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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 03–098–1]

Commuted Traveltime Periods: Overtime Services Relating to Imports and Exports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine by adding commuted traveltime allowances for travel between Hilo, HI, and five new locations in Hawaii. Commuted traveltime allowances are the periods of time required for Plant Protection and Quarantine employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by Plant Protection and Quarantine employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime for these locations.

EFFECTIVE DATE: December 5, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Caporaletti, Program Analyst, PPQ, APHIS, 4700 River Road Unit 120, Riverdale, MD 20737–1238; (301) 734–5781.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, chapter III, and 9 CFR, chapter I, subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals, animal products, or other commodities intended for importation into, or exportation from, the United States.

When these services must be provided by an employee of Plant Protection and Quarantine (PPQ) on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by adding commuted traveltime allowances for travel between Hilo, HI, and five new locations in Hawaii. The amendments are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

The number of requests for overtime services of a PPQ employee at the locations affected by this rule represents an insignificant portion of the total number of requests for these services in the United States.

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

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

■ Accordingly, we are amending 7 CFR part 354 as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

■ 1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 354.2 is amended by adding in the table, in alphabetical order, under Hawaii, the following entries to read as follows:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from—					Metropolitan area	
						Within	Outside
*	*	*	*	*	*		*
Hawaii:							
*	*	*	*	*	*		*
Hakalau	Hilo						2
*	*	*	*	*	*		*
Kurtistown	Hilo						2
*	*	*	*	*	*		*
Mt. View	Hilo						2
*	*	*	*	*	*		*
Pepeekeo	Hilo						2
*	*	*	*	*	*		*
Umauma	Hilo						2
*	*	*	*	*	*		*

Done in Washington, DC, this 2nd day of December 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–30230 Filed 12–4–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR parts 1412 and 1421

RIN 0560–AG71 and 0560–AG72

Direct and Counter Cyclical Program; Marketing Assistance Loans and Loan Deficiency Payments for Peanuts, Pulse Crops, Wheat, Feed Grains, Soybeans and Other Oilseeds; Correction

AGENCIES: Commodity Credit Corporation, USDA.

ACTION: Final rule (correcting amendments).

SUMMARY: This document also corrects the regulations published by the Commodity Credit Corporation (CCC) entitled ''Direct and Counter Cyclical Program'' and ''Marketing Assistance Loans and Loan Deficiency Payments.'' Corrections are necessary for provisions that conflict with statute or other program requirements and are intended to ensure that Agency regulations are properly written and implemented. These changes will apply retroactively to actions taken under the subject regulations since their effective date.

DATES: The revisions to part 1412 are effective as of October 16, 2002; the revisions to part 1421 are effective as of October 8, 2002.

FOR FURTHER INFORMATION CONTACT: Sharon Biastock at 720–6336, or Kimberly Graham, at 202–720–9154.

SUPPLEMENTARY INFORMATION:

Discussion of Corrections

(1) *Interstate transfer of peanut acreage.* This document also corrects 7 CFR part 1412, published in the **Federal Register** on October 21, 2002, 67 FR 64751, by authority of the Farm Security and Rural Investment Act of 2002 (''2002 Act''). Part 1412 is entitled ''Direct and Counter-Cyclical Program and Peanut Quota Buyout Program,'' and provides for direct and counter-cyclical payments for the crop years 2002 through 2007 for a number of crops to provide income support to producers of eligible commodities. The error is in the introductory language in section 1412.703(b) of part 1412, which states, ''Notwithstanding paragraph (a) of this section, the average acreage determined under § 1412.701 for a farm may be assigned to a farm in a contiguous county only if either of the following apply:'' This correction substitutes the word ''state'' for ''county'' in that sentence, as the provisions are directed to special allowance for interstate transfers for peanuts as reflected elsewhere and in the authorizing statute.

(2) *Penalties for erroneous certification.* This document corrects the regulations for CCC Marketing Assistance Loans and Loan Deficiency Payments for Peanuts, Pulse Crops, Wheat, Feed Grains, Soybeans and Other Oilseeds at 7 CFR Part 1421. The current provisions of Part 1421 were published in the **Federal Register** on Friday, October 11, 2002 (67 FR 63511). Marketing assistance loans and loan deficiency payments are authorized by title I of the 2002 Act.

This document corrects sections 1421.109 of 7 CFR part 1421 relating to a producer's violation of a loan agreement, and the resulting administrative remedies. Specifically, § 1421.109(e) is corrected so that the amount due for a violation of this provision is based only on the quantity of the commodity ''removed or disposed of'' and not the ''quantity incorrectly certified or the loan quantity removed or disposed.'' As to the reference to ''quantity incorrectly certified'' there can never be less than a full loan repayment as is clear from the circumstances and other provisions in the regulations. Accordingly, this section is corrected by removing that reference. Also, a clarifying comma is added after the word ''interest'' in § 1421.109(e)(1)(i).

Section 1421.109 is also corrected in paragraph (g) so that, ''The county committee may waive the liquidated damages if it determines that the violation was inadvertent, accidental, or unintentional.'' instead of ''* * * and unintentional.'' The word ''or'' was used here instead of ''and'' to comport fully with the original and continuing intent of this provision.

These changes are to clarify and correct regulations, and delaying their publication to request public comment is contrary to the public interest. Further, section 1601 of the 2002 Act exempts these changes from notice and comment rulemaking. So that they may apply equally with existing regulations,

these changes are effective as of the original filing of the rules implementing the 2002 Act.

List of Subjects

7 CFR Part 1412

Direct and counter-cyclical payments, Grains, Peanuts, Oilseeds, Reporting and record keeping requirements.

7 CFR Part 1421

Agricultural commodities, Feed grains, Grains, Loan programs—agriculture, Oilseeds, Price support programs.

■ Accordingly, 7 CFR chapter XIV is corrected as follows:

PART 1412—DIRECT AND COUNTER-CYCLICAL PROGRAM AND PEANUT QUOTA BUYOUT PROGRAM

■ 1. The authority citation for part 1412 continues to read as follows:

Authority: 7 U.S.C. 7911–7918, 7951–7956; 15 U.S.C. 714b and 714c.

Subpart G—Establishment and Assignment of Peanut Base Acres and Yields for a Farm

■ 2. Revise § 1412.703(b) to read as follows:

§ 1412.703 Assignment of average peanut yields and average peanut acreages to farms.

* * * * *

(b) Notwithstanding paragraph (a) of this section, the average acreage determined under § 1412.701 for a farm may be assigned to a farm in a contiguous state only if either of the following apply:

(1) The historic peanut producer making the assignment produced peanuts in that State during at least one of the 1998 through 2001 crop years; or

(2) As of March 31, 2003, the historic peanut producer is a producer on a farm in that State.

* * * * *

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES—MARKETING ASSISTANCE LOANS AND LOAN DEFICIENCY PAYMENTS FOR THE 2002 THROUGH 2007 CROP YEARS

■ 3. The authority citation for part 1421 continues to read as follows:

Authority: 7 U.S.C. 7231–7237 and 7931 *et seq.*; 15 U.S.C. 714b, 714c.

Subpart B—Marketing Assistance Loans

■ 4. In § 1421.109, paragraphs (e)(1) and (g) are corrected to read as follows:

§ 1421.109 Personal liability of the producer.

* * * * *

(e) For violations and the liquidated damages under paragraph (d)(1) of this section, the county committee shall:

(1) Require repayment of the marketing assistance loan quantity removed or disposed of at the lesser of:

(i) The applicable loan principal, and charges, plus interest, or:

(ii) The announced alternative repayment rate in effect on date the violation occurred, plus 15 percent of the loan rate, or as otherwise determined by the Deputy Administrator, and

* * * * *

(g) The county committee may waive imposing liquidated damages if it determines that the violation was inadvertent, accidental, or unintentional.

* * * * *

Signed in Washington, DC, on November 26, 2003.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–30198 Filed 12–4–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 030818205–3281–02]

RIN 0691–AA48

Direct Investment Surveys: BE–15, Annual Survey of Foreign Direct Investment in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends regulations that set forth reporting requirements for the BE–15, Annual Survey of Foreign Direct Investment in the United States. The annual survey is comprised of four forms—the BE–15(LF) long form, the BE–15(SF) short form, the BE–15(EZ) form, which is a new form, and the BE–15 Supplement C–Claim for Exemption From Filing a BE–15(LF), BE–15(SF), or BE–15(EZ). The annual survey is a sample survey that collects data on the financial structure and operations of nonbank U.S. affiliates of foreign companies needed to update similar data for the universe of U.S. affiliates collected once every 5 years in the BE–12 benchmark survey. The data are used to derive annual estimates of the operations of U.S. affiliates of foreign companies, including their balance sheets; income statements; property, plant, and equipment; external financing; employment and employee compensation; merchandise trade; sales of goods and services; taxes; and research and development activity. The data are needed to measure the size and economic significance of foreign direct investment in the United States, to measure changes in such investment, and to assess its impact on the U.S. economy.

DATES: This final rule will be effective January 5, 2004.

FOR FURTHER INFORMATION CONTACT: Obie G. Whichard, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9890.

SUPPLEMENTARY INFORMATION: On August 29, 2003, the Bureau of Economic Analysis (BEA) published in the **Federal Register** (68 FR 51942) a notice of proposed rulemaking setting forth revised reporting requirements for the BE–15, Annual Survey of Foreign Direct Investment in the United States. No comments on the proposed rule were received. Thus, the provisions in the proposed rule are adopted without change.

Description of Revisions

The BE–15, Annual Survey of Foreign Direct Investment in the United States, is mandatory and is conducted annually by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108)—hereinafter, ''the Act.'' BEA will send the survey to potential respondents in March of each year; responses will be due by May 31.

BEA will introduce a sampling procedure to help reduce respondent burden for some U.S. businesses. The procedure utilizes the new BE–15(EZ) form; this form provides a few basic indicators for non-sample firms that can be used as a basis for estimating data that they otherwise would have to report on the lengthier BE–15(LF) and BE–15(SF) forms. To bring the annual survey into conformity with the Benchmark Survey of Foreign Direct Investment in the United States–2002, the following changes are being made to the Code of Federal Regulations: (1) Direct that only nonbank majority-owned U.S. affiliates of foreign companies report on the BE–15(LF) long form (minority-owned affiliates will report on the BE–15(SF) short form, or

the BE–15(EZ) form, regardless of size); (2) raise the exemption level on the BE–15(LF) long form from $100 million to $125 million (reporting on a given form is required if the affiliate's assets, sales, or net income (or loss) exceed the exemption level); and (3) exempt nonbank subsidiaries or units of U.S. bank or bank holding company affiliates from reporting.

In addition, the following changes are being made to the forms: (1) Add questions to the BE–15 (LF) long form to collect detail on premiums earned and claims paid for U.S. affiliates operating in the insurance industry, and to collect detail on finished goods purchased for resale for U.S. affiliates operating in the wholesale and retail trade industries; (2) in conjunction with increasing the exemption level for reporting on the BE–15(LF) long form, add four items to the short form that will serve to improve estimates of gross product for majority-owned U.S. affiliates—certain realized and unrealized gains and losses, U.S. income taxes, interest received, and interest paid; (3) in conjunction with requiring all minority-owned U.S. affiliates to file on the short form, revise the State Schedule to collect additional detail, by State, for minority-owned U.S. affiliates with activities in more than five States; and (4) to reduce overall respondent burden, drop several questions that BEA feels are no longer of significant analytical interest to the data users.

Survey Background

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, ''the Act.'' Section 4(a) of the Act provides that with respect to foreign direct investment in the United States, the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information on international capital flows and other information related to international investment and trade in services, including (but not limited to) such information as may be necessary for computing and analyzing the United States balance of payments, the employment and taxes of United States parents and affiliates, and the international investment and trade in services position of the United States.

In Section 3 of Executive Order 11961, the President delegated authority granted under the Act as concerns direct investment to the Secretary of Commerce, who has redelegated it to BEA.

The annual survey is a sample survey that collects data on the financial structure and operations of nonbank U.S. affiliates of foreign companies needed to update similar data for the universe of U.S. affiliates collected once every 5 years in the BE–12 benchmark survey. The data are used to derive annual estimates of the operations of U.S. affiliates of foreign companies, including their balance sheets; income statements; property, plant, and equipment; external financing; employment and employee compensation; merchandise trade; sales of goods and services; taxes; and research and development activity. The data are needed to measure the size and economic significance of foreign direct investment in the United States, to measure changes in such investment, and to assess its impact on the U.S. economy. Such data are generally found in enterprise-level accounting records of respondent companies. The data are disaggregated by industry of U.S. affiliate, by country and industry of foreign parent or ultimate beneficial owner, and, for selected items, by State.

Executive Order 13132

This final rule does not contain policies with Federalism implications, as that term is defined in E.O. 13132.

Executive Order 12866

This final rule has been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection displays a currently valid Office of Management and Budget (OMB) Control Number. This final rule covers a collection of information subject to the provisions of the PRA. The OMB has approved this collection and assigned to it OMB Control Number 0608–0034. The collection will display this control number.

The survey is expected to result in the filing of reports from approximately 4,950 U.S. affiliates. The respondent burden for this collection of information is expected to vary from 20 minutes for the smallest and least complex company reporting on the BE–15 Supplement C form to 550 hours for the largest and most complex company reporting on the BE–15(LF) long form, with an average burden of 21.8 hours per response (down from 32 hours for the previous annual survey), including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Total respondent burden for the previous (2001) annual survey was estimated at 128,000 hours. Total respondent burden for this survey is estimated to be 107,900 hours (4,950 responses times 21.8 hours average burden). The decrease of 20,100 hours in the estimated total respondent burden is largely attributable to the changes to the reporting requirements.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the proposed rule would not have a significant economic impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act. The factual basis for the certification was published with the proposed rule. No comments were received regarding the economic impact of the rule. As a result, no final regulatory flexibility analysis was prepared.

List of Subjects in 15 CFR Part 806

International transactions, Economic statistics, Foreign investment in the United States, Penalties, Reporting and record keeping requirements.

Dated: November 24, 2003.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

■ For reasons set forth in the preamble, BEA amends 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

■ 1. The authority citation for 15 CFR Part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

■ 2. Section 806.15(i) is revised to read as follows:

§ 806.15 Foreign direct investment in the United States.

* * * * *

(i) *Annual report form.* BE–15–Annual Survey of Foreign Direct Investment in the United States: One report is required for each consolidated

U.S. affiliate, except a U.S. banking affiliate or U.S. bank holding company affiliate (including all of the subsidiaries and units of the bank holding company), exceeding an exemption level of $30 million. A long form, BE–15(LF), must be filed by each nonbank majority-owned U.S. affiliate (a ''majority-owned'' U.S. affiliate is one in which the combined direct and indirect ownership interests of all foreign parents of the U.S. affiliate exceed 50 percent) for which at least one of the three items-total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes-exceeds $125 million (positive or negative), unless the nonbank majority-owned U.S. affiliate is selected to file a BE–15(EZ) form. A short form, BE–15(SF), must be filed by each nonbank majority-owned U.S. affiliate for which at least one of the three items-total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes-exceeds $30 million but no one item exceeds $125 million (positive or negative), and by each nonbank minority-owned U.S. affiliate (a ''minority-owned'' U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate is 50 percent or less) for which at least one of the three items-total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes-exceeds $30 million (positive or negative), unless the nonbank U.S. affiliate is selected to file a BE–15(EZ) form. A BE–15(EZ) form must be filed by each nonbank U.S. affiliate that is selected to file this form in lieu of filing the BE–15(LF) or BE–15(SF). A BE–15 Supplement C (Exemption Claim) must be filed by each nonbank U.S. affiliate to claim exemption from filing a BE–15(LF), BE–15(SF), or BE–15(EZ). Following an initial filing, the BE–15 Supplement C is not required annually from those nonbank U.S. affiliates that meet the stated exemption criteria from year to year.

