2003

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## Part IV

# Environmental Protection Agency

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40 CFR Parts 302 and 355  
**Reportable Quantity Adjustments for  
Carbamates and Carbamate-Related  
Hazardous Waste Streams; Reportable  
Quantity Adjustment for Inorganic  
Chemical Manufacturing Processes Waste  
(K178); Proposed Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 302 and 355**

[SW H-FRL-7594-4]

RIN 2050-AE12

**Reportable Quantity Adjustments for Carbamates and Carbamate-Related Hazardous Waste Streams; Reportable Quantity Adjustment for Inorganic Chemical Manufacturing Processes Waste (K178)**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA or “the Agency”) is proposing reportable quantity (RQ) adjustments for 28 individual carbamates and five carbamate-related hazardous waste streams listed as hazardous wastes under the Resource Conservation and Recovery Act, and as hazardous substances with one-pound statutory RQs under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). In addition, EPA is proposing to adjust the one-pound

statutory RQ of another hazardous waste stream, K178, which is unrelated to the carbamates addressed in this rule.

EPA thoroughly evaluated the intrinsic properties of these substances to assess the possibility of harm from the release of each substance into the environment and to determine the appropriate levels that require release notification. The proposed RQ adjustments will relieve the regulated community and emergency response personnel from the burden of making and receiving reports of releases that are unlikely to pose a threat to public health or welfare or the environment.

**DATES:** To make sure we consider your comments on this proposed rule, they must be postmarked on or before February 2, 2004. Comments postmarked after this date will be marked “late” and may not be considered.

**ADDRESSES:** Comments submitted by regular U.S. Postal Service mail should be sent to: Docket Coordinator, Superfund Docket Office, Mail Code 5202T, U.S. Environmental Protection Agency Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Comments may also be submitted electronically, in person, or by special delivery. To ensure

proper receipt by EPA, it is imperative that you identify the appropriate docket control number in the subject line on the first page of your comment. These docket control numbers, as well as detailed instructions on how to submit your comments, are provided in the section entitled “How and to Whom Do I Submit Comments?” in the supplemental information portion of this preamble.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA, Superfund, and EPCRA Hotline at 800/424-9346 or TDD 800/553-7672 (hearing impaired). In the Washington, DC metropolitan area, call 703/412-9810 or TDD 703/412-3323 (hearing impaired). For information on specific aspects of the rule, contact Lynn Beasley of the Office of Emergency and Remedial Response (5204G), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Ms. Beasley’s e-mail address is *beasley.lynn@epa.gov*, and her telephone number is 703/603-9086.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Potentially Regulated Entities*

Type of entity	Examples of affected entities
Industry .....	Manufacturers, handlers, transporters, and other users of carbamates. These substances are often used as insecticides, fungicides, herbicides, accelerators in the vulcanization of rubber, or as chemical intermediates in the manufacture of drugs, pesticides, or resins. In addition, entities that may release K178 waste streams will also be affected.
State, Local, or Tribal Governments .....	State Emergency Response Commissions, and Local Emergency Planning Committees.
Federal Government .....	National Response Center, and any Federal agency that may release these carbamates and waste streams.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, or organization is regulated by this action, you should carefully examine the proposed changes to 40 CFR parts 302 and 355. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. How Can I Get Copies of Support Documents for This Rule?*

1. *Docket.* EPA has established an official public docket for the Carbamates and Carbamate-Related Hazardous

Waste Streams (Docket ID No. SFUND-2002-0010) and an official public docket for the Inorganic Chemical Manufacturing Processes Waste (K178) (Docket ID No. SFUND-2002-0011). 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 Superfund 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 Public Reading Room is (202) 566-1744, and the telephone number for the Superfund Docket is (202) 566-0270. You may copy a maximum of 100 pages from any regulatory docket at no cost. Additional copies cost \$0.15 per page. The Docket Office will mail copies of materials to you if you are located outside the Washington, DC metropolitan area.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA’s electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to

access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

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

For additional information about EPA's electronic public docket, visit

EPA Dockets online or see 67 FR 38102, May 31, 2002.

### *C. How and to Whom Do I Submit Comments?*

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

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

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. SFUND-2002-0010 for the Carbamates and Carbamate-Related Hazardous Waste Streams or Docket ID No. SFUND-2002-0011 for the Inorganic Chemical Manufacturing Processes Waste (K178). The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to

[superfund.docket@epa.gov](mailto:superfund.docket@epa.gov), Attention Docket ID No. SFUND-2002-0010 for Carbamates and Carbamate-Related Hazardous Waste Streams or Docket ID No. SFUND-2002-0011 for Inorganic Chemical Manufacturing Processes Waste (K178). 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 an original and two copies of your comments to: Superfund Docket, Environmental Protection Agency, Mailcode: [5202T], 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. SFUND-2002-0010 for Carbamates and Carbamate-Related Hazardous Waste Streams or Docket ID No. SFUND-2002-0011 for Inorganic Chemical Manufacturing Processes Waste (K178).

3. *By Hand Delivery or Courier.* Deliver your comments to: Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. SFUND-2002-0010 for Carbamates and Carbamate-Related Hazardous Waste Streams or Docket ID No. SFUND-2002-0011 for Inorganic Chemical Manufacturing Processes Waste (K178). Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.B.1.

4. *By Facsimile.* Fax your comments to: (202) 566-0272, Attention Docket ID No. SFUND-2002-0010 for Carbamates and Carbamate-Related Hazardous Waste Streams or Docket ID No. SFUND-2002-0011 for Inorganic Chemical Manufacturing Processes Waste (K178).

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

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

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

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

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

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

## II. Outline of Today's Preamble

### A. Overview

1. Statutory Authority
2. Does this proposed rule apply to me?
3. What types of releases are exempt from these reporting requirements?

### B. Background

#### C. Summary of Today's Action

1. What is the scope of today's rule?
2. What methodology is EPA using to adjust the RQs of the individual carbamates?
3. What RQs are proposed for the individual carbamates?
4. How is EPA adjusting the RQs for the carbamate-related waste streams?
5. What RQs are proposed for these carbamate-related waste streams?
6. What conforming changes are being made to Table 302.4 and its Appendix A?
7. What changes are being made to 40 CFR part 355?
8. What RQ is proposed for the K178 waste stream?

### D. Statutory and Regulatory Reviews

1. Executive Order 12866: Regulatory Planning and Review
2. Paperwork Reduction Act
3. Regulatory Flexibility Act
4. Unfunded Mandates Reform Act
5. Executive Order 13132: Federalism
6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
7. Executive Order 13045: Protection of Children from Environmental Risks and Safety Risks
8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution or Use
9. National Technology Transfer and Advancement Act of 1995

## III. Preamble for Reportable Quantity Adjustments for Carbamates and Carbamate-Related Hazardous Waste Streams; Reportable Quantity Adjustment for Inorganic Chemical Manufacturing Processes Waste (K178)

### A. Overview

#### 1. Statutory Authority

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986, gives the Federal government broad authority to respond to releases or threats of releases of hazardous substances from vessels and facilities. The term "hazardous substance" is defined in section 101(14) of CERCLA by referencing various Federal environmental statutes. For example, the term includes "any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act \* \* \*," also known as the Resource Conservation and Recovery Act (RCRA).

Section 102(b) of CERCLA establishes reportable quantities (RQs) of one pound ("statutory RQs") for releases of most CERCLA hazardous substances. Under section 102(a) of CERCLA, the Administrator of EPA has the authority to adjust these RQs by regulation ("adjusted RQs").

Under CERCLA section 103(a), the person in charge of a vessel or facility from which a CERCLA hazardous substance has been released in a quantity that equals or exceeds its RQ must immediately notify the National Response Center (NRC) of the release. A release is reportable if an RQ or more is released within a 24-hour period (see 40 CFR 302.6). This reporting requirement serves as a trigger for informing the government of a release so that Federal personnel can evaluate the need for a Federal removal or remedial action and undertake any necessary action in a timely fashion.

In addition to the reporting requirements under CERCLA section 103, section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11001 *et seq.*, requires owners or operators of certain facilities to report releases of extremely hazardous substances (EHSs) and CERCLA hazardous substances to State and local authorities (see 40 CFR 355.40). After the release of a hazardous substance in a quantity equal to or greater than its RQ, facility owners or operators must immediately notify the community emergency coordinator for each local

emergency planning committee for any area likely to be affected by the release, and the State emergency response commission of any State likely to be affected by the release.