* * * * *

[FR Doc. 03–29996 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 170

RIN 1076–AE50

Partial Distribution of Fiscal Year 2004 Indian Reservation Roads Funds

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: We are issuing a rule requiring that we immediately distribute $25 million of fiscal year 2004 Indian Reservation Roads (IRR) funds to projects on or near Indian reservations using the relative need formula. This partial distribution reflects the funds the Federal Highway Administration has allocated to the Department of the Interior and is based on funding appropriated by a continuing resolution and the Surface Transportation Extension Act of 2003 in effect until February 29, 2004. We are using the Federal Highway Administration (FHWA) Price Trends report for the relative need formula distribution process, with appropriate modifications to address non-reporting States. This distribution will allow an immediate allocation of funds based on an existing formula, final allocations will be dependent on a final authorization of highway trust funds and a fiscal year 2004 appropriations.

EFFECTIVE DATE: December 10, 2003. Section 170.4b expires September 30, 2004.

FOR FURTHER INFORMATION CONTACT: LeRoy Gishi, Chief, Division of Transportation, Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW., MS–4058–MIB, Washington, DC 20240. Mr. Gishi may also be reached at (202) 208–4359 (phone) or (202) 208–4696 (fax).

SUPPLEMENTARY INFORMATION:

Background

Where Can I Find General Background Information on the Indian Reservation Roads (IRR) Program, the Relative Need Formula, the Federal Highway Administration (FHWA) Price Trends Report, and the Transportation Equity Act for the 21st Century (TEA–21) Negotiated Rulemaking Process?

The background information on the IRR program, the relative need formula, the FHWA Price Trends Report, and the TEA–21 Negotiated Rulemaking process is detailed in the **Federal Register** notice dated February 15, 2000 (65 FR 7431).

Why Are You Publishing This Rule?

We are publishing this rule to distribute $25 million of fiscal year 2004 IRR Program funds. This rule sets no precedent for the final rule to be published as required by Section 1115 of TEA–21.

Where Can I Find Information on the Distribution of Fiscal Year 2003 IRR Program Funds?

You can find this information in the **Federal Register** notice dated June 5, 2003 (68 FR 33625).

How Will the Secretary Distribute $25 Million of Fiscal Year 2004 IRR Program Funds?

Upon publication of this rule, the Secretary will distribute only $25 million of fiscal year 2004 IRR program funds based on the current relative need formula used in fiscal years 2000, 2001, 2002 and in the first distribution in fiscal year 2003. We are using the latest indices from the FHWA Price Trends Report with appropriate modifications for non-reporting States in the relative need formula distribution process.

Regulatory Planning and Review (Executive Order 12866)

Under the criteria in Executive Order 12866, this rule is not a significant regulatory action because it will not have an annual effect of more than $100 million on the economy. The total amount currently available for distribution of fiscal year 2004 IRR program funds is approximately $145 million and we are distributing only $25 million under this rule. Congress has authorized these funds and FHWA has already allocated them to BIA. The cost to the government of distributing the IRR program funds, especially under the relative need formula with which the tribal governments and tribal organizations and the BIA are already familiar, is negligible. The distribution of fiscal year 2004 IRR program funds does not require tribal governments and tribal organizations to expend any of their own funds. This rule is consistent with the policies and practices that currently guide our distribution of IRR program funds. This rule continues to adopt the relative need formula that we have used since 1993, adjusting the FHWA Price Trends Report indices for states that do not have current data reports. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency. The FHWA has transferred the IRR program funds to us and fully expects the BIA to distribute the funds according to a funding formula approved by the

Secretary. This rule does not alter the budgetary effects on any tribes from any previous or any future distribution of IRR program funds and does not alter entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule does not raise novel legal or policy issues. It is based on the relative need formula in use since 1993. We are changing determination of relative need only by appropriately modifying the FHWA Price Trend Report indices for states that did not report data for the FHWA Price Trends Report, just as we did for the partial distributions for fiscal years 2000, 2001, 2002 and 2003 IRR Program funds. Approximately 350 road and bridge construction projects are at various phases that depend on this fiscal year's IRR program funds. Leaving these ongoing projects unfunded will create undue hardship on tribes and tribal members. Lack of funding would also pose safety threats by leaving partially constructed road and bridge projects to jeopardize the health and safety of the traveling public. Thus, the benefits of this rule far outweigh the costs. This rule is consistent with the policies and practices that currently guide our distribution of IRR Program funds.

Regulatory Flexibility Act

A Regulatory Flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required for this rule because it applies only to tribal governments, not State and local governments.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, because it does not have an annual effect on the economy of $100 million or more. We are distributing only $25 million under this rule. Congress has authorized these funds and FHWA has already allocated them to BIA. The cost to the government of distributing the IRR Program funds, especially under the relative need formula with which tribal governments, tribal organizations, and the BIA are already familiar, is negligible. The distribution of the IRR Program funds does not require tribal governments and tribal organizations to expend any of their own funds. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Actions under this rule will distribute Federal funds to projects for transportation planning, road and bridge construction, and road improvements. This rule 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. In fact, actions under this rule will provide a beneficial effect on employment through funding for construction jobs.

Unfunded Mandates Reform Act

Under the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), this rule will not significantly or uniquely affect small governments, or the private sector. A Small Government Agency Plan is not required. This rule will not produce a federal mandate that may result in an expenditure by State, local, or tribal governments of $100 million or greater in any year. The effect of this rule is to immediately provide $25 million of fiscal year 2004 IRR Program funds for ongoing IRR activities and construction projects.

Takings Implications (Executive Order 12630)

With respect to Executive Order 12630, the rule does not have significant takings implications since it involves no transfer of title to any property. A takings implication assessment is not required.

Federalism (Executive Order 13132)

With respect to Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. This rule should not affect the relationship between state governments and the Federal government because this rule concerns administration of a fund dedicated to IRR projects on or near Indian reservations that has no effect on Federal funding of state roads. Therefore, the rule has no Federalism effects within the meaning of Executive Order 13132.

Civil Justice Reform (Executive Order 12988)

This rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988. This rule contains no drafting errors or ambiguity and is clearly written to minimize litigation, provide clear standards, simplify procedures, and reduce burden. This rule does not preempt any statute. Under The Transportation Equity Act for the 21st Century negotiated rulemaking, we have published a proposed rule and funding formula which is currently being finalized. A final funding formula for fiscal year 2004 will be published in 2004. The rule is not retroactive with respect to any funding from any previous fiscal year (or prospective to funding from any future fiscal year), but applies only to $25 million of fiscal year 2004 IRR Program funding.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose record keeping or information collection requirements or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.* We already have all of the necessary information to implement this rule.

National Environmental Policy Act

This rule is categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, because its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and the road projects funded as a result of this rule will be subject later to the National Environmental Policy Act process, either collectively or case-by-case. Further, no extraordinary circumstances exist to require preparation of an environmental assessment or environmental impact statement.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

Pursuant to Executive Order 13175 of November 6, 2000, ''Consultation and Coordination with Indian Tribal Governments,'' we have consulted with tribal representatives throughout the negotiated rulemaking process. We have evaluated any potential effects on federally recognized Indian tribes and have determined that there are no potential adverse effects and have determined that this rule preserves the integrity and consistency of the relative need formula process we have used since 1993 to distribute IRR Program funds. We are making a change from previous years (which we also made for fiscal years 2000, 2001, 2002 and 2003 IRR Program funds (see **Federal Register** notices at 65 FR 37697, 66 FR 17073, 67 FR 44355 and 68 FR 33625) to modify the FHWA Price Trends Report indices for non-reporting states which do not have current price trends data reports. The yearly FHWA Report is used as part of the process to determine the cost-to-

improve portion of the relative need formula. Consultation with tribal governments and tribal organizations is ongoing as part of the TEA–21 negotiated rulemaking process.

List of Subjects in 25 CFR Part 170

Highways and Roads, Indians-lands.

■ In order to distribute part of fiscal year 2004 IRR Program funds immediately we are amending part 170 in chapter I of title 25 of the Code of Federal Regulations as follows.

PART 170—ROADS OF THE BUREAU OF INDIAN AFFAIRS

■ 1. The authority citation for part 170 continues to read as follows:

Authority: 36 Stat. 861; 78 Stat. 241, 253, 257; 45 Stat. 750 (25 U.S.C. 47; 42 U.S.C. 2000e(b), 2000e–2(i); 23 U.S.C. 101(a), 202, 204), unless otherwise noted.

■ 2. Revise § 170.4b to read as follows:

§ 170.4b What formula will BIA use to distribute $25 million of fiscal year 2004 Indian Reservation Roads Program funds?

On December 10, 2003, we will distribute $25 million of fiscal year 2004 IRR Program funds authorized under the Surface Transportation Extension Act of 2003, Pub. L. 108–88. We will distribute the funds to Indian Reservation Roads projects on or near Indian reservations using the relative need formula established and approved in January 1993. The formula has been modified to account for non-reporting States by inserting the latest data reported for those states for use in the relative need formula process.

Dated: November 25, 2003.

Aurene Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 03–30208 Filed 12–4–03; 8:45 am]

BILLING CODE 4310–LY–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Parts 1 and 323

Privacy Act of 1974; Implementation

AGENCY: Bureau of the Public Debt, Treasury.

ACTION: Final rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury exempts a Bureau of the Public Debt system of records entitled ''Treasury/BPD.009—U.S. Treasury Securities Fraud Information System'' from certain provisions of the Privacy Act.

EFFECTIVE DATE: December 5, 2003.

FOR FURTHER INFORMATION CONTACT: For information about Public Debt's anti-money laundering and fraud suppression program, contact the Fraud Inquiry Line at 304–480–8555. The phone line is administered by the Office of the Chief Counsel, Bureau of the Public Debt. For information about this document, contact the Office of the Chief Counsel, Bureau of the Public Debt, at 304–480–8692 or by e-mail at *chcounsel@bpd.treas.gov*. Copies of this rule can be downloaded from the public Web site at *http://www.publicdebt.treas.gov*.

SUPPLEMENTARY INFORMATION: The Department of the Treasury published a system notice for ''Treasury/BPD.009–U.S. Treasury Securities Fraud Information System'' in its entirety at 68 FR 34486–34489 (June 9, 2003). We did not receive any comments on the notice. The system of records became effective July 21, 2003.

We issued a proposed rule exempting the system of records from certain provisions of the Privacy Act of 1974, as amended, at 68 FR 36955–36957 (June 20, 2003). Under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, as amended, if the system is investigatory material compiled for law enforcement purposes. The system of records contains investigatory material compiled for law enforcement purposes.

The provisions of the Privacy Act from which exemption is claimed pursuant to 5 U.S.C. 552a(k)(2) are: 5 U.S.C. 552a(c)(3) (Accounting of certain disclosures available to the individual), (d)(1)–(4) (Access to records), (e)(1) (Maintenance of information to accomplish purposes authorized by statute or executive order only), (e)(4)(G) (Publication of procedures for notification), (e)(4)(H) (Publication of procedures for access and contest), (e)(4)(I) (Publication of sources of records), and (f) (Rules for notification, access and contest) to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2) as material compiled for law enforcement purposes.

In an unrelated change, the proposed rule clarified the privacy interests afforded to close survivors of a deceased securities holder. Public Debt protected the privacy interests of securities holders by regulation long before the passage of the Privacy Act of 1974. We proposed to amend part 323 to comport with exemption 6 of the Freedom of Information Act which permits us to withhold all information about individuals in ''personnel and medical files and similar files'' when the disclosure of such information ''would constitute a clearly unwarranted invasion of personal privacy.'' Although the right to privacy of a deceased securities holder extinguishes upon death, the exemption will protect the deceased person's family-related privacy interests in certain cases.

The proposed rule requested that public comments be sent to the Disclosure Officer, Administrative Resource Center, Bureau of the Public Debt, no later than July 21, 2003. We did not receive comments on the proposed rule. Accordingly, the Department of the Treasury is hereby giving notice that the system of records entitled ''Treasury/BPD.009–U.S. Treasury Securities Fraud Information System.'', is exempt from certain provisions of the Privacy Act.

As required by Executive Order 12866, it has been determined that this final rule is not a ''significant regulatory action,'' and therefore, does not require a Regulatory Impact Analysis.

The regulation will not have a substantial direct effect on the States, on the relationship between the Federal 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.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, the Department of the Treasury and Public Debt certify that these regulations will not significantly affect a substantial number of small entities. The final rule imposes no duties or obligations on small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1995, the Department of the Treasury and Public Debt have determined that this final rule would not impose new record keeping, application, reporting, or other types of information collection requirements.

List of Subjects

31 CFR Part 1

Privacy.

31 CFR Part 323

Freedom of Information Act, Privacy.

■ Accordingly, for the reasons stated in the preamble, 31 CFR part 1, is amended as follows:

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

PART 1—[AMENDED]

Subpart C—Privacy Act

■ 2. In Subpart C, §1.36, paragraph (g)(1)(x) is amended by adding the following new table below the heading BUREAU OF THE PUBLIC DEBT:

Number	System name
BPD.009	U.S. Treasury Securities Fraud Information System.

PART 323—[AMENDED]

■ 3. The authority citation for part 323 continues to read as follows:

Authority: 80 Stat. 379; sec. 3., 60 Stat. 238, as amended; 5 U.S.C. 301, 552.

■ 4. Revise § 323.2(b) to read as follows:

§ 323.2 Rules Governing Availability of Information.

* * * * *

(b) *Limitations on the availability of records relating to securities.* Records relating to the purchase, ownership of, and transactions in Treasury securities or other securities handled by the Bureau of the Public Debt for government agencies or wholly or partially Government-owned corporations will ordinarily be disclosed only to the owners of such securities, their executors, administrators or other legal representatives or to their survivors or to investigative and certain other agencies of the Federal and State governments, to trustees in bankruptcy, receivers of insolvents' estates or where a proper order has been entered requesting disclosure of information to Federal and State courts. These records are confidential because they relate to private financial affairs of the owners under this Part. In addition, the information falls within the category of ''personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy'' under the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(6). FOIA Exemption (b)(6) protects the privacy of living persons who own securities as well as the close survivors of deceased owners. Privacy interests, in the sense of the right to control, use, or disclose information about oneself, cease at death. However, the exemption protects the deceased person's family-related privacy interests that survive death where disclosure would cause embarrassment, pain, grief, or disrupt the peace of mind, of the surviving family. The Bureau of the Public Debt will determine, under FOIA exemption (b)(6), whether disclosure of the records is in the public interest by balancing the surviving family members' privacy interest against the public's right to know the information.

Dated: November 18, 2003.

Teresa Mullett Ressel,

Assistant Secretary for Management and Chief Financial Officer.

[FR Doc. 03–30241 Filed 12–4–03; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD07–03–151]

RIN 1625–AA08

Special Local Regulations; 2003 Holiday Boat Parade of the Palm Beaches, Riviera Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being established for the 2003 Holiday Boat Parade in Riviera Beach, Florida. The event will be held on December 6, 2003, on the waters of the Intracoastal Waterway staging in the Lake Worth turning basin southeast of Peanut Island, and proceeding north from Lake Worth South Section Marker 1 and to Jonathan's Landing Marina, Lake Worth Creek Marker 19. These regulations exclude non-participant vessels from the regulated area, which includes the staging area and the parade route, and are needed to provide for the safety of life on navigable waters during the event.

DATES: These regulations are effective from 6 p.m. until 9 p.m. on December 6, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of [CGD07–03–151] and are available for inspection or copying at Coast Guard Group Miami, 100 MacArthur Causeway, Miami Beach, Florida, 33139 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BMC Vaughn, Coast Guard Group Miami, Florida at (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Good Cause

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be unnecessary and contrary to public safety interests. These regulations are needed to minimize danger to the public resulting from numerous spectator and participant craft in close proximity to each other around the staging area and parade route. The event will be held on Saturday December 6, 2003. There is not sufficient time to allow for a notice and comment period, prior to the event. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. In addition, advance notifications will be made via marine information broadcasts.

For the same reasons, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The 2003 Holiday Boat Parade of the Palm Beaches is a nighttime parade of approximately 60 pleasure boats decorated with holiday lights. These boats range in length from 15 feet to 50 feet. It is anticipated that approximately 200 spectator craft will view the parade. The parade will form in a staging area located within the Lake Worth turning basin on the southeast side of Peanut Island and encompassing all waters within the turning basin west of a line connecting Marker 12 on the north side of the turning basin and Marker 13 on the south side of the turning basin. The parade will then commence and proceed north from Lake Worth South Section Marker 1 on the Intracoastal Waterway (ICW) to Jonathan's Landing Marina at Lake Worth Creek Marker 19, where the parade will disperse. The regulated area includes the staging area and the parade route.

Discussion of Rule

The special local regulations for this event prohibit non-participant vessels from entering the regulated area, which includes the staging area and the parade route.

The staging area encompasses all waters within the Lake Worth turning basin on the southeast side of Peanut Island west of a line connecting Lake Worth Inlet Marker 12 on the north side of the turning basin and Marker 13 on the south side of the turning basin. No anchoring is permitted in the staging area.

The parade route encompasses the Intracoastal Waterway from Lake Worth

South Section Marker 1 to Lake Worth Creek Marker 19. During transit of the parade, these regulations prohibit non-participating vessels from approaching within 500 feet ahead of the lead parade vessel, 500 feet astern of the last participating vessel, or within 50 feet on either side of the outboard parade vessels in the regulated area, unless authorized by the Coast Guard patrol commander.

Regulatory Evaluation

This proposal is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). This regulation will have a minimal impact on non-participant and non-spectator vessels due to the normally low volume of vessel traffic on the ICW during this time this rule is effective. Moreover, this rule is effective for only 3 hours, it regulates only the waters immediately surrounding the parade vessels, and moves with the parade vessels and should therefore have a minimal impact on non-participant and non-spectator vessels.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the regulated area from 6 p.m. to 9 p.m. on December 6, 2003. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule is for a highly publicized event and will be in effect for only three hours late in the day when vessel traffic is minimal. Any traffic that needs to pass through the regulated area will be allowed to pass with the permission of the Coast Guard patrol commander once the parade participants have moved further along the parade route.

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph 34(h), of the Instruction, from further environmental documentation. Under figure 2–1,

paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—[MARINE EVENTS]

■ 1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 100.35T–07–151 to read as follows:

§ 100.35T–07–151 2003 Holiday Boat Parade of the Palm Beaches, Riviera Beach, FL

(a) *Regulated areas.* (1) The regulated staging area encompasses all waters within the Lake Worth Inlet, Port of Palm Beach, turning basin, west of a line connecting Marker 12 on the north side of the turning basin and Marker 13 on the south side of the turning basin.

(2) The regulated parade area encompasses all waters of the Intracoastal Waterway from Lake Worth South Section Marker 1 behind Peanut Island north to Lake Worth Creek Marker 19 at Jonathan's Landing Marina.

(b) *Coast Guard patrol commander.* The Coast Guard patrol commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commander, Coast Guard Group Miami, Florida.

(c) *Special local regulations. (1) Staging areas.* Entry or anchoring in the staging area by non-participating vessels is prohibited, unless authorized by the Coast Guard patrol commander.

(2) *Parade route.* During the transit of parade vessels, non-participating vessels are prohibited from approaching within 500 feet ahead of the lead parade vessel, 500 feet astern of the last participating vessel in the parade, or within 50 feet either side of the outboard parade vessels, unless authorized by the Coast Guard patrol commander.

(d) *Effective period:* This section is effective from 6 p.m. until 9 p.m. on December 6, 2003.

Dated: November 25, 2003.

Harvey E. Johnson, Jr.,

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

[FR Doc. 03–30278 Filed 12–4–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Diego 03–032]

RIN 1625–AA00

Security Zone: Coronado Bay Bridge, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary security zones encompassing navigable waters 25 yards around all piers, abutments, fenders and pilings of the Coronado Bay Bridge. These temporary security zones are needed for national security reasons to protect the public and ports from potential subversive actions. Persons and vessels are prohibited from entering into, transiting through, loitering, or anchoring within these security zones unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from November 7, 2003, until May 1, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP San Diego 03–032] and are available for inspection or copying at Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, CA 92101–1064 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Austin Murai, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683–6495

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) the Coast Guard finds that good cause exists for not publishing an NPRM. Also, for the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The threat of maritime attacks is real as evidenced by the October 2002 attack of a tank vessel off the coast of Yemen and the continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September, 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002).

As a result, a heightened level of security has been established around the Coronado Bridge. Maintaining the structural integrity of the Coronado Bridge, which spans San Diego Bay, is very important to the local economy and military units within the San Diego Area. The measures contemplated by this rule are intended to prevent future terrorist attacks against individuals on or near the Coronado Bridge. Any delay in the effective date of this TFR is impractical and contrary to the public interest.

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and the war with Iraq have made it prudent to U.S. ports to be on higher state of alert because the Al-Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against the Coronado Bridge would have on the public interest, the Coast Guard is establishing security zones around the Coronado Bridge. These security zones help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against these bridges. Due to these heightened security concerns, and the catastrophic impact a terrorist attack on this bridge would have on the public,

the transportation system and surrounding areas and communities, security zones are prudent for these structures.

Discussion of Rule

In this temporary rule, the Coast Guard is establishing fixed security zones encompassing, from the surface to the sea floor, navigable waters 25 yards around all piers, abutments, fenders and pilings of the Coronado Bridge, San Diego Bay, California. Entry into these security zones is prohibited unless doing so is necessary for safe navigation or to conduct official business such as scheduled maintenance or retrofit operations. Vessels and people may be allowed to enter an established security zone on a case-by-case basis with authorization from the Captain of the Port.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein is punishable by civil penalties, criminal penalties (including imprisonment up to 6 years), and in rem liability against the offending vessel. Any person who violates this section using a dangerous weapon or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years.

Coast Guard personnel will enforce this regulation and the Captain of the Port may be assisted by other Federal, State, or local agencies in the patrol and enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 33 U.S.C. 1231.

Regulatory Evaluation

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

Although this regulation restricts access to portions of the navigable waterways around the bridge, the effect of this regulation will not be significant because: (i) The zones will encompass only a small portion of the waterway; (ii) Vessels will be able to pass safely around the zones; and (iii) Vessels may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port, or his designated representative.

The sizes of the zones are the minimum necessary to provide adequate protection for the bridges, vessels operating in the vicinity, adjoining areas and the public. The entities most likely to be affected are commercial vessels transiting the main ship channel en route the southern San Diego Bay and Chula Vista ports and pleasure craft engaged in recreational activities and sightseeing.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of commercial vessels transiting the main ship channel en route the southern San Diego Bay and Chula Vista ports and pleasure craft engaged in recreational activities and sightseeing. The security zones will not have a significant economic impact on a substantial number of small entities for several reasons: small vessel traffic can pass safely around the security zones and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zones to engage in these activities. Small entities and the maritime public will be advised of these security zones via public notice to mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Rick Sorrell, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683–6495 for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not

an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a security zone.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add new § 165.T11–030 to read as follows:

§ 165.T11–030 Security Zone: Coronado Bay Bridge, San Diego, CA.

(a) *Location.* All navigable waters, extending from the surface to the sea floor, 25 yards around all piers, abutments, fenders and pilings of the Coronado Bay Bridge spanning San Diego Bay. This security zone will not restrict the main navigational channel and vessels will not be restricted from transiting through the channel.

(b) *Effective period.* This section is effective from November 7, 2003, until May 1, 2004. If the Coast Guard terminates enforcement of this security zone prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into, transit through, loitering, or anchoring within this security zone by all persons and vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. Mariners are advised that the security zones will not restrict the main navigational channel and transit through the channel is not prohibited. Mariners requesting permission to transit through the security zone may request authorization to do so from Captain of the Port or his designated representative. The Coast Guard can be contacted on San Diego Bay via VHF-FM channel 16.

(d) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: November 4, 2003.

Stephen P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego.

[FR Doc. 03–30277 Filed 12–4–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE072–1042a; FRL–7593–5]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; MOBILE6-Based Motor Vehicle Emission Budgets for the Delaware Portion of the Philadelphia-Wilmington-Trenton 1-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Delaware State Implementation Plan (SIP). Specifically, EPA is approving amendments to the 2005 highway (on road) motor vehicle emission inventory for the Delaware portion of the Philadelphia-Wilmington-Trenton area's (the Philadelphia area) 1-hour ozone attainment plan as a revision to the Delaware SIP. This revision also serves to amend the 2005 motor vehicle emission budgets (MVEBs) used for determining transportation conformity under the Clean Air Act. The revised MVEBs were developed using MOBILE6, the most recent version of EPA's mobile source emission factor model. Revision of the MVEBs was a requirement of EPA's prior approval of Delaware's 1-hour ozone attainment demonstration plan for the Philadelphia severe ozone nonattainment area. The intended effect of this direct final approval action is to approve a SIP revision that will assist Delaware in attaining and demonstrating conformity with the 1-hour ozone standard. This action is being taken by EPA in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on February 3, 2004 without further notice, unless EPA receives adverse written comment by January 5, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Robert Kramer, Chief, Energy, Radiation and Indoor Environment Branch, Mailcode 3AP23, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *kramer.robert@epa.gov* or to

http://www.regulations.gov, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in Part III of the **SUPPLEMENTARY INFORMATION** section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and at the Delaware Department of Natural Resources and Environmental Control, 156 South State Street, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Larry Budney, (215) 814–2184, or by e-mail at *budney.larry@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. Delaware's SIP-Approved Attainment Demonstration and Mobile Budget

On October 29, 2001 (66 FR 54598), EPA approved Delaware's 1-hour ozone attainment demonstration plan for the Philadelphia area. As part of that final rule, EPA required that Delaware revise the plan to recalculate the 2005 attainment year motor vehicle emission budgets (MVEBs) for the Delaware portion of the Philadelphia area (Kent and New Castle Counties). The 2005 MVEBs were to be updated using MOBILE6, the most recent version of MOBILE, EPA's mobile emission factor model. On September 2, 2003, Delaware formally submitted a revision to its attainment demonstration plan for the Philadelphia area, consisting of updated MOBILE6-based MVEBs for the Delaware portion of the Philadelphia area.

B. Background on the MOBILE Emission Factor Model and Related EPA Policy

MOBILE is an EPA emission factor model for estimating pollution from on-road motor vehicles. The MOBILE model calculates emissions of volatile organic compounds (VOCs), nitrogen oxides (NO_X) and carbon monoxide (CO) from passenger cars, motorcycles, buses, and light-duty and heavy-duty trucks. The model accounts for the emission impacts of factors such as changes in vehicle emission standards, changes in vehicle populations and activity, and variation in local conditions such as temperature, humidity, fuel quality, and air quality programs. The MOBILE model, first developed in 1978, has been updated several times to reflect changes to motor vehicles and fuel composition, to incorporate better understanding of vehicle emissions, and to reflect new emissions programs. The MOBILE model is used to calculate current and future inventories of motor vehicle emissions at the national and local level. These inventories are used to make decisions about air pollution policy and programs at the local, state and national level. Mobile source emission inventories based on MOBILE are used to meet the Federal Clean Air Act's requirements for SIPs and transportation conformity. EPA announced the release of the MOBILE6 version of the MOBILE model on January 29, 2002 (67 FR 4254) as a replacement for a MOBILE5 version of the model. In November of 1999, EPA issued two memoranda [1] to articulate its policy regarding states that incorporated MOBILE5-based interim Tier 2 standard [2] benefits into their attainment demonstration plans and those plans' associated MVEBs. EPA has implemented this policy in all ozone nonattainment areas where a state assumed Federal Tier 2 benefits in its attainment demonstration plans according to EPA's April 2000 MOBILE5 guidance, ''MOBILE5 Information Sheet #8: Tier 2 Benefits Using MOBILE5.'' States whose approved attainment demonstrations or maintenance plans include interim MOBILE5-based estimates of the Tier 2 standards were required to update and resubmit the MVEBs of those plans after the final release of MOBILE6. EPA's October 29, 2001 (66 FR 54598) approval of Delaware's 1-hour ozone attainment demonstration plan for the Philadelphia area was based upon interim mobile emission budgets, with projected reductions from Tier 2 motor vehicle standards estimated using the MOBILE5 model. EPA's October 29, 2001 approval of Delaware's 1-hour ozone attainment demonstration for the Philadelphia area required a MOBILE6-based motor vehicle emission budget SIP revision.

[1] Memoranda, ''Guidance on Motor Vehicle Emissions Budgets in 1-Hour Ozone Attainment Demonstrations,'' issued November 3, 1999, and ''1-Hour Ozone Attainment Demonstrations and Tier2/Sulfur Rulemaking,'' issued November 8, 1999. Copies of these memoranda can be found on EPA's Web site at *http://www.epa.gov/otaq/transp/traqconf.htm.*

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

II. Summary of Delaware's SIP Revision and EPA's Review

A. MOBILE6-Based Highway Mobile Source Emission Inventories

On September 2, 2003, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted an SIP revision to its approved attainment plan for the Philadelphia area. The revision consists of updated inventories of emissions calculated using the MOBILE6 emission factor model of the ozone precursors VOC and NO_X from highway mobile sources operating in the Delaware portion (Kent and New Castle Counties) of the Philadelphia area. These inventories were generated for summertime periods in 1990, and for 2005, the year the Philadelphia area is to attain the 1-hour ozone standard. The MOBILE6-based highway emission inventory projections for VOCs and NO_X for 2005 also serve as the attainment plan's MVEBs for transportation conformity planning.