#### 2. Does This Proposed Rule Apply to Me?

The person in charge of a vessel or facility from which a CERCLA hazardous substance is released in a quantity that equals or exceeds its RQ must notify appropriate authorities who can evaluate whether a government response is needed. Therefore, this proposed rule may affect the following entities: (1) Persons in charge of vessels or facilities that may release CERCLA hazardous substances (as identified in this proposal) and owners or operators of facilities that may release EHSs or CERCLA hazardous substances (as identified in this proposal) into the environment; and (2) entities that plan for or respond to such releases.

#### 3. What Types of Releases Are Exempt From the Reporting Requirements?

In determining whether you must report the release of a carbamate that equals or exceeds its RQ, it should be noted that section 103(e) of CERCLA exempts from the notification provisions of CERCLA section 103(a): "\* \* \* the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act or \* \* \* the handling and storage of such a pesticide product by an agricultural producer." The legislative history of CERCLA suggests that Congress intended this exemption to apply to the application of a pesticide generally in accordance with the pesticide's purpose.

In addition, if a release of a CERCLA hazardous substance meets the criteria under CERCLA section 103(e) for an exemption from reporting to the NRC, the same release is also exempt from reporting to State and local authorities under EPCRA section 304. In the context of today's proposed rule, EPA believes that the CERCLA section 103(e) reporting exemption provides a potential source of reporting relief under both CERCLA and EPCRA for certain releases of carbamate pesticides.

As EPA previously noted in an April 4, 1985 final rule (50 FR 13464), we do not consider the spill of a pesticide to be an application of the pesticide, nor do we consider a pesticide spill to be in accordance with the pesticide's purpose. Consequently, spills of a carbamate pesticide that equal or exceed an RQ must be reported to the NRC under CERCLA section 103 and to the

appropriate State and local authorities under EPCRA section 304.

### B. Background

In today's notice of proposed rulemaking (NPRM), EPA is proposing to adjust the statutory one-pound RQs for 28 individual carbamates and five carbamate-related waste streams. Today's rulemaking includes proposed RQ adjustments not only for individual carbamates, but also for thiocarbamates, dithiocarbamates, carbamoyl oximes, and several other individual substances that are closely related to carbamate production and/or waste generation. For purposes of simplicity, however, the preamble to today's proposed rule refers to all 28 individual substances for which RQ adjustments are being proposed as "carbamates," and to the five waste streams as "carbamate-related" waste streams. In addition, EPA is proposing to adjust the one-pound statutory RQ of another hazardous waste stream, K178, which is unrelated to the carbamates addressed in this rule (see Section III.C.8 of today's preamble for information regarding K178). A summary of the developments leading up to today's proposed rulemaking as it relates to the carbamate-related substances is provided below.

On November 8, 1984, Congress amended RCRA by enacting the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6901 *et seq.* In one provision of HSWA—a newly added RCRA section 3001(e)(2)—Congress directed EPA to determine whether several wastes, including wastes generated from the production of carbamates, should be listed as RCRA hazardous wastes. Carbamates are widely used as active ingredients in pesticides, herbicides, insecticides, and fungicides, and in the production of synthetic rubber. Before Congress enacted HSWA in 1984, EPA already had regulated several carbamate substances under RCRA, CERCLA, and other statutes.

Based on our evaluation of the carbamate production wastes, we published on March 1, 1994 (59 FR 9808), a proposal to list 80 carbamate-related substances as RCRA hazardous wastes and as CERCLA hazardous substances. These 80 substances included: (1) 70 individual carbamates; (2) six carbamate-related waste streams; and (3) four categories of carbamate substances. Subsequently, on February 9, 1995 (60 FR 7824), we finalized the listing of 64 of these 80 substances as RCRA hazardous wastes and CERCLA hazardous substances, deferring action on 12 individual substances and the four categories of carbamate substances

included in the proposed rule. Thus, EPA listed a total of 58 individual carbamates and six carbamate-related hazardous waste streams as RCRA hazardous wastes and CERCLA hazardous substances in the February 9, 1995 final rule. We published corrections to minor errors in these listings in the *Federal Register* on April 17, 1995 (60 FR 19165) and May 12, 1995 (60 FR 25619). We also modified our interpretation of the rule as it affected listings for K156 and K157 hazardous wastes on August 14, 1995 (60 FR 41817).

On November 1, 1996, the Court of Appeals (D.C. Circuit) ruled that EPA failed to follow proper rulemaking procedures in making some of the carbamate listing determinations in the February 9, 1995 rule. *Dithiocarbamate Task Force v. EPA*, 98 F.3d 1394 (D.C.Cir. 1996). As a result, the court vacated the RCRA hazardous waste and CERCLA hazardous substance listings for 24 of the 58 individual carbamates and one of the six carbamate-related waste streams (K160) included in that rule. In addition, the court vacated three other carbamate-related waste streams (K156, K157, and K158) only to the extent that they applied to the chemical 3-iodo-2-propynyl n-butylcarbamate. Under the court decision, the vacated carbamate listings are to be treated as though they had never been in effect.

To clarify the legal status of the vacated listings for the regulated community and the public, EPA, in a June 17, 1997 final rule (62 FR 32974), amended the lists of RCRA hazardous wastes and CERCLA hazardous substances (in 40 CFR parts 261 and 302 respectively) to remove the entries for the 24 individual carbamates and one carbamate-related waste stream (K160) that were vacated by the court, as well as revised the entries for K156, K157, and K158 to indicate that they do not apply to 3-iodo-2-propynyl n-butylcarbamate.

It is important to note, however, that the court's ruling did not change the February 9, 1995 listing of the 34 remaining individual carbamates as RCRA hazardous wastes; those listings remain in effect. Independent of the February 9, 1995 rule, EPA already has added six of these 34 individual carbamates to the CERCLA list of hazardous substances in Table 302.4 of 40 CFR 302.4, and developed adjusted RQs for these substances because of their listing under the Clean Air Act or Clean Water Act.<sup>1</sup> The six substances

<sup>1</sup> We adjusted the RQs for five of these six substances in an April 4, 1985 final rule (50 FR 13456), and adjusted the RQ for the other substance,

and their Chemical Abstracts Service Registry Numbers (CASRN) are: carbaryl (CASRN 63-25-2); carbofuran (CASRN 1563-66-2); mercaptodimethur (CASRN 2032-65-7); mexacarbate (CASRN 315-18-4); propoxur (CASRN 114-26-1); and triethylamine (CASRN 121-44-8).<sup>2</sup> Thus, we are not proposing any RQ adjustments for these six substances today.

Upon the effective date of the February 9, 1995 final rule, the 28 remaining individual carbamates and the five carbamate-related hazardous waste streams became hazardous substances under CERCLA section 101(14)(C) and received one-pound statutory RQs. We are proposing today to adjust the statutory one-pound RQs for these 28 substances and five waste streams based on criteria that relate to the possibility of harm from the release of each hazardous substance into the environment. EPA will revise the List of Hazardous Substances and Reportable Quantities (Table 302.4 of 40 CFR 302.4) to reflect these proposed changes and other, conforming proposed changes, if they are finalized. However, until such time as we finalize the adjusted RQs proposed in today's rule, the statutory RQ of one pound remains in effect for these substances.

Finally, eleven of the individual substances with proposed RQ adjustments in today's rule are also EPCRA section 302 EHSs. For the names of these 11 substances, see the proposed revisions to appendices A and B of 40 CFR part 355, included at the end of today's rule. In an August 30, 1989 rule (54 FR 35988), we proposed to adjust the RQs for all the EPCRA EHSs.<sup>3</sup> We finalized adjustments to the RQs for all the EHSs, except the 11 included in today's rule (61 FR 20473, May 7, 1996). We are repropounding adjusted RQs for these 11 substances today, for reporting under both CERCLA and EPCRA.

### C. Summary of Today's Action

#### 1. What Is the Scope of Today's Rule?

In today's rule, we are proposing to adjust the one-pound statutory RQs for 28 individual carbamates (one of which is adjusted to a final RQ of one-pound) and five carbamate-related waste streams. In addition, EPA is proposing to adjust the one-pound statutory RQ of another hazardous waste stream, K178, which is unrelated to the carbamates

propoxur, in a June 12, 1995 final rule (60 FR 30926).