The SIP revision is intended to demonstrate that the updated MOBILE6-based projections of motor vehicle emissions continue to support the demonstration of attainment of the 1-hour ozone NAAQS for the Philadelphia area by 2005. Table 1 is presented to compare Delaware's revised MOBILE6-based motor vehicle emissions inventories with the previously approved MOBILE5-based inventories, by pollutant, expressed in units of tons per summer day (tpd). The MOBILE6-based inventories were developed using the latest available planning assumptions, including 2002 data from Delaware's Department of Transportation for vehicle registration, vehicle miles traveled (VMT) and speeds.

TABLE 1.—COMPARISON OF THE MOBILE5 AND MOBILE6-BASED HIGHWAY MOBILE EMISSIONS FOR THE DELAWARE PORTION OF THE PHILADELPHIA-WILMINGTON-TRENTON 1-HOUR OZONE ATTAINMENT PLAN

	Kent County		New Castle County		Two-county totals	
	VOC	NO_X	VOC	NO_X	VOC	NO_X
MOBILE6-Based Estimates (tpd)						
1990 Base Year	11.84	9.24	42.16	31.03	54.00	40.27
2005 Attainment Year	5.14	8.42	15.08	21.28	20.22	29.70
Percent Reduction	56.6	8.9	64.2	31.4	62.6	26.2
MOBILE5-Based Estimates (tpd)						
1990 Base Year	12.89	10.62	34.07	27.04	46.96	37.66
2005 Attainment Year	4.84	7.90	14.76	22.92	19.60	30.83
Percent Reduction	62.5	25.6	56.7	15.2	58.3	18.1

EPA's articulated its policy regarding the use of MOBILE6 modeling for purposes of SIP development in guidance documents entitled ''Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity'' [3] and ''Clarification of Policy Guidance for MOBILE6 in Mid-course Review Areas.'' [4]

Delaware's September 2, 2003 SIP revision submittal includes an explanation of the differences between the MOBILE5 and MOBILE6-based inventories. The submittal also provides a comparison of the relative reduction, by percentage, between the 1990 and 2005 inventories generated using the two different versions of the model to ensure that the approved Philadelphia area 1-hour ozone attainment demonstration will continue to demonstrate attainment by 2005. The methodology for this relative reduction comparison consists of comparing the revised MOBILE6 baseline and attainment case inventories, by pollutant, with the previously approved MOBILE5 inventory totals for the Delaware portion of Philadelphia area to determine if attainment can still be predicted by the attainment date. Delaware then compared these relative reduction percentages for the MOBILE5 versus MOBILE6 inventories for 1990 and 2005. As indicated in Table 1, the State's relative reduction comparison for the two-county Delaware portion of the Philadelphia area shows that the reductions in NO_X and VOC emissions, on a percentage basis, are greater in the revised MOBILE 6-based inventories than in the previously approved MOBILE5-based inventories. It should be noted that because the latest available planning assumptions (*e.g.*, 2002 data for vehicle registration, vehicle miles traveled (VMT) and speeds) were also used in the revised MOBILE6-based modeling, this relative reduction comparison is not a strict comparison of the differences resulting solely from the use of the MOBILE6 versus MOBILE5 version of the MOBILE model.

EPA's relevant policy guidance also requires Delaware to consider whether growth and control strategy assumptions for other sources (*i.e,* point, area, and non-road mobile sources) were still accurate at the time of the revised MOBILE6-based MVEBs were developed for submittal as a SIP revision to the Philadelphia area attainment plan. Delaware's September 2, 2003 SIP submittal indicates that the overall emissions of VOC and/or NO_X in the 1996 and 1999 periodic emissions inventories are below the rate-of-progress emission targets for those two milestone years, and concludes that the assumptions for growth and control strategies continue to be valid for the Delaware portion of the Philadelphia area. EPA finds that Delaware's September 2, 2003 SIP revision satisfies the conditions outlined in EPA's MOBILE6 policy guidance, and demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to support achievement of the projected attainment of the 1-hour ozone standard by the attainment date of 2005 for the Delaware portion of the Philadelphia area.

B. MOBILE6-Based Motor Vehicle Emission Budgets (MVEBs)

As previously stated, the on-road components of VOC and NO_X emissions of the 2005 attainment plan emission inventories are the 2005 MVEBs for the Philadelphia area. Those MVEBs for the Delaware portion of the Philadelphia area are summarized in Table 2. As indicated in Delaware's September 2, 2003 submittal, these budgets were developed using the latest planning assumptions, including 2002 vehicle registration, speed and vehicle miles traveled (VMT) data. Because Delaware's September 2, 2003 submittal satisfies the conditions outlined in EPA's MOBILE6 policy guidance and demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to support achievement of the projected attainment of the 1-hour ozone standard, EPA is approving these MVEBs.

TABLE 2.—MOBILE6-BASED MOTOR VEHICLE EMISSION BUDGETS (MVEBS) FOR THE DELAWARE PORTION OF THE 1-HOUR ATTAINMENT DEMONSTRATION PLAN FOR THE PHILADELPHIA-WILMINGTON-TRENTON AREA

2005 Attainment year	Kent County		New Castle County	
	VOC	NO_X	VOC	NO_X
Emission Budgets (tpd)	5.14	8.42	15.08	21.28

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

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

III. Final Action

EPA is approving Delaware's September 2, 2003 SIP revision submittal which updates the 1990 and 2005 highway mobile VOC and NO_X emissions inventories and the 2005 MVEBs of the Philadelphia area attainment plan to reflect the use of MOBILE6. This SIP revision fulfills the requirement of EPA's October 29, 2001 (66 FR 54598) approval of Delaware's 1-hour attainment demonstration plan for the Philadelphia area that the 2005 highway mobile emissions inventory and, therefore, the 2005 MVEBs of the plan be updated after the release of MOBILE6. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is also publishing a separate document that will serve as the proposal to approve this SIP revision if adverse comments are filed. This rule will be effective on February 3, 2004 without further notice unless EPA receives adverse comment by January 5, 2004. If EPA receives adverse comment, EPA will publish a timely withdrawal of this action in the **Federal Register** informing the public that the rule will not take effect. EPA will address public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number (DE072–1042) in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

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

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to: *kramer.robert@epa.gov,* attention DE072–1042. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

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

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

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

Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Considerations When Preparing Comments to EPA

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

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

response. It would also be helpful if you provided the name, date, and Federal Register citation related to your comments.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 3, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving Delaware's updates to the 1990 and 2005 highway mobile VOC and NO_X emissions inventories and the 2005 MVEBs of its 1-hour ozone attainment demonstration plan for the Philadelphia area to reflect the use of MOBILE6 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 20, 2003.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart I—Delaware

■ 2. Section 52.426 is amended by:
■ a. Removing and reserving paragraph (c)(2);
■ b. Revising paragraph (d);
■ c. Adding paragraph (e).

The revision and addition read as follows:

§ 52.426 Control strategy plans for attainment and rate-of-progress: ozone.

* * * * *

(c) * * *

(2) [Reserved]

* * * * *

(d) EPA is approving the following mobile budgets, explicitly quantified as sub-budgets for each of Kent and New Castle Counties, of the Post 1996 ROP Plans and the 1–Hour Ozone Attainment Demonstration Plan:

TRANSPORTATION CONFORMITY EMISSION BUDGETS FOR THE DELAWARE PORTION OF THE PHILADELPHIA AREA

Type of control strategy SIP	Year	Kent County		New Castle County		Effective date of adequacy determination or SIP approval
		VOC	NO_X	VOC	NO_X	
Post-1996 ROP Plan	1999	7.55	11.17	22.49	29.41	April 29, 1999, (64 FR 31217, published June 10, 1999).
Post-1996 ROP Plan	2002	6.30	9.81	18.44	27.29	June 23, 2000, (65 FR 36440, published June 8, 2000).

TRANSPORTATION CONFORMITY EMISSION BUDGETS FOR THE DELAWARE PORTION OF THE PHILADELPHIA AREA—Continued

Type of control strategy SIP	Year	Kent County		New Castle County		Effective date of adequacy determination or SIP approval
		VOC	NO_X	VOC	NO_X	
Post-1996 ROP Plan	2005	4.84	7.90	14.76	22.92	May 2, 2001, (66 FR 19769, published April 17, 2001).
Attainment Demonstration	2005	5.14	8.42	15.08	21.28	SIP approval on December 5, 2003; Effective on February 3, 2004.

(1)(2) [Reserved]

(e) EPA approves Delaware's revised 2005 VOC and NO_X motor vehicle emission budgets for the 1-hour ozone attainment plan for the Delaware portion of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area as a SIP revision. The revisions were submitted by the Delaware Department of Natural Resources and Environmental Control on September 2, 2003. Submittal of these revised MOBILE6-based motor vehicle emissions budgets was a requirement of EPA's approval of the attainment demonstration under paragraph (c) of this section.

[FR Doc. 03–30041 Filed 12–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0045, FRL–7594–8]

RIN 2060–AK53

National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical corrections.

SUMMARY: On July 18, 2003, the EPA promulgated amendments to the national emission standards for hazardous air pollutants (NESHAP) for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills. The technical corrections in this action restore provisions which were inadvertently deleted by the July 18, 2003, amendments and restore a provision which was inadvertently omitted from the January 12, 2001, final rule.

EFFECTIVE DATE: December 5, 2003.

ADDRESSES: Docket numbers OAR–2002–0045 and A–94–67, containing supporting information used in the development of this notice, are available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B–102, 1301 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Telander, Minerals and Inorganic Chemicals Group, Emission Standards Division (C504–05), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5427, facsimile number (919) 541–5600, electronic mail address *telander.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: *Docket.* The EPA has established an official public docket for this action including both Docket ID No. OAR–2002–0045 and Docket ID No. A–94–67. 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. 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 available for public viewing at the Air Docket in the EPA Docket Center, EPA West, Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460. 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 Air Docket is (202) 566–1742.

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/.* You may also access a copy of the final rule incorporating the provisions of this **Federal Register** notice through the Technology Transfer Network (TTN) at *http://www.epa.gov/ttn/atw/pulp/pulppg.html.*

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 of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select search, then key in the appropriate docket identification number.

Background: On February 18, 2003, we published a direct final rule (68 FR 7706) and parallel proposal (68 FR 7735) amending the NESHAP for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills (40 CFR part 63, subpart MM). The amendments clarified and consolidated the monitoring and testing requirements and added a site-specific alternative standard for one pulp mill. The consolidation of the monitoring and testing requirements resulted in significant text shifts within and between the monitoring and testing sections of the final rule.

On July 18, 2003 (68 FR 42603), we published amendments to the final rule that deleted portions of subpart MM added by the direct final rule (68 FR 7706), the provisions of which were the subject of adverse comment. The amendments also made two technical corrections to inadvertent errors in rule language. The EPA indicated in that notice that if we took further action, we would do so by acting on the pending proposed rule (68 FR 7735) and would not submit that proposal to another round of public comment.

However, the amendments inadvertently failed to restore some of the underlying rule language from the original rule. We are restoring those provisions here. The technical

corrections in this action restore the following provisions inadvertently deleted by the July 18, 2003, amendments:

- Reference in § 63.864(d) to the procedures in §§ 63.6(h) and 63.8 for installing, calibrating, maintaining, and operating a continuous opacity monitoring system;
- Requirement in § 63.864(e)(10) to determine and record the pressure drop across the scrubber and the scrubbing liquid flow rate at least once every successive 15-minute period;
- Requirement in § 63.864(e)(11) to determine and record the operating temperature of the regenerative thermal oxidizer at least once every successive 15-minute period; and,
- ''Eq. 1'' label for the equation in § 63.865(a)(1).

The technical corrections in this action also restore the particulate matter (PM) emission limit in English units in § 63.862(b)(1) for new kraft and soda recovery furnaces, which was inadvertently omitted from the January 12, 2001, final rule. This addition to the rule text does not alter the standard. It merely expresses it in English units, to go along with the metric units already in the rule.

The EPA is issuing today's technical corrections in final form because we are acting on the pending proposal on which there has been notice and opportunity for public comment. In addition, we gave actual notice of this action to the commenters to that proposed rule, alerted them to the possibility of this action, and considered their comments.

Section 553(d) of 5 U.S.C. allows an agency, upon a finding of good cause, to make a rule effective immediately. Because today's technical corrections restore regulatory language which was inadvertently deleted by previous amendments, do not add any requirements necessitating additional time for compliance, and otherwise do not substantively change the requirements of the final rule, we find good cause to make the technical corrections effective immediately.

Statutory and Executive Order Review

Under Executive Order 12866 (58 FR 51736, October 4, 1993), this action is not a ''significant regulatory action'' and is, therefore, not subject to review by the Office of Management and Budget. Because EPA has made a ''good cause'' finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA. This action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action 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 (64 FR 43255, August 10, 1999). This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant.

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA is not proposing/adopting any voluntary consensus standards in this action.

This action does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing these technical corrections, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of these technical corrections in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. These technical corrections do 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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of December 5, 2003. The EPA will submit a report containing the rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 10, 2003.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

■ For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart MM—National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills

■ 2. Section 63.862 is amended by revising paragraph (b)(1) to read as follows:

§ 63.862 Standards.

* * * * *

(b) *Standards for HAP metals: new sources.* (1) The owner or operator of any new kraft or soda recovery furnace must ensure that the concentration of PM in the exhaust gases discharged to the atmosphere is less than or equal to 0.034 g/dscm (0.015 gr/dscf) corrected to 8 percent oxygen.

* * * * *

■ 3. Section 63.864 is amended by:

■ a. Revising paragraph (d) introductory paragraph;
■ b. Revising paragraph (e)(10)introductory text; and
■ c. Revising paragraph (e)(11).
The revisions read as follows:

§ 63.864 Monitoring requirements.

* * * * *

(d) *Continuous opacity monitoring system (COMS).* The owner or operator of each affected kraft or soda recovery furnace or lime kiln equipped with an ESP must install, calibrate, maintain, and operate a COMS according to the provisions in §§ 63.6(h) and 63.8 and paragraphs (d)(1) through (4) of this section.

* * * * *

(e) * * *

(10) The owner or operator of each affected kraft or soda recovery furnace, kraft or soda lime kiln, sulfite combustion unit, or kraft or soda smelt dissolving tank equipped with a wet scrubber must install, calibrate, maintain, and operate a CPMS that can be used to determine and record the pressure drop across the scrubber and the scrubbing liquid flow rate at least once every successive 15-minute period using the procedures in § 63.8(c), as well as the procedures in paragraphs (e)(10)(i) and (ii) of this section:

* * * * *

(11) The owner or operator of each affected semichemical combustion unit equipped with an RTO must install, calibrate, maintain, and operate a CPMS that can be used to determine and record the operating temperature of the RTO at least once every successive 15-minute period using the procedures in § 63.8(c). The monitor must compute and record the operating temperature at the point of incineration of effluent gases that are emitted using a temperature monitor accurate to within ±1 percent of the temperature being measured.

* * * * *

■ 4. Section 63.865 is amended by revising paragraph (a)(1) to read as follows:

§ 63.865 Performance test requirements and test methods.

* * * * *

(a) * * *

(1) Determine the overall PM emission limit for the chemical recovery system at the mill using Equation 1 of this section as follows:

$$EL_{PM} = \frac{\left[\left(C_{ref,RF}\right)\left(Q_{RFtot}\right)+\left(C_{ref,LK}\right)\left(Q_{LKtot}\right)\right](F1)}{\left(BLS_{tot}\right)} + ER1_{ref,SDT} \qquad \text{(Eq. 1)}$$

Where:

EL_{PM} = overall PM emission limit for all existing process units in the chemical recovery system at the kraft or soda pulp mill, kg/Mg (lb/ton) of black liquor solids fired.

$C_{ref,\ RF}$ = reference concentration of 0.10 g/dscm (0.044 gr/dscf) corrected to 8 percent oxygen for existing kraft or soda recovery furnaces.

Q_{RFtot} = sum of the average volumetric gas flow rates measured during the performance test and corrected to 8 percent oxygen for all existing recovery furnaces in the chemical recovery system at the kraft or soda pulp mill, dry standard cubic meters per minute (dscm/min) (dry standard cubic feet per minute (dscf/min)).

$C_{ref,LK}$ = reference concentration of 0.15 g/dscm (0.064 gr/dscf) corrected to 10 percent oxygen for existing kraft or soda lime kilns.

Q_{LKtot} = sum of the average volumetric gas flow rates measured during the performance test and corrected to 10 percent oxygen for all existing lime kilns in the chemical recovery system at the kraft or soda pulp mill, dscm/min (dscf/min).

F1 = conversion factor, 1.44 minutes·kilogram/day·gram (min·kg/d·g) (0.206 minutes·pound/day·grain (min·b/d·gr)).

BLS_{tot} = sum of the average black liquor solids firing rates of all existing recovery furnaces in the chemical recovery system at the kraft or soda pulp mill measured during the performance test, megagrams per day (Mg/d) (tons per day (ton/d)) of black liquor solids fired.

$ER1_{ref,\ SDT}$ = reference emission rate of 0.10 kg/Mg (0.20 lb/ton) of black liquor solids fired for existing kraft or soda smelt dissolving tanks.

* * * * *

[FR Doc. 03–30265 Filed 12–4–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412, 413, 476, and 484

[CMS–3055–F]

RIN 0938–AK68

Medicare Program; Photocopying Reimbursement Methodology

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule increases the rate of reimbursement for expenses incurred by prospective payment system (PPS) hospitals for photocopying medical records requested by Quality Improvement Organizations (QIOs), formerly known as Utilization and Quality Control Peer Review Organizations (PROs). We are increasing the rate from 7 cents per page to 12 cents per page to reflect inflationary changes in the labor and supply cost components of the formula.

This final rule also provides for the periodic review and adjustment of the per-page reimbursement rate to account for inflation and changes in technology. The methodology for calculating the per-page reimbursement rate will remain unchanged.

We are also providing for the payment of the expenses of furnishing photocopies to QIOs, to other providers subject to a PPS (for example, skilled nursing facilities and home health agencies), in accordance with the rules established for reimbursing PPS hospitals for these expenses.

EFFECTIVE DATE: These regulations are effective on January 5, 2004.

FOR FURTHER INFORMATION CONTACT: Les Caplan, (410) 786–7223.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1866(a)(1)(F) of the Social Security Act (the Act) requires a hospital, as a condition of Medicare participation, to enter into an agreement with a quality improvement organization (QIO), for the peer review of Medicare services provided by the hospital. (**Note:** QIOs were formerly known as peer review organizations (PROs). We published a final rule with comment period on May 24, 2002 (67 FR 36539), changing the name to QIOs.) Our regulations at 42 CFR 476.78 provide that health care facilities that

submit Medicare claims must cooperate in the conduct of QIO reviews, including providing the QIO with information necessary to its determinations. This often includes providing the QIO with photocopies of patients' medical records.

We published a final rule on October 20, 1992, in the **Federal Register** (57 FR 47779), following notice-and-comment rulemaking, which established a formula for calculating the rate of reimbursement for these photocopy costs incurred by hospitals. Using this formula, we set the rate at 7 cents per page. The regulation requires us to determine a fixed payment amount per page by adding per-page labor costs and per-page supply costs. The regulation also provides for Medicare payment for the costs of first class postage for mailing records to QIOs. As discussed in detail in the October 20, 1992, final rule (57 FR 47779), the payment established by § 476.78 represents an additional payment to hospitals under the prospective payment system (PPS) for photocopy costs. Payment for the equipment and overhead costs associated with furnishing the QIO with required documentation is made under other Medicare payment provisions for capital-related costs and inpatient operating costs.

The formula for calculating the per-page reimbursement rate for photocopies is set forth at § 476.78(c), which provides:

Photocopying reimbursement methodology for prospective payment system hospitals. Hospitals subject to the prospective payment system are paid for the photocopying costs that are directly attributable to the hospitals' responsibility to the QIOs to provide photocopies of requested hospital records. The payment is in addition to payment already provided for these costs under other provisions of the Social Security Act and is based on a fixed amount per page as determined by CMS as follows:

(1) *Step one.* CMS adds the annual salary of a photocopy machine operator and the costs of fringe benefits as determined in accordance with the principles set forth in OMB circular A–76.

(2) *Step two.* CMS divides the amount determined in paragraph (c)(1) of this section by the number of pages that can be reasonably expected to be made annually by the photocopy machine operator to establish the labor cost per page.

(3) CMS adds to the per-page labor cost determined in paragraph (c)(2) of this section the per-page costs of supplies.

Using this formula we established the per-page rate of 7 cents in the October 20, 1992, final rule. The validity of this rule and its reimbursement methodology were challenged in a certified class action by Medicare—participating hospitals, in the U.S. Court of Appeals for the Ninth Circuit. *Queen of Angels/Hollywood Presbyterian Medical Center* v. *Shalala,* 65 F.3d 1472, 1476 (9th Cir. 1995). The Court of Appeals upheld the validity of our photocopy reimbursement methodology and sustained the lawfulness of the 7 cents per page rate established in the rule.

Due to increases in labor and supply costs, we are increasing the reimbursement rate from 7 cents per page to 12 cents per page in accordance with the established court-approved methodology set forth in § 476.78(c).

Current Photocopy Reimbursement Rate

Under the current regulation, we apply a uniform per-page rate on a nationwide basis to all PPS hospitals that have QIO agreements. We base the calculation on labor and supply costs. The calculation in the current rule, as discussed in the preamble to the October 20, 1992, rule, is based on the following:

- An operator will copy approximately 364,320 pages annually.
- The salary level of an operator is equivalent to a GS–5 experienced midlevel secretary ($17,686) plus 27.9 percent fringe benefits ($4,934) for a total salary of $22,620.
- Paper costs are 0.5 cents per page ($25 per case of paper with 5,000 sheets in a case).
- Toner and developer costs are 0.5 cents per page.

The total cost per page is 7 cents.

II. Provisions of the Proposed Regulations

On November 22, 2002, we published a proposed rule (67 FR 70358) in which we proposed to increase the rate of QIO-related photocopy reimbursement from 7 cents to 12 cents per page. We calculated this rate by updating the salary, fringe benefits, and supply figures used in the October 20, 1992, final rule. In accordance with the methodology at § 476.78(c), we considered the following factors in calculating the proposed rate: (1) The labor costs associated with photocopying and (2) the costs of supplies.

A. Labor Costs

Labor costs were calculated consistent with the methodology at § 476.78(c), first, by adding the annual salary of a photocopy machine operator with the costs of fringe benefits, and second, by dividing that sum by the number of pages that can reasonably be expected to be made in a year.

B. Annual Salary of a Photocopy Machine Operator

In the October 20, 1992, rule, we adopted the salary level for an experienced (GS–5) midlevel secretary in the Federal government as representative of that of a photocopy machine operator. Use of this figure approximated or exceeded the actual salary information for individuals performing these tasks that had been submitted by various commenters. Furthermore, we determined that use of this salary level yielded payments that were more than adequate to ensure a sufficient skill level. The annual salary of $17,686 used in the October 20, 1992, rule was derived from the U.S. Office of Personnel Management's 1992 General Schedule.

In this final rule, we will continue to deem the salary of a Federal GS–5 midlevel secretary as representative of a photocopy operator's salary; however, we will update the figure to take into account increases in the payment rate of a midlevel secretary. Thus, as discussed in the proposed rule, we are using the GS–5 annual salary of $28,727 derived from the U.S. Office of Personnel Management's 2002 General Schedule to calculate the revised rate.

C. Fringe Benefits

In the October 20, 1992, final rule, we ascribed the fringe benefits of an employee to be 27.9 percent of the employee's salary, which was the standard percentage dictated by the cost principles set forth in the Office of Management and Budget (OMB) Circular A–76. While there may be other yardsticks to measure this component of costs, we find this to be a reasonable resource since the thrust of this OMB circular is to help the government compare potentially incurred costs to determine whether the costs can be more economically incurred internally or through contract with a commercial source. Therefore, we continue to use OMB Circular A–76 to calculate the annual fringe benefit cost. Accordingly, fringe benefits were calculated in the November 22, 2002, proposed rule based on 29.7 percent of the GS–5 salary as outlined in the OMB Circular A–76 Transmittal Memorandum 19—FY 2000 estimate. Thus, the annual fringe benefit cost is $8,532 ($28,727 * 29.7 percent).

D. Number of Pages Copied Annually

In this final rule, we are using 364,320 pages per year in the calculation of the annual labor cost. In the October 20, 1992, rule, we determined that 364,320 was the number of pages that could reasonably be expected to be copied in a year. Earlier, in the proposed rule ''Changes to Peer Review Organizations Regulations'', published on March 16, 1988, at 53 FR 8654, we had proposed the use of 748,000 pages per year in the calculation of the annual labor cost. This initial figure was determined based on copying documents at a rate of six pages per minute for each hour in an 8 hour day, 5 days a week, 52 weeks per year. The estimate was based on hand feeding of documents into the photocopying machine for duplication, although we recognized that there are many photocopying tasks that may be accomplished through automatic feeds. Automatic feeds greatly increase the number of pages that can be generated by a machine on an hourly basis, and as a result, greatly decrease the cost of photocopying per page.

In response to comments received on the March 16, 1988, proposed rule (53 FR 8654), we revised the 748,000 figure in the October 20, 1992, final rule to account for time spent by the photocopy machine operator in search and retrieval tasks, and time away from work on annual vacation, sick, and holiday leave. This resulted in a reduction from 748,000 to 364,320 in our estimate of the number of pages that may be reasonably expected to be made annually, and a corresponding increase in the per-page labor rate.

We are unaware of any significant changes in technology since the October 20, 1992, final rule (57 FR 47779) that would lead to either a significant decrease or increase in the annual number of pages that may be copied. Nor are we aware of any changes that would significantly increase or decrease the time allocated to search and retrieval tasks. Therefore, we continue to use the 364,320 figure to calculate the per-page labor cost.

E. Calculation of Per-Page Labor Costs

To determine the per-page labor cost, the total of salary ($28,727) and fringe benefits ($8,532) costs, which amount to $37,259, was divided by 364,320 pages, the number of copies made in a year, resulting in an annual labor cost per page of 10 cents ($37,259/364,320 pages).

F. Supply Costs

In the proposed rule, we proposed a total supply cost of 2.3 cents per page. This is based on a per-page paper cost of 0.5 cents and a developer and toner cartridge cost of 1.8 cents per page. The paper costs were calculated based on $23 per case of paper with 5,000 sheets in a case. This equates to 0.5 cents per page ($23/5,000).

In this rule, we used an objective methodology to calculate the per-page cost for toner and developer that can also be used in future updates. We calculated these costs using estimates of the costs for toner cartridges and developer drums contained in the General Services Administration (GSA) supply catalogue, and on the basis of a photocopy machine producing 364,320 pages annually.

G. Payment Rate Per Page

Consistent with § 476.78(c)(3), the payment rate per page is the total of the per-page labor cost and the per-page supply cost, which is equivalent to 12 cents. The established calculation methodology actually results in a cost of 12.3 cents per page, however, consistent with our policy and generally accepted mathematics principles, we chose to round down to 12 cents. We believe this decision is both reasonable and supportable, based on the fact that the higher amount substantially exceeds all published OMB inflation indexes, including the Consumer Price Index (CPI)-Wage index (photocopying expense is largely comprised of labor costs).

H. Future Updates to Rate of Photocopy Reimbursement

In addition to updating the rate of reimbursement for photocopies, we are also amending the existing regulation to permit the rate to be adjusted without undergoing notice-and-comment rulemaking each time it needs to be adjusted to reflect inflationary or technology changes.

We intend to review and adjust the rate periodically in accordance with the same factors considered in establishing the rate in the October 20, 1992, final rule and the updated rate in this final rule. This review will include an examination of the labor and supply components of the formula, and we will update the rate as necessary to account for significant inflationary changes to these components.

Absent some compelling reason, in future updates, we will continue to deem the salary and fringe benefits of a Federal government GS–5 midlevel secretary as representative of the salary and fringe benefits of a photocopy machine operator and use those values to calculate the reimbursement rate. Also, absent some compelling reason or major technological change that would lead to a significant increase or decrease in the number of pages that can be made annually, we will not change the number of pages used in calculating the rate.

I. Reimbursement to Other PPS Providers of the Cost of Photocopying

We will provide for the payment of the expenses of furnishing photocopies to QIOs, to other providers subject to a PPS (for example, skilled nursing facilities (SNFs) and home health agencies (HHAs)), in accordance with the rules established at § 476.78 for reimbursing PPS hospitals for these expenses.

Current regulations do not address reimbursement for providers other than hospitals for costs of photocopying medical records in cooperation with QIO review activities because in the past QIO review of providers other than hospitals was relatively insignificant. To the extent that this review activity took place, it was minimal, and the related costs were included on the provider's cost report. SNFs, HHAs, and other providers have recently converted from the cost-based reimbursement system to a PPS. Because QIO review of these providers has been minimal or nonexistent, costs related to this activity are not adequately reflected in the base PPS rate. Therefore, we believe it is appropriate to provide for a means of paying for these costs when they occur. To accomplish this change, we will replace the more narrow term ''hospitals'' with ''providers,'' in § 476.78(b)(2) and (c), to include other providers subject to a PPS.

Additionally, we will revise the payment provisions for SNFs and HHAs by adding a paragraph at § 413.355 and § 484.265, that authorizes reimbursement for the costs of photocopying and mailing medical records required for QIO review, to SNFs and HHAs.

We will amend § 476.78(d) to provide that, as with other disputes regarding Medicare payment to providers, disputes concerning payments for costs related to QIO review under § 476.78 and the other payment provisions of the Medicare statute and regulations must be presented in accordance with the administrative and judicial review requirements of section 1878 of the Act and subpart R of 42 CFR part 405.

III. Analysis of and Responses to Public Comments

We received three timely items of correspondence in response to the proposed rule published on November 22, 2002. A summary of the major issues

raised in those comments and our responses follow:

Comment: One QIO commented that the November 22, 2002, proposed rule would increase pass-through photocopy costs well beyond the amount budgeted in their seventh round Medicare contract. This increase could cause the QIO to exceed the total cost of its contract.