<sup>2</sup> Although not a carbamate, triethylamine is used during the production of carbamates.

<sup>3</sup> We used the data from this August 30, 1989 proposed rulemaking, as well as more recent data, to support the RQ adjustments proposed for these 11 substances in today's rule.

addressed in this rule (see section III.C.8 of today's preamble for information regarding K178). We based these adjustments on specific scientific and technical criteria that relate to the possibility of harm from the release of a CERCLA hazardous substance in certain amounts. RQs are based, in part, on a determination of possible or potential harm, but they are not a determination that releases of a particular amount of a hazardous substance necessarily will harm the public health, welfare, or the environment. The quantity released is just one factor that the Federal government considers when it assesses the need to respond to such a release. Other factors include, but are not limited to, the location of the release, its proximity to drinking water supplies or other valuable resources, and the likelihood of exposure or injury to nearby populations. The RQ adjustments that EPA is proposing today would enable us to focus our resources on those releases that are most likely to pose potential threats to public health, welfare, or the environment. These RQ adjustments also would relieve the regulated community and emergency response personnel from the burden of making and receiving reports of releases that are unlikely to pose such threats.

## 2. What Methodology Is EPA Using To Adjust the RQs of the Individual Carbamates?

EPA has wide discretion in adjusting the statutory RQs for hazardous substances under CERCLA. Administrative feasibility and practicality are important considerations. Our methodology for adjusting the RQ of an individual hazardous substance begins with an evaluation of its intrinsic physical, chemical, and toxicological properties. These intrinsic properties—called “primary criteria”—are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity.<sup>4</sup>

Generally, for each intrinsic property, EPA ranks hazardous substances on a five-tier scale, associating a specific range of values on each scale with an RQ value of 1, 10, 100, 1,000, or 5,000

<sup>4</sup> For further information on assigning adjusted RQs to hazardous substances under the primary criteria, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 2, August 1986 (for chronic toxicity), Volume 3, July 1989 (for potential carcinogenicity), and Volume 1, March 1985 (for the four other primary criteria), available for inspection at the Superfund Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

pounds. Each hazardous substance may receive several tentative RQ values based on the primary criteria. The lowest of the tentative RQs becomes the “primary criteria RQ” for that substance.

When we find sufficient data in the scientific literature on the chronic toxicity and/or potential carcinogenicity (two of the six primary criteria) of a substance, we generally evaluate and summarize these data in a chemical-specific profile. Following an extensive review of available scientific literature on the 28 individual carbamates addressed in today's proposed rule, we found that chronic toxicity profiles are warranted for nine of these 28 carbamates, and that potential carcinogenicity profiles are warranted for six of the 28 carbamates. EPA has placed these 15 draft chemical-specific profiles in the docket for this proposed rulemaking.<sup>5</sup> Proposed RQs for several of the substances included in today's rule are based, at least in part, on the conclusions drawn in these profiles.

We are soliciting comments on these drafts. We will consider data that you submit, including any additional toxicity or carcinogenicity data that may be available on these substances or the other carbamates included in today's proposed rule. If the data are applicable, we will incorporate them into the draft profiles prior to their completion.

After assigning the primary criteria RQs, we further evaluate the substances for their susceptibility to certain degradative processes. These natural degradative processes, which we use as “secondary RQ adjustment criteria,” are biodegradation, hydrolysis, and photolysis (BHP). If a hazardous substance, when released into the environment, degrades relatively rapidly to a less hazardous form by one or more of the BHP processes, we generally increase its RQ (as determined by the primary RQ adjustment criteria) by one level.<sup>6</sup> Conversely, if a hazardous substance degrades to a more hazardous product after its release, we assign an RQ equal to the RQ for the more hazardous substance, which may be one or more levels lower than the RQ for the original substance.

<sup>5</sup> You may inspect the preliminary draft Reportable Quantity documents and potential carcinogenicity evaluations at the Superfund Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

<sup>6</sup> We do not raise an RQ level based on BHP if the primary criteria RQ is already at its highest possible level (100 pounds for potential carcinogens and 5,000 pounds for all other types of hazardous substances). The secondary adjustment criteria of BHP are not applied to radionuclides.

Three carbamates—bendiocarb, benomyl, and thiophanate-methyl—have BHP data that are a sufficient basis for adjusting the primary criteria RQs for these substances. Although several other carbamates (e.g., propham) have BHP data that suggest rapid degradation, the evidence for most of these substances is not conclusive. Therefore, no adjustment to the RQs for these other carbamates was proposed on the basis of BHP.<sup>7</sup> EPA is requesting that commenters submit additional degradation data (e.g., data on BOD<sub>5</sub> values and on half lives), if available, on these 28 individual substances.<sup>8</sup>

EPA could not locate acceptable data on any of the primary or secondary criteria for three of the 28 individual carbamates in today's proposed rule (see Table 1). In the past, when adjusting the statutory RQs of such data-poor hazardous substances, we have used data from chemically similar, surrogate substances.<sup>9</sup> Therefore, to adjust the statutory RQs of the three data-poor carbamates in today's rule, we conducted an analysis of other carbamates to identify potential surrogate substances (i.e., carbamates with primary criteria data that are chemically similar, based primarily on structural analogy, to the data-poor substances).

Table 1 lists the chemically similar carbamates EPA used as proposed surrogates, and the proposed RQs we assigned to each data-poor substance based on its chemically similar

<sup>7</sup> To review a summary of the BHP data on the 28 carbamates included in today's rule, see Exhibit 4–3 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, Volume 8, available for inspection at the Superfund Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

<sup>8</sup> One or more of the following criteria must be met for a hazardous substance to qualify for further RQ adjustment based on BHP: (1) *Biodegradation*: the substance must have a five-day biochemical oxygen demand (BOD<sub>5</sub>) that equals or exceeds 50 percent of the theoretical oxygen demand as calculated based on stoichiometric oxidation; and (2) *Hydrolysis/Photolysis*: the half-life of the substance in the environment must be five days or less. For further information on the methodology for applying BHP, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, Volume 1, March 1985, available for inspection at the Superfund Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

<sup>9</sup> For further information on, and examples of, EPA's use of surrogate data to adjust RQs of hazardous substances, see section 2 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, Volume 8, available for inspection at the Superfund Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

surrogate.<sup>10</sup> We are requesting primary and secondary criteria data on these three data-poor substances. We also are soliciting comments from readers on our choice of surrogate substances used to adjust the RQs for these three carbamates.

TABLE 1.—PROPOSED RQs FOR THE DATA-POOR CARBAMATES

Data-poor carbamate	Proposed surrogate	Proposed RQ (pounds)
Bendiocarb phenol .....	Bendiocarb .....	1000
Carbofuran phenol .....	Carbofuran .....	10
Manganese dimethyldithiocarbamate .....	Ziram .....	10

Please note that in Table 2, below, we are assigning different RQs for the data-poor carbamate/surrogate pair of Bendiocarb phenol (data-poor carbamate) and Bendiocarb (its proposed surrogate) in shown in Table 1, above. In Table 2, EPA is applying the secondary criteria of BHP to adjust the RQ for bendiocarb to 100 pounds. However, due to structural differences

between the two substances, we believe that it would be inappropriate to apply the BHP data for bendiocarb to bendiocarb phenol; hence, EPA is proposing a 1000-pound RQ for bendiocarb phenol (see Tables 1 and 2).

3. What RQs Are Proposed for the Individual Carbamates?

Table 2 lists the chemical names, CASRNs, and proposed RQs for the 28

individual carbamates included in today's proposed rule. The proposed RQs for 27 of the 28 individual carbamates would be raised from their one-pound statutory levels, while one of the 28 individual carbamates—Dimetilan—would be adjusted to its proposed, final RQ of one pound.

TABLE 2.—PROPOSED RQs FOR 28 INDIVIDUAL CARBAMATES

Chemical name	CASRN	Proposed RQ (pounds)
A2213 .....	30558-43-1	5000
Aldicarb sulfone .....	1646-88-4	100
Barban .....	101-27-9	10
Bendiocarb .....	22781-23-3	100
Bendiocarb phenol .....	22961-82-6	1000
Benomyl .....	17804-35-2	10
Carbendazim .....	10605-21-7	10
Carbofuran phenol .....	1563-38-8	10
Carbosulfan .....	55285-14-8	1000
m-Cumenyl methylcarbamate .....	64-00-6	10
Diethylene glycol, dicarbamate .....	5952-26-1	5000
Dimetilan .....	644-64-4	1
Formetanate hydrochloride .....	23422-53-9	100
Formparanate .....	17702-57-7	100
Isolan .....	119-38-0	100
Manganese dimethyldithiocarbamate .....	15339-36-3	10
Metolcarb .....	1129-41-5	1000
Oxamyl .....	23135-22-0	100
Physostigmine salicylate .....	57-64-7	100
Physostigmine .....	57-47-6	100
Promecarb .....	2631-37-0	1000
Propham .....	122-42-9	1000
Prosulfocarb .....	52888-80-9	5000
Thiodicarb .....	59669-26-0	100
Thiophanate-methyl .....	23564-05-8	10
Tirpate .....	26419-73-8	100
Triallate .....	2303-17-5	100
Ziram .....	137-30-4	10

4. How is EPA Adjusting the RQs for the Carbamate-Related Waste Streams?

In addition to the 28 individual carbamate hazardous substances, we also are proposing to adjust the RQs of

the five carbamate-related RCRA hazardous waste streams (K156, K157, K158, K159, and K161). The standard methodology used to adjust the RQs for RCRA hazardous waste streams differs

from the methodology applied to individual hazardous substances. Our procedure for assigning RQs to RCRA waste streams is based on an analysis of the hazardous constituents of the waste

<sup>10</sup> These three data-poor carbamates also are included in the list of 28 individual carbamates that appears in Table 2. For further information on the three data-poor carbamates and the chemically-

similar, surrogate substances that EPA has identified, see section 3 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, Volume 8,

available for inspection at the Superfund Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

streams. Specifically, EPA identifies the constituents of each RCRA hazardous waste stream in 40 CFR part 261, appendix VII. We determine the RQ for each constituent within the waste stream and establish the lowest RQ value of these constituents as the adjusted RQ for the waste stream. We also apply this same methodology to adjust the RQ for K178 (see section III.C.8 for more information).

5. What RQs Are Proposed for These Carbamate-Related Waste Streams?

In the February 9, 1995 final rule, the five carbamate-related waste streams were assigned the statutory one-pound RQ required by CERCLA section 102(b). In today's rule, using the standard methodology for adjusting RQs for RCRA waste streams, EPA is proposing a one-pound adjusted RQ for waste stream K161 and 10-pound adjusted RQs for the remaining four carbamate-related waste streams (K156, K157, K158, and K159) based on the constituent(s) with the lowest RQ within each of the waste streams. Table 3 lists the constituents and constituent RQs of each of the five carbamate-related hazardous waste streams.

TABLE 3.—CONSTITUENTS OF FIVE CARBAMATE-RELATED WASTE STREAMS

Carbamate Waste Stream Constituents	RQ (pounds)
K156 .....	10
benomyl .....	10
carbaryl .....	100
carbendazim .....	10
carbofuran .....	10
carbosulfan .....	1000
formaldehyde .....	100
methylene chloride .....	1000
triethylamine .....	5000
K157 .....	10
carbon tetrachloride .....	10
formaldehyde .....	100
methyl chloride .....	100
methylene chloride .....	1000
pyridine .....	1000
triethylamine .....	5000
K158 .....	10
benomyl .....	10
carbendazim .....	10
carbofuran .....	10
carbosulfan .....	1000
chloroform .....	10
methylene chloride .....	1000
K159 .....	10
benzene .....	10
butylate .....	100
EPTC .....	1000
molinate .....	10
pebulate .....	100
vernolate .....	100
K161 .....	1
antimony .....	5000
arsenic .....	1

TABLE 3.—CONSTITUENTS OF FIVE CARBAMATE-RELATED WASTE STREAMS—Continued

Carbamate Waste Stream Constituents	RQ (pounds)
metam sodium .....	10
ziram .....	10

6. What Conforming Changes Are Being Made to Table 302.4 and Its Appendix A?

EPA is proposing to modify the entries in Table 302.4 for the carbamates added by the February 9, 1995 final rule to the list of CERCLA hazardous substances. Specifically, we are proposing in today's rule to change the entries for the chemical names of the carbamates in the "Hazardous Substance" column in Table 302.4 to reflect more accurately the chemical names for these substances as they appear in the RCRA tables of hazardous wastes at 40 CFR 261.33(e) and (f).

For example, the February 9, 1995 final rule generally lists two names for each individual carbamate in Table 302.4—a chemical name and, in parentheses, a synonym. Thus, the February 9, 1995 final rule added one entry for each carbamate to the CERCLA list of hazardous substances. The same final rule alphabetically lists these two names as separate entries in the RCRA tables of hazardous wastes in 40 CFR 261.33.

Because each of the 28 individual carbamates included in today's rule has at least two separate entries in the RCRA tables of hazardous wastes, we are proposing to make the CERCLA table of hazardous substances consistent by listing the two (or more) synonymous names as separate entries in Table 302.4. Thus, amendatory instruction 3, which immediately precedes Table 302.4 in today's proposed rule, accounts for the addition of the chemical names and synonyms as separate entries in Table 302.4, and amendatory instruction 2 accounts for the removal of the previously listed names for these substances. We believe that proposing these changes to Table 302.4 is a positive step toward ensuring that chemical lists under RCRA and CERCLA are more consistent and that carbamate synonyms are easier to find in the table.

In addition, we are proposing conforming changes to entries in appendix A to Table 302.4 for the 28 carbamates added to the list of CERCLA hazardous substances by the February 9, 1995 final rule.

7. What Changes Are Being Made to 40 CFR Part 355?

Appendices A and B of 40 CFR part 355, which list EHSs and their threshold planning quantities (TPQs) under EPCRA, also list the RQs for EHSs. Eleven of the individual carbamates for which EPA is proposing adjusted RQs are EHSs, as well as CERCLA hazardous substances. EPA today is proposing to revise appendices A and B of 40 CFR part 355 to include these adjusted RQs. For the names of these 11 substances, see the proposed revisions to appendices A and B included at the end of today's proposed rule.

8. What RQ Is Proposed for the K178 Waste Stream? <sup>11</sup>

As noted in section III.C.4 of the preamble, the Agency's standard methodology for adjusting the RQs for RCRA waste streams is based on an analysis of the hazardous constituents of each waste, as identified in 40 CFR part 261, appendix VII. We determine an RQ for each constituent and establish the lowest RQ value of these constituents as the adjusted RQ for the waste stream. When there are hazardous constituents identified for a waste stream that are not individual CERCLA hazardous substances, EPA develops an RQ for these constituents in order to assign an appropriate RQ to the waste stream (see 48 FR 23565, May 25, 1983). In other words, we derive the RQ for an RCRA waste stream based on the lowest RQ of all of the hazardous constituents identified for that waste in appendix VII of 40 CFR part 261, regardless of whether the constituents are CERCLA hazardous substances.

On September 14, 2000, EPA published a proposed rule to list three waste streams from inorganic chemical manufacturing processes as RCRA hazardous wastes in 40 CFR 261.32 and as CERCLA hazardous substances in 40 CFR 302.4 (65 FR 55684). In that rule, we proposed to adjust the one-pound statutory RQ for two of the three waste streams, K176 and K177. For the third waste stream, K178 (nonwastewaters from the production of titanium dioxide by the chloride-ilmenite process), EPA identified two hazardous constituents. The two hazardous constituents identified in the proposed rule were: thallium, which is a CERCLA hazardous substance with a 1,000-pound RQ; and manganese, which does not appear on the CERCLA hazardous substance list in 40 CFR 302.4 and, therefore, has not been assigned an RQ. Because EPA had

<sup>11</sup> HSWA also directed EPA to determine whether wastes from the Inorganic Chemical Industry should be listed as RCRA hazardous wastes.

not yet developed an RQ for manganese at that time, we did not propose to adjust the RQ for K178 in the September 14, 2000 proposed rule.