Response: Increased photocopying costs are included in the seventh round scope of work funding level. However, these costs are a true pass-through; that is, CMS is responsible for paying providers, and CMS uses its QIO contractors as the vehicle to pay them. Although CMS does not anticipate increasing the total cost of each QIO contract immediately upon publication of this rule, any time a QIO believes it will exceed the total cost of its contract, the QIO should immediately notify CMS (see ''Limitation of Cost'' clause in the seventh round contract). If the excess costs are the result of increased photocopying reimbursement, CMS will exercise one of the four options CMS always uses in similar cases—we will either request that money be added to the contract, reduce work, ask the QIO to move funds between cost centers or line items, or some combination of these options. In no case will CMS expect the QIO to absorb any excess pass-through with existing contract funds without a corresponding reduction or shifting in level of effort.

Comment: One hospital commented that the method for calculating labor costs described in section II.A of the preamble of the November 22, 2002, proposed rule only provides for the cost of a photocopy machine operator, while in actual practice a significant portion of records reproduction time should be attributed to record retrieval, review, and re-filing by a records technician. The hospital further stated its pay scale for a records technician ranges from $8.30 to $11.22 per hour.

Response: We agree with this comment. However, in section II.D of the preamble of the November 22, 2002, proposed rule, we explained how we calculated the estimated number of pages copied annually. As discussed in detail at 57 FR 47780, this estimate was adjusted before publication of the current regulation to take into account the appropriate amount of labor time required to perform all of the steps that are performed in addition to the actual photocopying, such as logging in the request, retrieving the record, refiling the record, and mailing copies. Thus, the term ''photocopy machine operator'' can reasonably be interpreted to include records technicians or anyone else directly involved in the hands-on process. Further, section II.B of the preamble of the November 22, 2002, proposed rule explains that we used an updated representative annual salary of $28,727, or an hourly rate of $13.81, which exceeds this provider's salary range for a records technician. Therefore, we have not increased the per-page reimbursement rate based on this comment.

Comment: Another commenter questioned the raw data we applied to the approved methodology for calculating the per-page cost of photocopying medical records. Although this commenter strongly supported the three primary objectives of the rule (to increase reimbursement, extend provisions of the rule to all PPS providers, and allow for periodic adjustment of rates without notice and comment rulemaking), the commenter contended the rate should be significantly higher than the proposed 12 cents per page.

In particular, this organization stated the proposed labor rate is insufficient to retain qualified personnel in the private sector, fringe benefit rates are too low, the number of pages copied annually is too high due to recent Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements, and the cost of supplies is too low as a result of comparing GSA bulk purchase costs to actual costs available to private sector companies. The commenter believes we used the October 20, 1992, regulation as a starting point for current calculations and that regulation was based on artificially low cost assumptions.

The commenter supports extending the proposed reimbursement methodology to non-hospital PPS providers and also supported the periodic review provisions. However, the commenter asked us to amend the rate review section to require such a review at no more than 5-year intervals.

Response: In this rule, we used recent cost data to calculate the proposed per-page photocopy costs and did not simply build on 1992 data. However, we believe that the data used in both this rule and the 1992 rule is reasonable and accurately reflects the costs associated with this responsibility. Further, we believe the proposed representative salary and fringe benefit rates of $28,727 and 29.7 percent, respectively, are reasonable and sufficient to attract and retain qualified personnel. The fringe benefit (F/B) rate, in particular, is very close to the mean F/B rate of the numerous contractors we reviewed before publication of the November 22, 2002, proposed rule, to validate the A–76 Transmittal Memorandum. Although the 29.7 percent F/B rate is based on the 2000 OMB guidance, we have applied it to a higher base figure and see no reason to adjust it further. The $28,727 salary estimate represents a mid-level GS–5 secretary salary in 2002, which we believe is a fair and accurate comparison to the skill level necessary to process medical record photocopying requests.

The estimated number of pages has remained constant since the October 20, 1992, regulation was published. Although the commenter may be correct that HIPAA privacy requirements will modestly reduce the maximum number of pages an operator or technician can copy per year, it is still too soon to calculate the exact effect of that legislation. Further, we believe that increases in the speed and simplicity of reproduction hardware over the last 10 years may offset any decreases in volume resulting from HIPAA.

The comment that the cost of supplies to non-governmental organizations exceeds the GSA catalogue price may be valid. However, the GSA price provides a solid benchmark that does not vary widely by vendor or product quality. Further, our proposed overall reimbursement rate per page amounts to a 7 percent annual increase over the 10 years since publication of the previous rule. This is approximately twice the inflation index rate and adequately compensates for any modest differences between the government and private-sector costs of supplies.

We believe the suggestion to include a maximum 5-year interval between review periods has some merit but may be unnecessary. By eliminating the need for notice and comment rulemaking, it becomes unlikely that any future rate adjustment will take longer than 5 years and potentially could be more frequent.

IV. Provisions of the Final Regulations

This final rule incorporates the provisions of the proposed rule with only one minor change. We have deleted the proposed revision of § 476.78(b)(4), thus leaving that section unchanged from the existing text. The proposed amendment, replacing ''hospital'' with ''provider,'' had an unintended consequence of appearing to extend the requirement to provide QIOs with discharge notices from hospitals to other inpatient providers. That is neither the purpose nor the intent of this final rule.

V. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, agencies are required to provide 60-day notice in the **Federal**

Register and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved, section 3506(c)(2)(A) of the PRA of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Section 476.78 of this regulation contains information collection requirements. In summary, § 476.78 requires providers to submit information to the QIO during the conduct of a QIO review. Because this information is collected during the conduct of an audit, investigation, and/or an administrative action, we believe these collection requirements are not subject to the PRA as stipulated under 5 CFR 1320.4.

VI. Regulatory Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of $100 million or more annually. This final rule is not a major rule in terms of the aggregate costs involved.

The 53 separate QIO contracts are awarded on a staggered 3-year basis. Current sixth scope of work contracts provide photocopy reimbursement costs of 7 cents per page. The total dollars budgeted were $8.6 million per year and the 3-year costs were $25.9 million. We estimate by the time this final regulation is published, 19 QIOs will have completed their sixth round contracts, and the other 34 will have less than 153 months (combined) out of a total of 636 months (for all 53 QIOs) remaining in the final year of their sixth round contracts. This translates to 24 percent of the final sixth round year. As such, we project this regulation will increase the costs in the last (that is, current) year of the sixth scope of work by $1.5 million above the previous budgeted level of $8.6 million, to a total of $10.1 million. However, in future years—based on the full 12 months and all 53 QIOs under contract—the increase will be nearly $6.2 million annually.

Thus, we have determined that this final rule is not a major rule with economically significant effects because it will not result in increases in total expenditures of $100 million or more per year.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million or less annually (see 65 FR 69432). Individuals and States are not included in the definition of a small entity.

We generally prepare a regulatory flexibility analysis that is consistent with the RFA unless we certify that a rule will not have a significant impact on a substantial number of small entities. We have not prepared an analysis for the RFA because we have determined, and certify, that this final rule will have no significant economic impact on small entities. The regulation will not impose any economic or operational regulatory burdens on small entities. The regulation will only assist providers in performing the tasks required under the QIO program sixth scope of work, by increasing the reimbursement for providing copies of documents to the QIOs.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have not prepared an analysis for section 1102(b) of the Act because we have determined that this final regulation will not have a significant impact on the operations of small rural hospitals for the reasons stated above in our discussion of the RFA.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million or more. We have determined that this final rule will not result in such an expenditure. Rather, the final rule will benefit providers by increasing the photocopy reimbursement rate.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule under the threshold criteria of Executive Order 13132 and have determined that it will not have a substantial direct effect on the rights, roles, and responsibilities of States or local governments.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 476

Grant programs-health, Health care, Health facilities, Health professions, Quality Improvement Organizations (QIO), Reporting and record keeping requirements.

42 CFR Part 484

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services is amending 42 CFR chapter IV as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

Subpart H—Payment to Hospitals Under the Prospective Payment Systems

■ 1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. In § 412.115, revise paragraph (c) to read as follows:

§ 412.115 Additional payments.

* * * * *

(c) *QIO photocopy and mailing costs.* An additional payment is made to a hospital in accordance with § 476.78 of this chapter for the costs of photocopying and mailing medical records requested by a QIO.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

Subpart J—Prospective Payment for Skilled Nursing Facilities

■ 1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395l(a), (i), and (n), 1395hh, 1395rr, 1395tt, and 1395ww).

■ 2. Add a new § 413.355 to read as follows:

§ 413.355 Additional payment: QIO photocopy and mailing costs.

An additional payment is made to a skilled nursing facility in accordance with § 476.78 of this chapter for the costs of photocopying and mailing medical records requested by a QIO.

PART 476—UTILIZATION AND QUALITY CONTROL REVIEW

Subpart C—Review Responsibilities of Quality Improvement Organizations (QIOs)

General Provisions

■ 1. The authority citation for part 476 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. In § 476.78, revise the introductory text to paragraph (b); revise paragraphs (b)(2), and the introductory text to paragraph (c); add new paragraph (c)(4); and revise paragraph (d) to read as follows:

§ 476.78 Responsibilities of health care providers.

* * * * *

(b) *Cooperation with QIOs.* Health care providers that submit Medicare claims must cooperate in the assumption and conduct of QIO review. Providers must—

* * * * *

(2) Provide patient care data and other pertinent data to the QIO at the time the QIO is collecting review information that is required for the QIO to make its determinations. The provider must photocopy and deliver to the QIO all required information within 30 days of a request. QIOs pay providers paid under the prospective payment system for the costs of photocopying records requested by the QIO in accordance with the payment rate determined under the methodology described in paragraph (c) of this section and for first class postage for mailing the records to the QIO. When the QIO does postadmission, preprocedure review, the facility must provide the necessary information before the procedure is performed, unless it must be performed on an emergency basis.

* * * * *

(c) *Photocopying reimbursement methodology for prospective payment system providers.* Providers subject to the prospective payment system are paid for the photocopying costs that are directly attributable to the providers' responsibility to the QIOs to provide photocopies of requested provider records. The payment is in addition to payment already provided for these costs under other provisions of the Social Security Act and is based on a fixed amount per page as determined by CMS as follows:

* * * * *

(4) CMS will periodically review the photocopy reimbursement rate to ensure that it still accurately reflects provider costs. CMS will publish any changes to the rate in a **Federal Register** notice.

(d) *Appeals.* Reimbursement for the costs of photocopying and mailing records for QIO review is an additional payment to providers under the prospective payment system, as specified in § 412.115, § 413.355, and § 484.265 of this chapter. Thus, appeals concerning these costs are subject to the review process specified in part 405, subpart R of this chapter.

PART 484—HOME HEALTH SERVICES

Subpart E—Prospective Payment System for Home Health Agencies

■ 1. The authority citation for part 484 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh) unless otherwise indicated.

■ 2. Add a new § 484.265 to read as follows:

§ 484.265 Additional payment.

QIO photocopy and mailing costs. An additional payment is made to a home health agency in accordance with § 476.78 of this chapter for the costs of photocopying and mailing medical records requested by a QIO.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 23, 2003.

Thomas A. Scully,

Administrator, Center for Medicare & Medicaid Services.

Approved: August 28, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–30096 Filed 11–28–03; 11:32 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 414

[CMS–1232–FC]

RIN 0938–AM44

Medicare Program; Coverage and Payment of Ambulance Services; Inflation Update for CY 2004

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule provides the sunset date for the interim bonus payment for rural ambulance mileage of 18 through 50 miles as required by the Medicare, Medicaid and State Child Health Insurance Program Benefits Improvement and Protection Act of 2000 (BIPA) and provides notice of the annual Ambulance Inflation Factor (AIF) for ambulance services for calendar year (CY) 2004. The statute requires that this inflation factor be

applied in determining the fee schedule amounts and payment limits for ambulance services.

DATES: *Effective date:* These revisions are effective on January 1, 2004. The ambulance inflation factor for 2004 applies to ambulance services furnished during the period January 1, 2004, through December 31, 2004.

Comment date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on January 29, 2004.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1232–FC, P.O. Box 8013, Baltimore, MD 21244–8013.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses: Hubert H. Humphrey Building, Room 443–G, 200 Independence Avenue, SW., Washington, DC 20201, or Centers for Medicare & Medicaid Services, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–8013.

Comments mailed to those addresses designated for courier delivery may be delayed and could be considered late. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Please refer to file code CMS–1232–FC on each comment. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of this document, in Room C5–12–08 of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland, Monday through Friday of each week from 8:30 a.m. to 4 p.m. Please call (410) 786–7197 to make an appointment to view comments.

FOR FURTHER INFORMATION CONTACT: Anne E. Tayloe, (410) 786–4546.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legislative and Regulatory History

Under section 1861(s)(7) of the Social Security Act (the Act), Medicare Part B (Supplementary Medical Insurance) covers and pays for ambulance services, to the extent prescribed in regulations, when the use of other methods of transportation would be contraindicated. The House Ways and Means Committee and Senate Finance Committee Reports that accompanied the 1965 legislation creating the Social Security Act suggest that the Congress intended that (1) the ambulance benefit cover transportation services only if other means of transportation are contraindicated by the beneficiary's medical condition, and (2) only ambulance service to local facilities be covered unless necessary services are not available locally, in which case, transportation to the nearest facility furnishing those services is covered (H.R. Rep. No. 213, 89th Cong., 1st Sess. 37 and S. Rep. No. 404, 89th Cong., 1st Sess., Pt I, 43 (1965)). The reports indicate that transportation may also be provided from one hospital to another, to the beneficiary's home, or to an extended care facility.

Our regulations relating to ambulance services are located at 42 CFR part 410, subpart B and 42 CFR part 414, subpart H. Section 410.10(i) lists ambulance services as one of the covered medical and other health services under Medicare Part B. Ambulance services are subject to basic conditions and limitations set forth at § 410.12 and to specific conditions and limitations included at § 410.40. Part 414, subpart H describes how payment is made for ambulance services covered by Medicare.

The Medicare program pays for ambulance services for Medicare beneficiaries when other means of transportation are contraindicated. Ambulance services are divided into different levels of services based on the medically necessary treatment provided during transport as well as into ground (including water) and air ambulance services. These services include the levels of service listed below.

For ground:

- Basic Life Support (BLS)
- Advanced Life Support, Level 1 (ALS1)
- Advanced Life Support, Level 2 (ALS2)
- Specialty Care Transport (SCT)
- Paramedic ALS Intercept (PI)

For air:

- Fixed Wing Air Ambulance (FW)
- Rotary Wing Air Ambulance (RW)

Historically, payment levels for ambulance services depended, in part, upon the entity that furnished the services. Prior to implementation of the ambulance fee schedule on April 1, 2002, providers (hospitals, including critical access hospitals, skilled nursing facilities, and home health agencies) were paid on a retrospective reasonable cost basis. Suppliers, which are entities that are independent of any provider, were paid on a reasonable charge basis.