Numerous commenters to the proposed rule objected to using manganese as a basis for listing K178 wastes, citing potential adverse impacts to many industries. Although EPA continues to believe that manganese poses significant issues that ultimately should be resolved, the court-ordered schedule for the hazardous waste listings provided no flexibility to address those issues fully before finalizing the listings. For that reason, in the final rule, EPA deferred final action on adding manganese to appendix VII of 40 CFR part 261 as a basis for listing K178 wastes (66 FR 58258; November 20, 2001). The final hazardous waste listing for K178 is based solely on thallium. As a result, we are proposing an RQ of 1,000 pounds for the K178 waste stream, based on the constituent RQ for thallium, the sole hazardous constituent identified for the waste stream.

As stated in the section of the preamble entitled "How and to Whom Do I Submit Comments?," it is important to identify docket control number SFUND-2002-0011 in the subject line on the first page of your correspondence if you are submitting comments on the proposed 1,000-pound RQ for K178.

#### D. Statutory and Regulatory Reviews

##### 1. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether this regulatory action is "significant" and therefore subject to formal review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy

issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review. EPA performed an economic analysis, which shows that this proposed rule will result in an annual cost savings of approximately \$90,640 to the regulated community and to Federal, State, and local governments, and does not result in any of the other effects that define a significant regulatory action. In this proposed rule, EPA would raise the RQs for 27 of the 28 individual substances and five of the six waste streams (including K178) from their current statutory one-pound levels. The remaining individual carbamate substance and carbamate-related waste stream will remain subject to an RQ of one pound.

We have estimated that these adjustments from the statutory one-pound RQs will reduce by approximately 176 the number of reportable releases for these hazardous substances each year (see the economic analysis mentioned above). The estimated \$90,640 cost savings reflects only those effects of the RQ adjustments that are readily quantifiable in dollars and are associated with the release notification requirements under CERCLA section 103 and EPCRA section 304, including the associated activities of recordkeeping and notification processing.

A detailed presentation of EPA's methodology, data sources, and computations applied for estimating the number of affected entities (industrial facilities) and economic impacts attributable to today's proposal is provided in the "Economic Impact Analysis" to this proposal.

##### 2. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Information Collection Request (ICR) documents have been prepared by EPA (ICR Nos. 1049.09 and 1395.04). A copy of these ICRs may be obtained from Susan Ambry by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or by calling (202) 566-1676, and by e-mail at [ambry.susan@epamail.epa.gov](mailto:ambry.susan@epamail.epa.gov). A copy also may be downloaded off the Internet at <http://www.epa.gov/icr>.

EPA proposes the following conditions for reporting and recordkeeping: mandatory reporting requirements (CERCLA section 103(a) and EPCRA section 304) serve as triggers for informing the government of a release so that Federal, State, or local personnel can evaluate the need for removal or remedial actions, and undertake any necessary action in a timely fashion.

We estimate that the public reporting burden for collecting information required under CERCLA section 103 averages 4.1 labor hours (*i.e.*, combined managerial, technical, and clerical hours) per response; the reporting burden under EPCRA section 304 averages approximately 5 labor hours per response. This estimate includes the time required to: make a determination whether a release requires a report to the NRC, the State, and local agencies; make the call(s); maintain a log of any calls made to government organizations; and make a follow-up written notification (if required under EPCRA section 304). The average burden estimates of 4.1 and 5 hours are provided only for the purpose of calculating the labor costs associated with the entire release reporting and recordkeeping process under CERCLA and EPCRA. Thus, these burden estimates should not be misinterpreted as reflecting the amount of time an individual has before he or she must call the NRC. Rather, CERCLA and EPCRA require that persons in charge of vessels or facilities immediately notify the NRC, the State, and local agencies of releases that equal or exceed an RQ.

Because we are proposing to raise the RQs for all but two of the substances included in today's rule, we expect the net reporting and recordkeeping burden associated with reporting releases of these substances under CERCLA section 103 to decrease. As noted in the economic impact analysis supporting today's proposed rule (and in Section III.D.2 of this preamble), we estimate that the annual reporting and recordkeeping burdens associated with reports to the NRC will be reduced by approximately 720 hours, and to SERCs and LEPCs by 880 hours.

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 are listed in 40 CFR part 9 and 48 CFR chapter 15.

##### 3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of

1996 (SBREFA), 5 U.S.C. 601 *et. seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has fewer than 1000 or 100 employees per firm depending upon the SIC code the firm primarily is classified; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I hereby certify that this proposal will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities" (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on small entities subject to the rule. For more information regarding the economic impact of this proposed rule, please refer to the economic background document to this proposal.

We have therefore concluded that today's proposed rule will relieve regulatory burden for small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

#### 4. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal Agencies to assess the effects of

their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA must prepare a written analysis, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials to have meaningful and timely input in the development of regulatory proposals, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not include a Federal mandate that may result in expenditures of \$100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any one year. This is because this proposed rule imposes no enforceable duty on any State, local, or tribal governments. EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding \$100 million. Therefore, today's proposed rule is not subject to the requirements of sections 202 and 205 of UMRA.

#### 5. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism

implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposal does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule directly affects manufacturers, handlers, transporters, and other users of carbamates; in addition, entities that may release K178 waste streams will also be affected. There are no State and local government bodies that incur direct compliance costs by this rulemaking. State and local government implementation expenditures are expected to be less than \$500,000 in any one year. Thus, the requirements of section 6 of the Executive Order do not apply to this proposal.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

#### 6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments, nor would it impose substantial direct compliance costs on them. Thus, Executive Order 13175 does not apply to this rule.

#### 7. Executive Order 13045: Protection of Children From Environmental Risks and Safety Risks

The Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) is "economically significant" as

defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposal is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

#### 8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This proposed rule reduces regulatory burden. It thus should not adversely affect energy supply, distribution, or use.

#### 9. National Technology Transfer and Advancement Act of 1995

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

The proposed rule does not involve technical standards. Therefore, EPA is

not considering the use of any voluntary consensus standards.

#### List of Subjects

##### 40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

##### 40 CFR Part 355

Air pollution control, Chemicals, Hazardous substances, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: November 25, 2003.

**Michael O. Leavitt**,  
*Administrator.*

For the reasons set out in the preamble, it is proposed to amend title 40, chapter I of the Code of Federal Regulations as follows:

#### PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for part 302 continues to read as follows:

**Authority:** 42 U.S.C. 9602, 9603, 9604; 33 U.S.C. 1321 and 1361.

2. Table 302.4 in § 302.4 is amended by removing the entries for "1,3-Benzodioxol-4-ol, 2,2-dimethyl-, (Bendiocarb phenol)", "1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate (Bendiocarb)", "7-Benzofuranol, 2,3-dihydro-2,2-dimethyl- (Carbofuran phenol)", "Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3b]indol-5-yl methylcarbamate ester (1:1) (Physostigmine salicylate)", "Carbamic acid, 1H-benzimidazol-2-yl, methyl ester (Carbendazim)", "Carbamic acid, [1-(butylamino)carbonyl]-1H-benzimidazol-2-yl, methyl ester (Benomyl)", "Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester (Barban)", "Carbamic acid, [(dibutylamino)thio]methyl-, 2,3-dihydro-2,2-dimethyl-7benzofuranyl ester (Carbosulfan)", "Carbamic acid, dimethyl-,1[(dimethylamino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester

(Dimetilan)", "Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester (Isolan)", "Carbamic acid, methyl-, 3-methylphenyl ester (Metolcarb)", "Carbamic acid, [1,2-phenylenebis(iminocarbonothioyl)]bis-, dimethyl ester (Thiophanate-methyl)", "Carbamic acid, phenyl-, 1-methylethyl ester (Propham)", "Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester (Triallate)", "Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester (Prosulfocarb)", "1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)carbonyl]oxime (Tirpate)", "Ethanimidothioci acid, 2-(dimethylamino-N-hydroxy-2-oxo-, methyl ester (A2213)", "Ethanimidothioic acid, 2-(dimethylamino)-N-[[[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester (Oxamyl)", "Ethanimidothioic acid, N,N'-[thiobis[(methylimino)carbonyloxy]]bis-, dimethyl ester (Thiodicarb)", "Ethanol, 2,2'-oxybis-, dicarbamate (Diethylene glycol, dicarbamate)", "Manganese, bis(dimethylcarbomodithioato-S,S')-(Manganese dimethyldithiocarbamate)", "Methanimidamide, N,N-dimethyl-N'-[3-[[[(methylamino)carbonyl]oxy]phenyl]-, monohydrochloride (Formetanate hydrochloride)", "Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[[(methylamino)carbonyl]oxy]phenyl]- (Formparanate)", "Phenol, 3-(1-methylethyl)-, methyl carbamate (m-Cumenyl methylcarbamate)", "Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate (Promecarb)", "Propanal, 2-methyl-2-(methylsulfonyl)-, O-[(methylamino)carbonyl] oxime (Aldicarb sulfone)", "Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-(Physostigmine)", "Zinc, bis(dimethylcarbomodithioato-S,S')-(Ziram)", "K156", "K157", "K158", "K159", "K161", and "K178", and adding the following new entries in alphabetical order to read as follows (applicable footnotes have been republished without change):

#### § 302.4 Designation of hazardous substances.

\* \* \* \* \*

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste number	Final RQ pounds (Kg)
A2213 .....	30558431	4	U394 .....	5000 (2270)
Aldicarb sulfone .....	1646884	4	P203 .....	100 (45.4)
Barban .....	101279	4	U280 .....	10 (4.54)
Bendiocarb .....	22781233	4	U278 .....	100 (45.4)
Bendiocarb phenol .....	22961826	4	U364 .....	1000 (454)
Benomyl .....	17804352	4	U271 .....	10 (4.54)
1,3-Benzodioxol-4-ol, 2,2-dimethyl- .....	22961826	4	U364 .....	1000 (454)
1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate .....	22781233	4	U278 .....	100 (45.4)
7-Benzofuranol, 2,3-dihydro-2,2-dimethyl- .....	1563388	4	U367 .....	10 (4.54)
Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1) .....	57647	4	P188 .....	100 (45.4)
Carbamic acid, 1H-benzimidazol-2-yl, methyl ester .....	10605217	4	U372 .....	10 (4.54)
Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-, methyl ester .....	17804352	4	U271 .....	10 (4.54)
Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester .....	101279	4	U280 .....	10 (4.54)
Carbamic acid, [(dibutylamino)-thio]methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester .....	55285148	4	P189 .....	1000 (454)
Carbamic acid, dimethyl-, 1-[(dimethyl-amino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester .....	644644	4	P191 .....	1 (0.454)
Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester .....	119380	4	P192 .....	100 (45.4)
Carbamic acid, methyl-, 3-methylphenyl ester .....	1129415	4	P190 .....	1000 (454)
Carbamic acid, [1,2-phenylenebis(iminocarbonothioyl)]bis-, dimethyl ester .....	23564058	4	U409 .....	10 (4.54)
Carbamic acid, phenyl-, 1-methylethyl ester .....	122429	4	U373 .....	1000 (454)
Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester .....	2303175	4	U389 .....	100 (45.4)
Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester .....	52888809	4	U387 .....	5000 (2270)
Carbendazim .....	10605217	4	U372 .....	10 (4.54)
Carbofuran phenol .....	1563388	4	U367 .....	10 (4.54)
Carbosulfan .....	55285148	4	P189 .....	1000 (454)
m-Cumenyl methylcarbamate .....	64006	4	P202 .....	10 (4.54)
Diethylene glycol, dicarbamate .....	5952261	4	U395 .....	5000 (2270)
Dimetilan .....	644644	4	P191 .....	1 (0.454)
1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)-carbonyl]oxime .....	26419738	4	P185 .....	100 (45.4)
Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester .....	30558431	4	U394 .....	5000 (2270)
Ethanimidothioic acid, 2-(dimethylamino)-N-[[[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester .....	23135220	4	P194 .....	100 (45.4)
Ethanimidothioic acid, N,N'-[thiobis[(methylimino)carbonyloxy]]bis-, dimethyl ester .....	59669260	4	U410 .....	100 (45.4)
Ethanol, 2,2'-oxybis-, dicarbamate .....	5952261	4	U395 .....	5000 (2270)
Formetanate hydrochloride .....	23422539	4	P198 .....	100 (45.4)
Formparanate .....	17702577	4	P197 .....	100 (45.4)
Isolan .....	119380	4	P192 .....	100 (45.4)
3-Isopropylphenyl N-methylcarbamate .....	64006	4	P202 .....	10 (4.54)
Manganese, bis(dimethylcarbomodithioato-S,S')- .....	15339363	4	P196 .....	10 (4.54)
Manganese dimethyldithiocarbamate .....	15339363	4	P196 .....	10 (4.54)
Methanimidamide, N,N-dimethyl-N'-[3-[[[(methylamino)-carbonyl]oxy]phenyl]-, monohydrochloride .....	23422539	4	P198 .....	100 (45.4)
Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[[(methylamino)carbonyl]oxy]phenyl]- .....	17702577	4	P197 .....	100 (45.4)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Statutory code†	RCRA waste number	Final RQ pounds (Kg)
Metolcarb .....	1129415	4	P190 .....	1000 (454)
Oxamyl .....	23135220	4	P194 .....	100 (45.4)
Phenol, 3-(1-methylethyl)-, methyl carbamate .....	64006	4	P202 .....	10 (4.54)
Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate .....	2631370	4	P201 .....	1000 (454)
Physostigmine .....	57476	4	P204 .....	100 (45.4)
Physostigmine salicylate .....	57647	4	P188 .....	100 (45.4)
Promecarb .....	2631370	4	P201 .....	1000 (454)
Propanal, 2-methyl-2-(methylsulfonyl)-, O-[(methylamino)carbonyl] oxime .....	1646884	4	P203 .....	100 (45.4)
Propam .....	122429	4	U373 .....	1000 (454)
Prosulfocarb .....	52888809	4	U387 .....	5000 (2270)
Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)- .....	57476	4	P204 .....	100 (45.4)
Thiodicarb .....	59669260	4	U410 .....	100 (45.4)
Thiophanate-methyl .....	23564058	4	U409 .....	10 (4.54)
Tirpate .....	26419738	4	P185 .....	100 (45.4)
Triallate .....	2303175	4	U389 .....	100 (45.4)
Zinc, bis(dimethylcarbamodithioato-S,S')- .....	137304	4	P205 .....	10 (4.54)
Ziram .....	137304	4	P205 .....	10 (4.54)
K156 .....		4	K156 .....	10 (4.54)
Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)		4	K157 .....	10 (4.54)
K157 .....		4	K157 .....	10 (4.54)
Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)		4	K158 .....	10 (4.54)
K158 .....		4	K158 .....	10 (4.54)
Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)		4	K159 .....	10 (4.54)
K159 .....		4	K159 .....	10 (4.54)
Organics from the treatment of thiocarbamate wastes.		4	K161 .....	1 (0.454)
K161 .....		4	K161 .....	1 (0.454)
Purification solids (including filtration, evaporation, and centrifugation solids), bag-house dust and floor sweepings from the production of dithiocarbamate acids and their salts. (This listing does not include K125 or K126.)		4	K178 .....	1000 (454)
K178 .....		4	K178 .....	1000 (454)
Nonwastewaters from the production of titanium dioxide by the chloride-ilmenite process. [This listing does not apply to chloride process waste solids from titanium tetrachloride production exempt under section 261.4(b)(7).]		4	K178 .....	1000 (454)

† Indicates the statutory source as defined by 1, 2, 3, and 4 below.

4- Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA section 3001.

1\* Indicates that the 1-pound RQ is a CERCLA statutory RQ.

3. Appendix A to § 302.4 is amended by revising the following entries, to read as follows:

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES

CASRN	Hazardous substance
57476	Physostigmine. Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-.
57647	Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1). Physostigmine salicylate.
64006	m-Cumenyl methylcarbamate. 3-Isopropylphenyl N-methylcarbamate. Phenol, 3-(1-methylethyl)-, methyl carbamate.
101279	Barban. Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester.
119380	Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester. Isolan.
122429	Carbamic acid, phenyl-, 1-methylethyl ester. Propham.
137304	Zinc, bis(dimethylcarbamodithioato-S,S')-. Ziram.
644644	Carbamic acid, dimethyl-, 1-[(dimethyl-amino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester. Dimetilan.
1129415	Carbamic acid, methyl-, 3-methylphenyl ester. Metolcarb.
1563388	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-. Carbofuran phenol.
1646884	Aldicarb sulfone. Propanal, 2-methyl-2-(methyl-sulfonyl)-, O-[(methylamino)carbonyl] oxime.
2303175	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester. Triallate.
2631370	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate. Promecarb.
5952261	Ethanol, 2,2'-oxybis-, dicarbamate. Diethylene glycol, dicarbamate.
10605217	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester. Carbendazim.
15339363	Manganese, bis(dimethylcarbamodithioato-S,S')-. Manganese dimethyldithiocarbamate.
17702577	Formparanate. Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[(methylamino)carbonyl]oxy]phenyl]-.
17804352	BenomyI. Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-, methyl ester.
22781233	Bendiocarb. 1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate.
22961826	Bendiocarb phenol. 1,3-Benzodioxol-4-ol, 2,2-dimethyl-.
23135220	Ethanimidothioic acid, 2-(dimethylamino)-N- [[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester. Oxamyl.
23422539	Methanimidamide, N,N-dimethyl-N'-[3-[(methylamino)-carbonyl]oxy]phenyl]-, monohydrochloride. Formetanate hydrochloride.
23564058	Carbamic acid, [1,2-phenylenebis(iminocarbonothioyl)]bis-, dimethyl ester. Thiophanate-methyl.
26419738	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)-carbonyl]oxime. Tirpate.