On February 27, 2002, a final rule was published in the **Federal Register** (67 FR 9100) that established a fee schedule for the payment of ambulance services under the Medicare program, effective for services furnished on or after April 1, 2002. This rule implemented section 1834(l) of the Act. The fee schedule described in the final rule replaced the retrospective reasonable cost payment system for providers and the reasonable charge system for suppliers of ambulance services. In addition, that final rule implemented that statutory requirement that ambulance suppliers accept Medicare assignment; codified the establishment of new Health Care Common Procedure Coding System (HCPCS) codes to be reported on claims for ambulance services; established increased payment under the fee schedule for ambulance services furnished in rural areas based on the location of the beneficiary at the time the beneficiary is placed on board the ambulance; and revised the certification requirements for coverage of nonemergency ambulance services. The final rule also provided for a 5-year transition period during which program payment for Medicare covered ambulance services would be based upon a blended rate comprised of a fee schedule portion and a reasonable cost (providers) or reasonable charge (suppliers) portion. We are now in the second year of that transition over to full payment based solely on the fee schedule amount.

B. Transitional Assistance for Rural Mileage 18 through 50—Section 221 of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA)

Section 221 of BIPA provided that, for services furnished during the period July 1, 2001 through, December 31, 2003, a bonus payment, not less than one-half of the bonus paid under the ambulance fee schedule for rural mileage 1 through 17 miles, would be paid for rural mileage 18 through 50. This provision was implemented by § 414.610(c) with the ambulance fee schedule.

The statute provided for this bonus payment only for the interim period specified. We inadvertently omitted from the regulation the time period during which this benefit is payable. Therefore, we are revising § 414.610(c) to reflect that this bonus payment applies only for services furnished during the statutory period. This revision to the regulation is a technical correction to conform the regulation to the statute. Therefore, we believe that notice and comment are unnecessary, and we are waiving proposed rulemaking.

C. Ambulance Inflation Factor (AIF) for CY 2004

Section 1834(l)(3)(B) of the Act provides the basis for updating payment amounts for ambulance services. Our regulations at § 414.620(f) provide that the ambulance fee schedule must be updated by the AIF annually, based on the percentage increase in the consumer price index (CPI) for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year (§ 414.610(f)). The regulations also provide that notice of the AIF be published in the **Federal Register** without opportunity for prior notice and comment. We will follow applicable rulemaking procedures in publishing revisions to the fee schedule for ambulance services that result from any factors other than the inflation factor. In this preamble, we set forth the ambulance inflation factor applicable for services furnished in CY 2004.

II. Provisions of the Final Rule

A. Transitional Assistance for Rural Mileage 18 Through 50

Section 414.610(c)(5) is amended to clarify that this benefit is no longer payable for services furnished after December 31, 2003.

B. Ambulance Inflation Factor for 2004

Section 1834(l)(3)(B) of the Act, specified in § 414.620(f), provides for an update in payments for CY 2004 that is equal to the percentage increase in the CPI for all urban consumers (CPI–U), for the 12-month period ending with June of the previous year (that is, June 2003). For CY 2004, that percentage is 2.1 percent.

During the transition period (described in § 414.615, Transition to the ambulance fee schedule), the AIF is applied to both the fee schedule portion of the blended payment amount and to the reasonable charge/cost portion of the blended payment amount separately for each ambulance provider/supplier. Then, these two amounts are added together to determine the total payment amount for each provider/supplier.

III. Technical Corrections

We are also making the following technical corrections to § 414.605, Definitions.

- In the definition of ''*Advanced life support (ALS) intervention,*'' we are clarifying that an ALS intervention must be furnished by ALS personnel.
- A comma was inadvertently omitted in the definition of ''*Advanced life support, Level 2 (ALS2).*'' That comma is now inserted after the phrase ''or by continuous infusion'' and before the phrase ''excluding crystalloid. * * *''
- There was an inadvertent misuse of the term ''supplier'' in the definition of the term ''*emergency response*.'' The correct term is ''entity.'' Providers, as well as suppliers, may furnish an emergency response. We did not intend to exclude providers from receiving payment for this service.
- In the definition of ''*Rural area*'', we are clarifying that only New England County Metropolitan Areas (NECMAs) (and not MSAs) apply in New England. (NECMAs exist only in New England. All other areas have MSAs.) Also, the term ''NECMA'' was inadvertently omitted from the discussion of the Goldsmith modification. The phrase ''or NECMA'' is now inserted after the term ''MSA'' and before the phrase ''that is identified as rural by the Goldsmith modification.'' This clarifies that a Goldsmith modification can apply to a NECMA as well as an MSA.
- Section 414.610(c)(3) is revised to conform the first two sentences to reflect the fact that the process for determining payment for mileage is the same for ground and air miles.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a proposed rule in the **Federal Register** and provide a period for public comment before we publish a final rule. We can waive this procedure, however, if we find good cause that notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and we incorporate a statement of this finding and its reasons in the rule issued. We find it unnecessary to undertake notice and comment rulemaking in this instance because the statute specifies the method of computation of annual updates, and we have no discretion in this matter. Further, this rule does not change substantive policy, but merely applies the statutorily-specified update method. Therefore, under 5 U.S.C. 553(b)(B), for good cause, we waive notice and comment procedures.

We also find it unnecessary to undertake notice and comment rulemaking as to the technical changes because they merely provide technical corrections to the regulations and do not make any substantive changes to the regulations. Therefore, for good cause, we waive notice and comment procedures.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VI. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This final rule is not considered a major rule because it has an effect on the Medicare program of less than $100 million in any 1 year. Application of an AIF of 2.1 percent will result in an additional total program expenditure of approximately $65 million.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. For purposes of the RFA, all ambulance providers/suppliers are considered to be small entities. Individuals and States are not included in the definition of a small entity.

HHS considers that a substantial number of entities are affected if the rule impacts more than 5 percent of the total number of small entities as it does in this rule. Although this rule impacts every ambulance provider and supplier because all ambulance payment rates are increased by the 2.1 percent ambulance inflation factor, we do not believe that this has a significant impact. We estimate the combined impact of this rule would be an approximate 2 percent increase in Medicare revenues, which, therefore, would be a somewhat less than 2 percent increase in total revenues (that is, Medicare plus non-Medicare revenues). This estimated impact does not meet the threshold established by

HHS to be considered a significant impact. Nonetheless, we have prepared the analysis below to describe the impact of this rule.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This rule applies to small rural hospitals that furnish at least one Medicare covered ambulance service to at least one Medicare beneficiary.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This final rule does not result in an expenditure in any 1 year by State, local, or tribal governments of $110 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule will not have a substantial effect on State or local governments.

This final rule sunsets the rural mileage bonus for rural mileage 18 through 50 as required by statute, provides an update for inflation as mandated by statute, and changes the term ''supplier'' to the term ''entity'' in the definition of an emergency service. Elimination of the bonus payment for rural mileage 18 through 50 will result in a savings to the program of $6 million in CY 2004. Therefore, this is not a major rule.

We estimate that the total program expenditure for CY 2004 for ambulance services covered by the Medicare program is approximately $3 billion. Application of an AIF of 2.1 percent will result in an additional total program expenditure of approximately $65 million.

Our clarification that an ALS intervention must be furnished by ALS personnel will have negligible impact because generally ALS services are required to be furnished by ALS personnel.

The insertion of the comma that had been inadvertently omitted in the definition of ''Advanced life support, Level 2 (ALS2)'' will have no impact since it conforms the regulation to the existing implementing instructions.

Changing the term ''supplier'' to the term ''entity'' in the definition of ''emergency services'' is not a material change because it simply conforms the regulation to actual practice as the program is currently administered.

Our clarification in the definition of ''Rural area'' that NECMAs apply in New England and our addition of NECMA to the discussion of the Goldsmith Modification have a negligible impact because of the very few ambulance suppliers affected. Also, the statute requires that this policy be followed in updating rates by using the most recent Goldsmith modifications.

Our clarification for loaded mileage has no impact because it conforms the regulation to actual practice as the program is correctly administered.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services is amending 42 CFR chapter IV as follows:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

■ 1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(1)).

Subpart H—Fee Schedule for Ambulance Services

§ 414.605 [Amended]

■ 2. In § 414.605, the following changes are made:

■ A. The definition of ''*Advanced life support (ALS) intervention*'' is revised by removing the phrase ''beyond the scope of authority of an emergency medical technician-basic (EMT-Basic)'' and adding in its place the phrase ''required to be furnished by ALS personnel.''

■ B. A comma is inserted in the definition of ''*Advanced Life Support, Level 2 (ALS2)*'' after the phrase ''or by continuous infusion'' and before the phrase ''excluding crystalloid. * * *''

■ C. The term ''supplier'' in the definition of ''Emergency response'' is removed and the term ''entity'' is added in its place.

■ D. The definition of ''Rural area'' is revised to read as follows:

§ 414.605 Definitions.

* * * * *

Rural area means an area located outside a Metropolitan Statistical Area (MSA), or, in New England, a New England County Metropolitan Area (NECMA), or an area within an MSA or NECMA that is identified as rural by the Goldsmith modification.

* * * * *

■ 3. Section 414.610 is amended by revising paragraphs (c)(3) and (c)(5) to read as follows:

§ 414.610 Basis of payment.

* * * * *

(c) * * *

* * * * *

(3) Loaded mileage. Payment is based on loaded miles. Payment for air mileage is based on loaded miles flown as expressed in statute miles. There are three mileage payment rates: a rate for FW services, a rate for RW services, and a rate for all levels of ground transportation.

* * * * *

(5) Rural adjustment factor (RAF). For ground ambulance services where the point of pickup is in a rural area, the mileage rate is increased by 50 percent for each of the first 17 miles and, for services furnished before January 1, 2004, by 25 percent for miles 18 through 50. The standard mileage rate applies to every mile over 50 miles and, for services furnished after December 31, 2003, to every mile over 17 miles. For air ambulance services where the point of pickup is in a rural area, the total payment is increased by 50 percent; that is, the rural adjustment factor applies to the sum of the base rate and the mileage rate.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 2, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: October 27, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–30152 Filed 12–1–03; 12:43 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3555; MB Docket No. 03–24; RM–10636]

Radio Broadcasting Services; Apopka, Homosassa Springs, Maitland, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Cox Radio, Inc., licensee of FM Station WPYO, Channel 237A, Apopka, Florida, deletes Apopka, Florida, Channel 237A, from the FM Table of Allotments, allots Channel 237C3 at Maitland, Florida, as the community's first local FM service, and modifies the license of FM Station WPYO to specify operation on Channel 237C3 at Maitland. Channel 237C3 can be allotted to Maitland, Florida, in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.7 km (9.2 miles) east of Maitland. The coordinates for Channel 237C3 at Maitland, Florida, are 28–39–38 North Latitude and 81–13–02 West Longitude.

DATES: Effective January 5, 2004.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 03–24, adopted November 12, 2003, and released November 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Apopka, Channel 237A, and by adding Maitland, Channel 237C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–30195 Filed 12–4–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3650; MB Docket No. 02–243; RM–10533; RM–10712*]

Radio Broadcasting Services; Marathon and Mertzon, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making,* 67 FR 57779 (September 12, 2001), this *Report and Order* allots Channel 278C to Marathon, Texas, and provides Marathon with its first local aural transmission service. This document also allots Channel 278C2 to Mertzon, Texas and provides that community with its second local aural transmission service. The coordinates for Channel 278C at Marathon, Texas, are 30–21–56 North Latitude and 103–17–40 West Longitude. This allotment has a site restriction of 18.4 kilometers (11.5 miles) north of Marathon, Texas. The coordinates for Channel 278C2 at Mertzon, Texas, are 31–10–09 North Latitude and 100–51–41 West Longitude, with a site restriction of 10.8 kilometers (6.7 miles) southwest of Mertzon, Texas.

DATES: Effective January 8, 2004.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–243, adopted November 14, 2003, and released November 17, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202 863–2893, facsimile 202 863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Marathon, Channel 278C, and Channel 278C2 at Mertzon.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–30194 Filed 12–4–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031126297–3297–01; I.D. 111703D]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Interim 2004 Harvest Specifications for Groundfish

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

ACTION: Interim final rule.

SUMMARY: NMFS issues interim 2004 total allowable catch (TAC) amounts for each category of groundfish, American Fisheries Act (AFA) sideboard amounts, and prohibited species catch (PSC) amounts for the groundfish fisheries of the Gulf of Alaska (GOA). The intended effect is to conserve and manage the groundfish resources in the GOA.

DATES: The interim harvest specifications are effective from 0001 hrs, Alaska local time (A.l.t.), January 1, 2004, until the effective date of the final 2004 harvest specifications for GOA groundfish, which will be published in the **Federal Register**.

ADDRESSES: Copies of the Environmental Assessment/Initial Regulatory Flexibility Analysis (EA/

IFRA) prepared for this action, the final 2002 Stock Assessment and Fishery Evaluation (SAFE) report, dated November 2002, and the final 2003 SAFE report, dated November 2003, is available from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501–2252, telephone (907) 271–2809 or from its homepage at *http://www.fakr.noaa.gov/npfmc.*

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, (907) 481–1780 or *tom.pearson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Federal regulations at 50 CFR part 679 implementing the Fishery Management Plan (FMP) for Groundfish of the GOA govern the groundfish fisheries in the GOA. The North Pacific Fishery Management Council (Council) prepared the FMP, and NMFS approved it under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). General regulations that also pertain to the U.S. fisheries appear at subpart H of 50 CFR part 600.

The Council met in October 2003 to review scientific information concerning groundfish stocks including the 2002 SAFE report and the EA (see **ADDRESSES**) and recommended proposed 2004 specifications. The Council recommended and NMFS proposed a total acceptable biological catch (ABC) of 409,690 mt and a TAC of 227,797 mt for the 2004 fishing year. The proposed TAC amounts for each species were based on the best available biological and socioeconomic information.

Under § 679.20(c)(1)(ii), NMFS published in the **Federal Register** proposed harvest specifications for groundfish in the GOA for the 2004 fishing year published elsewhere in this issue. That document contains a detailed discussion of the proposed 2004 TACs, groundfish reserves, apportionments of TAC, ABC amounts, overfishing levels (OFLs), PSC amounts and apportionments, of the GOA groundfish fishery.

This action provides interim harvest specifications and apportionments thereof for the 2004 fishing year that will become available on January 1, 2004, and remain in effect until superseded by the final 2004 harvest specifications. Background information concerning the 2004 groundfish harvest specification process, on which this interim action is based, is provided in the above mentioned proposed specification document.

Establishment of Interim TACs

Regulations at § 679.20(c)(2)(i) require that one-fourth of each proposed TAC and apportionment thereof (not including the reserves and the first seasonal allowance of pollock and Pacific cod) and one-fourth of the halibut PSC amounts become effective at 0001 hours, A.l.t., January 1, on an interim basis and remain in effect until superseded by the final harvest specifications. As stated in the proposed specifications publication published elsewhere in this issue, no harvest of groundfish is authorized before the effective date of this action implementing the interim specifications.

Regulations at § 679.20(a)(6)(i) and (ii) allocate 100 percent of the pollock TAC to vessels catching pollock for processing by the inshore component, 90 percent of the Pacific cod TAC to vessels catching Pacific cod for processing by the inshore component and 10 percent to vessels catching Pacific cod for processing by the offshore component.

The reserves for the GOA are 20 percent of the TAC amounts for pollock, Pacific cod, flatfish species, and the ''other species'' category (§ 679.20(b)(2)). The GOA groundfish TAC amounts have been utilized fully since 1987, and NMFS expects this trend to continue in 2004. Therefore, NMFS has proposed reapportioning all the reserves to the TAC. The interim TAC amounts contained in Table 1 reflect the reapportionment of reserves to the TAC.