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
30558431	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester. A2213.
52888809	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester. Prosulfocarb.
55285148	Carbamic acid, [(dibutylamino)-thio]methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester. Carbosulfan.
59669260	Ethanimidothioic acid, N,N'-[thiobis[(methylimino)carbonyloxy]]bis-, dimethyl ester. Thiodicarb.

**PART 355—EMERGENCY PLANNING AND NOTIFICATION**

**Authority:** 42 U.S.C. 11002, 11004, and 11048.

entries, to read as follows (footnotes “\*” and “h” have been republished without change):

1. The authority citation for part 355 continues to read as follows:

2. Appendices A and B in part 355 are amended by revising the following

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES  
[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
26419-73-8	Carbamic Acid, Methyl-, O-(((2,4-Dimethyl-1, 3-Dithiolan-2-yl)Methylene)Amino)-.		100	100/10,000
644-64-4	Dimetilan		1	500/10,000
23422-53-9	Formetanate Hydrochloride	(h)	100	500/10,000
17702-57-7	Formparanate		100	100/10,000
119-38-0	Isopropylmethyl-pyrazolyl Dimethylcarbamate		100	500
1129-41-5	Metolcarb		1,000	100/10,000
23135-22-0	Oxamyl		100	100/10,000
64-00-6	Phenol, 3-(1-Methylethyl)-, Methylcarbamate		10	500/10,000
57-47-6	Physostigmine		100	100/10,000
57-64-7	Physostigmine, Salicylate (1:1)		100	100/10,000
2631-37-0	Promecarb	(h)	1,000	500/10,000

\* Only the statutory or final RQ is shown. For more information, see 40 CFR Table 302.4.

**Notes:**

<sup>h</sup> Revised TPQ based on new or re-evaluated toxicity data.

APPENDIX B TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES  
[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)**
57-47-6	Physostigmine		100	100/10,000
57-64-7	Physostigmine, Salicylate (1:1)		100	100/10,000
64-00-6	Phenol, 3-(1-Methylethyl)-, Methylcarbamate		10	500/10,000
119-38-0	Isopropylmethyl-pyrazolyl Dimethylcarbamate		100	500
644-64-4	Dimetilan		1	500/10,000
1129-41-5	Metolcarb		1,000	100/10,000
2631-37-0	Promecarb	(h)	1,000	500/10,000
17702-57-7	Formparanate		100	100/10,000
23135-22-0	Oxamyl		100	100/10,000
23422-53-9	Formetanate Hydrochloride	(h)	100	500/10,000
26419-73-8	Carbamic Acid, Methyl-, O-(((2,4-Dimethyl-1, 3- Dithiolan-2- yl)Methylene)Amino)-		100	100/10,000

\*Only the statutory or final RQ is shown. For more information, see 40 CFR Table 302.4.

<sup>h</sup> Revised TPQ based on new or re-evaluated toxicity data.



# Federal Register

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**Thursday,  
December 4, 2003**

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**Part V**

## **Environmental Protection Agency**

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**40 CFR Part 61**

**National Emission Standard for Benzene  
Waste Operations; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 61**

[OAR-2003-0147; FRL-7594-3]

RIN 2060-AJ87

**National Emission Standard for Benzene Waste Operations**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; amendments.

**SUMMARY:** On November 12, 2002, the EPA issued amendments to the national emission standard for benzene waste

operations as a direct final rule, along with a parallel proposal to be used as a basis for final action in the event we received any adverse comments. Because an adverse comment was received on provisions related to control devices, we withdrew the corresponding parts of the direct final rule on February 6, 2003. This action promulgates the provisions that were withdrawn based on the proposed rule published on November 12, 2002. This action also amends the rule to correct a cross-reference citation.

**EFFECTIVE DATE:** December 4, 2003.

**ADDRESSES:** The official public docket is available for public viewing at the EPA

Docket Center, EPA West, Room B-102, 1301 Constitution Ave., NW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert B. Lucas, Waste and Chemical Process Group (C504-05), Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541-0884, facsimile number (919) 541-5600, electronic mail (e-mail) address, *lucas.bob@epa.gov*.

**SUPPLEMENTARY INFORMATION**

*Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	NAIC <sup>1</sup>	Examples of regulated entities
Industry .....	32512-325182 32411 331111 22121 562211 324110	Chemical manufacturing plants, petroleum refineries, coke by-product recovery plants, and commercial hazardous waste treatment, storage, and disposal facilities that manage waste generated by these industries.
Federal government .....	.....	Not affected.
State/local/tribal government .....	.....	Not affected.

<sup>1</sup> North American Industry Classification System

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the final rule amendments. To determine whether your facility is regulated by the final rule amendments, you should examine the applicability criteria in 40 CFR 61.340 of the national emission standard for benzene waste operations. If you have any questions concerning applicability and rule determinations, contact the technical contact person in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*Docket.* The EPA has established an official public docket for this action including both Docket ID No. OAR-2003-0147 and Docket ID No. A-2001-23. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to the final rule amendments. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B-102, 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 Docket is (202) 566-1742.

*Electronic Docket Access.* You may access the final rule amendments 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 view public comments, access the index listing the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of today's final rule amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the final rule amendments will be posted on

the TTN's policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

*Judicial Review.* Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 2, 2004. Under section 307(d)(7)(B) of the CAA, only an objection to the final rule amendments that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final rule amendments may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

*Outline.* The information in this preamble is organized as follows:

- I. Background
- II. Response to Comment on Amendments to the National Emission Standard for Benzene Waste Operations
- III. Editorial Correction to the Amendments
- IV. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act

- C. Regulatory Flexibility Analysis
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
- G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
- H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer Advancement Act
- J. Congressional Review Act

## I. Background

On March 7, 1990, we issued the national emission standard for benzene waste operations (40 CFR part 61, subpart FF). Subpart FF applies to equipment and processes at certain chemical manufacturing plants, coke by-product recovery plants, petroleum refineries, and facilities that treat, store, or dispose of waste generated by those facilities.

On November 12, 2002, we issued a direct final rule (67 FR 68528) and a parallel proposed rule (67 FR 68546) to amend the national emission standard for benzene waste operations. We stated in the preamble to the direct final rule and parallel proposal that if we received adverse comments by December 12, 2002 (or February 18, 2003, if a public hearing was requested), on one or more distinct provisions of the direct final rule, we would publish a timely notice in the **Federal Register** specifying which provisions will become effective and which provisions will be withdrawn due to adverse comment.

We subsequently received an adverse comment from one commenter on the provisions related to control devices in a new compliance option for tanks equipped with an enclosure.

Accordingly, we withdrew 40 CFR 61.343(e) introductory text and withdrew and reserved paragraph (e)(2) in § 61.343 (68 FR 6082, February 6, 2003). The remaining provisions, for which we did not receive any adverse comments, became effective on February 10, 2002. After full and careful consideration of the comment, we are promulgating the amendments previously withdrawn based on the parallel proposal published on November 12, 2002.

## II. Response to Comment on Amendments to the National Emission Standard for Benzene Waste Operations

The direct final rule published on November 12, 2002, included amendments to 40 CFR 61.343 of the benzene waste final rule that add a new compliance option for tanks located

inside a permanent total enclosure. The new compliance option was adopted from similar standards established under the Resource Conservation and Recovery Act (RCRA) for hazardous waste treatment, storage, and disposal facilities (40 CFR parts 264 and 265, subparts CC). This change was first requested as an alternative emission limitation by a company subject to both the benzene waste final rule and the RCRA subparts CC rules. Under 40 CFR 264.1082(c)(5) and 265.1083(c)(5) of the RCRA rules, tanks are specifically exempted from the standards provided that, among other conditions, the tank is located inside an enclosure, and the enclosure is vented to a control device designed and operated in accordance with the requirements in the benzene waste national emission standard.

Prior to development of the direct final rule amendments and parallel proposal, we reviewed the information submitted by the company and determined that their control system (a tank located inside a permanent total enclosure with emissions vented through a closed vent system to an enclosed combustion device) provided a level of control of benzene equivalent to that required by the national emission standard for benzene waste operations. Based on this equivalency determination, we issued direct final rule amendments to the national emission standard by adding a new compliance option that allowed tanks to be located inside a permanent total enclosure that routes organic vapors to an "enclosed combustion control device." This is the most common type of control device used for tanks located inside a total enclosure.

The commenter objected to provisions that restricted applicable emission controls for the compliance option (*i.e.* the controls on the emissions from the tank in the enclosure) to an "enclosed combustion control device." He correctly pointed out that the national emission standard allows a wide range of control devices to be used to comply with the requirements. In fact, a "control device" is defined in 40 CFR 61.341 of the rule to mean an enclosed combustion device (vapor incinerator, boiler, or process heater); a vapor recovery system (carbon canister or condenser); or flare.

The commenter also stated that the amendments were inconsistent with the spirit of 40 CFR 264.1082(c)(5) and 265.1083(c)(5) of the RCRA rules, in that they would lead to situations where the RCRA rules would continue to apply but were not, in fact, intended to be applicable any longer. The anomalous situation put forward by the commenter

would be where a tank is located inside an enclosure, and the enclosure is vented to a vapor recovery system designed and operated in accordance with the requirements in the benzene waste national emission standard. The commenter stated that their tanks meet all the requirements for the exemption from the RCRA rules. In this case, however, the control device applied to the emissions from the permanent total enclosure is not an enclosed combustion control device. Consequently, the facility would not qualify for the RCRA exemption, an unintended outcome.

It was not our intention to restrict the new compliance option for tanks to enclosed combustion control devices. Any of the control devices allowed under the benzene waste national emission standard can be used under the new compliance option provided it meets the control device performance standards in 40 CFR 61.349 of subpart FF. The benzene waste national emission standard also contains procedures and requirements for requesting approval of a control device other than an enclosed combustion system, vapor recovery system, or flare.

We agree with the issue raised by the commenter and are issuing final amendments to the new compliance option, based on the parallel proposal, that refer simply to the use of a "control device." This change allows a tank meeting all of the conditions for exemption under 40 CFR 264.1082(c)(5) and 265.1083(c)(5) of the RCRA rules to comply with the new compliance option using a "control device" as defined in 40 CFR 61.341 of the benzene waste national emission standard (meaning an enclosed combustion device, vapor recovery system, or flare). This change is effective immediately. No risk, environmental, energy, cost, or economic impacts are associated with this action.

## III. Editorial Correction to the Amendments

Since publication of the direct final rule amendments and parallel proposal, we identified one cross-reference error. As proposed, paragraph (a)(3)(iii) of 40 CFR 61.345 allowed the use of safety devices on any container, enclosure, closed-vent system, or control device used to comply with the requirements of "paragraph (e)(1) of this section," which does not exist. We have corrected this citation in today's final rule amendments by referencing the control requirements in 40 CFR 61.345(a)(3)(i).

#### IV. Statutory and Executive Order Reviews

##### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is “significant” and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a “significant regulatory action” as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

It has been determined that the final rule amendments are not a “significant regulatory action” under the terms of Executive Order 12866 and are, therefore, not subject to OMB review.

##### B. Paperwork Reduction Act

This action does not impose any new information collection burden because the only facility with a total enclosure is already conducting annual verifications and keeping the prescribed records. However, the OMB has previously approved the information collection requirements in the existing national emission standard (40 CFR part 61, subpart FF) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0183.

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 purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of

information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

##### C. Regulatory Flexibility Analysis

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule amendments. For the purposes of assessing the impact of today’s final rule amendments on small entities, small entity is defined as: (1) A small business according to the Small Business Administration (SBA) size standards by NAICS code ranging from 500 to 1,500 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today’s final rule amendments on small entities, EPA has concluded that this action will not impose a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives “which minimize any significant economic impact of the proposed rule on small entities.” (See 5 U.S.C. 603 and 604.) Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic impact on all of the small entities subject to the rule. These final rule amendments will not create any new costs for affected firms. In fact, the final rule amendments will relieve the regulatory burden for all facilities, large or small, by broadening the types of control devices that can be used to meet the requirements in RCRA rules for exemption from standards for tanks. This will decrease compliance costs for a few facilities subject to both the RCRA and CAA rules. We have, therefore, concluded that today’s final rule amendments will relieve regulatory burden for all small entities that are

subject to both the RCRA and CAA standards for tanks located inside a permanent total enclosure.

##### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law.

Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today’s final rule amendments contain no Federal mandate (under the regulatory provisions of the UMRA) for State, local, or tribal governments. The EPA has determined that the final rule amendments do not contain a Federal mandate that may result in expenditures for State, local, or tribal governments, in the aggregate, or to the private sector of \$100 million or more in any 1 year. No costs are attributable to the final rule amendments. Thus, the final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. The EPA has also

determined that the final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments. Thus, the final rule amendments are not subject to the requirements of section 203 of the UMRA.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

These final rule amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the final rule amendments.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." These final rule amendments do not have tribal implications, as specified in Executive Order 13175. They 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. No tribal governments own facilities subject to the benzene waste national emission standard. Thus, Executive Order 13175 does not apply to the final rule amendments.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that:

(1) Is determined to be "economically significant," as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

The EPA interprets Executive Order 13045 as applying only to regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. The national emission standard for benzene waste operations is based on protection of the public health with an ample margin of safety. However, the amendments to the benzene waste national emission standard have no effect on the level of emissions from benzene waste operations or associated risk and are not subject to Executive Order 13045.

#### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

The final rule amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113; 15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling and analytical procedures, business practices, etc.) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when EPA does not use available and applicable VCS.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### *J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency 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. The EPA has submitted a report containing the final rule amendments 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 final rule amendments in today's **Federal Register**. The final rule amendments are not a "major rule" as defined by 5 U.S.C. 804(2).

#### **List of Subjects in 40 CFR Part 61**

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 25, 2003.

**Michael O. Leavitt,**  
*Administrator.*

■ For the reasons stated in the preamble, title 40, chapter I, part 61 of the Code of Federal Regulations is amended as follows:

#### **PART 61—[AMENDED]**

■ 1. The authority citation for part 61 continues to read as follows:

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

#### **Subpart FF—[AMENDED]**

■ 2. Section 61.343 is amended by:  
■ a. Revising paragraph (a)(2);  
■ b. Adding paragraph (e) introductory text; and  
■ c. Adding paragraph (e)(2).

The revisions and additions read as follows:

#### **§ 61.343 Standards: Tanks.**

(a) \* \* \*

(2) The owner or operator must install, operate, and maintain an enclosure and closed-vent system that routes all organic vapors vented from the tank, located inside the enclosure, to a control device in accordance with the requirements specified in paragraph (e) of this section.

\* \* \* \* \*

(e) Each owner or operator who controls air pollutant emissions by using an enclosure vented through a closed-vent system to a control device must meet the requirements specified in paragraphs (e)(1) through (4) of this section.

(1) \* \* \*

(2) The enclosure must be vented through a closed-vent system to a control device that is designed and operated in accordance with the standards for control devices specified in § 61.349.

\* \* \* \* \*

■ 3. Section 61.345 is amended by revising paragraph (a)(3)(iii) to read as follows:

**§ 61.345 Standards: Containers.**

(a) \* \* \*

(3) \* \* \*

(iii) Safety devices, as defined in this subpart, may be installed and operated

as necessary on any container, enclosure, closed-vent system, or control device used to comply with the requirements of paragraph (a)(3)(i) of this section.

\* \* \* \* \*

[FR Doc. 03-30163 Filed 12-3-03; 8:45 am]

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