Interim 2004 GOA Groundfish Harvest Specifications and Apportionments

Table 1 provides interim TAC amounts, the first seasonal allowance of pollock in the combined Western and Central Regulatory Areas, the first seasonal allowance of Pacific cod in the Western and Central Regulatory Areas, interim TAC allocations of Pacific cod to the inshore and offshore components, and interim sablefish TAC apportionments to hook-and-line and trawl gear. These interim TAC amounts and apportionments become effective at 0001 hours, A.l.t., January 1, 2004.

TABLE 1.—INTERIM 2004 TAC AMOUNTS OF GROUNDFISH FOR THE COMBINED WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA (GOA) [1,2]

[The first seasonal allowances of pollock in the Combined W/C Regulatory Areas, the first seasonal allowances of Pacific cod. Interim sablefish TAC apportionments to hook-and-line (H/L) and trawl (TRW) gear. Interim TAC amounts have been rounded to nearest metric tons]

Species	Area	Interim TAC	Total
Pollock [3,4]	W (610)	2,894	
	C (620)	6,535	
	C (630)	2,274	
Subtotal	W/C		11,703
	WYK (640)	270	
	SEO (650)	1,615	
Total			13,588
Pacific cod [5]	Inshore W	7,553	
	Offshore W	839	
	Inshore C	10,916	
	Offshore C	1,213	
	Inshore E	587	
	Offshore E	65	
Total			21,173
Flatfish, Deep-water [6]	W	45	
	C	555	

TABLE 1.—INTERIM 2004 TAC AMOUNTS OF GROUNDFISH FOR THE COMBINED WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA (GOA) [1,2]—Continued

[The first seasonal allowances of pollock in the Combined W/C Regulatory Areas, the first seasonal allowances of Pacific cod. Interim sablefish TAC apportionments to hook-and-line (H/L) and trawl (TRW) gear. Interim TAC amounts have been rounded to nearest metric tons]

Species	Area	Interim TAC	Total
	WYK	332	
	SEO	288	
Total			1,220
Rex sole	W	320	
	C	1,385	
	WYK	400	
	SEO	262	
Total			2,367
Flathead sole	W	500	
	C	1,250	
	WYK	659	
	SEO	284	
Total			2,693
Flatfish, Shallow-water [7]	W	1,125	
	C	3,250	
	WYK	290	
	SEO	740	
Total			5,405
Arrowtooth flounder	W	2,000	
	C	6,250	
	WYK	625	
	SEO	625	
Total			9,500
Sablefish [8,9,10]	H/L W	N/A (394)	
	TRW W	98	
	H/L C	N/A (986)	
	TRW C	247	
	TRW WYak	56	
	H/L WYak	N/A (388)	
	H/L SEO	N/A (682)	
Total			2,851
Pacific ocean perch [11]	W	675	
	C	2,127	
	WYK	203	
	SEO	410	
Total			3,415
Shortraker/rougheye [12]	W	55	
	C	210	
	E	140	
Total			405
Rockfish, northern [13]	W	197	
	C	1,028	
	E	N/A	
Total			1,225
Rockfish, other [14,15]	W	22	
	C	138	
	WYK	38	
	SEO	50	
Total			248
Rockfish, pelagic shelf [16]	W	128	
	C	870	
	WYK	160	
	SEO	215	
Total			1,373
Rockfish, demersal shelf SEO [17]	SEO	98	
Thornyhead rockfish	W	90	
	C	210	

TABLE 1.—INTERIM 2004 TAC AMOUNTS OF GROUNDFISH FOR THE COMBINED WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA (GOA) [1,2]—Continued

[The first seasonal allowances of pollock in the Combined W/C Regulatory Areas, the first seasonal allowances of Pacific cod. Interim sablefish TAC apportionments to hook-and-line (H/L) and trawl (TRW) gear. Interim TAC amounts have been rounded to nearest metric tons]

Species	Area	Interim TAC	Total
	E	200	
Total			500
Atka mackerel	GW	150	
Other species [18]	GW	2,712	
GOA Total Interim TAC			68,921

[1] Reserves have been reapportioned back to each species TAC and are reflected in the interim TAC amounts (*see* § 679.20(a)(2)).

[2] *See* § 679.2 for definitions of regulatory area and statistical area. *See* Figure 3b to part 679 for a description of regulatory districts.

[3] The first seasonal allowance of pollock TAC in the W/C combined area is set at 25% of the annual TAC for the area which is 11,703 mt. Within the W/C area pollock is apportioned between Statistical Areas 610, 620, and 630 based on adjusted estimate of the relative distribution of pollock biomass in the area which is approximately 25% in Area 610 (2,894 mt), 56% in Area 620 (6,535 mt), and 19% in Area 630 (2,274 mt). In the Eastern Regulatory Area, pollock is not divided into less than annual allowances, and one-fourth of the TAC is available on an interim basis.

[4] The pollock TAC in all regulatory areas will be allocated 100 percent to vessels catching groundfish for processing by the inshore component after subtraction of amounts that are determined by the Regional Administrator, NMFS, to be necessary to support the bycatch needs of the offshore component in directed fisheries for other groundfish species. At this time, these bycatch amounts are unknown and will be determined during the fishing year (*see* § 679.20(a)(6)(i)).

[5] The Pacific cod TAC in all regulatory areas is allocated 90 percent to vessels catching groundfish for processing by the inshore component and 10 percent to vessels catching groundfish for processing by the offshore component (*see* § 679.20(a)(6)(ii)). The first seasonal apportionment of Pacific cod in the GOA is 60% of the annual TAC.

[6] ''Deep-water flatfish'' means Dover sole, Greenland turbot and deepsea sole.

[7] ''Shallow-water flatfish'' means flatfish not including ''deep-water flatfish'', flathead sole, rex sole, or arrowtooth flounder.

[8] Sablefish TAC amounts for each of the regulatory areas and districts are assigned to hook-and-line and trawl gear. In the Central and Western Regulatory Areas, 80 percent of the TAC is allocated to hook-and-line gear and 20 percent to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is assigned to hook-and-line gear. Five percent is allocated to trawl gear and may only be used as bycatch to support directed fisheries for other target species (*see* § 679.20(a)(4)).

[9] The sablefish hook-and-line (H/L) gear fishery is managed under the Individual Fishing Quota (IFQ) program and is subject to regulations contained in subpart D of 50 CFR part 679. Annual IFQ amounts are based on the final TAC amount specified for the sablefish H/L gear fishery as contained in the final specifications for groundfish. Under § 679.7(f)(3)(ii), retention of sablefish caught with H/L gear is prohibited unless the harvest is authorized under a valid IFQ permit and IFQ card. In 2004, IFQ permits and IFQ cards will not be valid before the effective date of the 2004 final specifications. Thus, fishing for sablefish with H/L gear will not be authorized under these interim specifications. Nonetheless, interim amounts are shown in parentheses to reflect assignments of one-fourth of the proposed TAC amounts among gear categories and regulatory areas in accordance with § 679.20(c)(2)(i). See § 679.40 for guidance on the annual allocation of IFQ.

[10] Sablefish caught in the GOA with gear other than hook-and-line or trawl gear must be treated as a prohibited species and may not be retained.

[11] ''Pacific ocean perch'' means *Sebastes alutus.*

[12] ''Shortraker/rougheye rockfish'' means *Sebastes borealis* (shortraker) and *S. aleutianus* (rougheye).

[13] ''Northern rockfish'' means *Sebastes polyspinis.*

[14] ''Other rockfish'' in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category ''other rockfish'' in the Southeast Outside District means slope rockfish.

[15] ''Slope rockfish'' means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegateu* (harlequin), *S. wilsoni* (pygmy), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), *S. babcocki* (redbanded), and *S. reedi* (yellowmouth).

[16] ''Pelagic shelf rockfish'' includes *Sebastes ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).

[17] ''Demersal shelf rockfish'' means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

[18] ''Other species'' includes sculpins, sharks, skates, squid, and octopus. The TAC for ''other species'' equals 5 percent of the TAC amounts of target species.

Interim 2004 Halibut PSC Mortality Limits

Under § 679.21(d), annual Pacific halibut PSC mortality limits are established for trawl and hook-and-line gear and may be established for pot gear. The Council recommended and NMFS proposed to reestablish the 2003 halibut mortality limits for 2004 because no new information was available. Consistent with 2003, the Council recommended and NMFS proposed exemptions for pot gear, jig gear and the sablefish hook-and-line fishery from halibut PSC limits for 2004. The fishery specific interim PSC allowances for halibut are in effect at 0001 hours, A.l.t., January 1, 2004, and remain in effect until superseded by the final 2004 harvest specifications. The interim halibut PSC limits are: (1) 500 mt to trawl gear, (2) 72.5 mt to hook-and-line gear for fisheries other than demersal shelf rockfish, and (3) 2.5 mt to hook-and-line gear for the demersal shelf rockfish fishery in the Southeast Outside District.

Regulations at § 679.21(d)(3)(iii) authorize apportionments of the trawl halibut PSC limit as bycatch allowances to a deep-water species complex, comprised of rex sole, sablefish, rockfish, deep-water flatfish, and arrowtooth flounder; and a shallow-water species complex, comprised of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species.'' The interim 2004 apportionment for the shallow-water species complex is 409 mt and for the deep-water species complex is 91 mt.

Interim 2004 Non-Exempt AFA Catcher Vessel Groundfish Harvest and PSC Limitations

The AFA regulations implemented groundfish harvesting and processing limitations, also called sideboards, on AFA catcher/processors and catcher vessels in the GOA. These limitations are considered necessary for fishermen and processors who have received an exclusive harvesting and processing

privilege under the AFA to protect the interests of fishermen and processors who do not have such privileges. In the GOA, AFA catcher/processors are prohibited from fishing for any species of fish (§ 679.7(k)(1)(ii)) and from processing any groundfish harvested in Statistical Area 630 of the GOA (§ 679.7(k)(1)(iv)). The Council recommended and NMFS proposed that certain AFA catcher vessels in the GOA be exempt from groundfish harvest limitations. Regulations at § 679.64(b)(2)(ii) exempt AFA catcher vessels in the GOA less than 125 ft (38.1 m) length overall (LOA) whose annual Bering Sea and Aleutian Islands management area pollock landings totaled less than 5,100 mt and that made 40 or more GOA groundfish landings from 1995 through 1997.

For non-exempt AFA catcher vessels in the GOA, harvest limitations are based on their traditional harvest levels of TAC in groundfish fisheries covered by the GOA FMP. Regulations at § 679.64(b)(3)(iii) establish the groundfish harvest limits in the GOA based on the retained catch of non-exempt AFA catcher vessels of each sideboard species from 1995 through 1997, divided by the sum of the TACs for that species over the same period. These amounts are listed in Table 2. All harvests of sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or bycatch, will be deducted from the sideboard limits in Table 2.

TABLE 2.—INTERIM 2004 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995 1997 non-exempt AFA CV catch to 1995–1997 TAC	2004 interim TAC (mt)	2004 Non-Exempt AFA catcher vessel sideboard (mt)
Pollock	Shumagin (610)	0.6112	2,894	1,769
	Chirikof (620)	0.1427	933	6,535
	Kodiak (630)	0.2438	554	2,274
	WYK (640)	0.3499	270	94
	SEO (650)	0.3499	1,615	565
Pacific cod	W inshore	0.1423	7,553	1,075
	W offshore	0.1026	839	86
	C inshore	0.0722	10,916	788
	C offshore	0.0721	1,213	87
	E inshore	0.0079	587	5
	E offshore	0.0078	65	1
Flatfish deep-water	W	0.0000	45	0
	C	0.0670	555	37
	E	0.0171	620	11
Rex sole	W	0.0010	320	0
	C	0.0402	1,385	56
	E	0.0153	662	10
Flathead sole	W	0.0036	500	2
	C	0.0261	1,250	33
	E	0.0048	943	5
Flatfish shallow-water	W	0.0156	1,125	18
	C	0.0598	3,250	194
	E	0.0126	1,030	13
Arrowtooth flounder	W	0.0021	2,000	4
	C	0.0309	6,250	193
	E	0.0020	1,250	3
Sablefish	W trawl gear	0.0000	98	0
	C trawl gear	0.0720	247	18
	E trawl gear	0.0488	56	3
Pacific ocean perch	W	0.0623	675	42
	C	0.0866	2,127	184
	E	0.0466	613	29
Shortraker/Rougheye	W	0.0000	55	0
	C	0.0237	210	5
	E	0.0124	140	2
Other rockfish	W	0.0034	23	0
	C	0.2065	138	28
	E	0.0000	88	0
Northern rockfish	W	0.0003	197	0
	C	0.0336	1,028	35
Pelagic shelf rockfish	W	0.0001	128	0
	C	0.0000	870	0
	E	0.0067	375	3
Thornyhead rockfish	W	0.0308	90	3
	C	0.0308	210	6
	E	0.0308	200	6
Demersal shelf rockfish	SEO	0.0020	98	0
Atka mackerel	Gulfwide	0.0309	150	5
Other species	Gulfwide	0.0090	2,712	24

In accordance with regulations at § 679.64(b)(4), PSC bycatch limits for non-exempt AFA catcher vessels in the GOA are based on the ratio of aggregate retained groundfish catch by non-exempt AFA catcher vessels in each PSC target category from 1995 through 1997, relative to the retained catch of all vessels in that fishery from 1995 through 1997. These amounts are shown in Table 3.

TABLE 3.—INTERIM 2004 NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH (PSC) LIMITS FOR THE GOA

PSC species	Target fishery	Ratio of 1995–1997 non-exempt AFA CV retained catch to total retained catch	2004 interim PSC limit (mt)	2004 non-exempt AFA catcher vessel PSC limit (mt)
Halibut (mortality in mt)	shallow water targets	0.340	409	139
	deep water targets	0.070	91	6

Directed Fishing Closures

In accordance with § 679.20(d)(1)(i), if the Regional Administrator determines that any allocation or apportionment of a target species or ''other species'' category apportioned to a fishery or, with respect to pollock and Pacific cod, to an inshore or offshore component allocation, will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group. If the Regional Administrator establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified GOA regulatory area or district (§ 679.20(d)(1)(iii)).

The Regional Administrator has determined that the TAC amounts in Table 4 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2004 fishing year.

TABLE 4.—INCIDENTAL CATCH NEEDED TO SUPPORT OTHER DIRECTED FISHERIES IN THE GOA IN 2004.

[Amounts are in metric tons]

Target	Regulatory area	Gear/component	Amount
Atka Mackerel	entire GOA	all	150
Thornyhead Rockfish	entire GOA	all	500
Shortraker Rougheye Rockfish	entire GOA	all	405
Other Rockfish	entire GOA	all	248
Sablefish	entire GOA	trawl	401
Pollock	entire GOA	all/offshore	0

In accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the directed fishing allowances for the above species or species groups as zero. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS immediately is prohibiting directed fishing for those species, areas, gear types, and components listed in Table 4. These closures will remain in effect until superseded by the final 2004 harvest specifications.

Regulations at § 679.64(b)(5) provide for management of AFA catcher vessel groundfish harvest limits and PSC bycatch limits using directed fishing closures and PSC closures according to procedures set out at §§ 679.20(d)(1)(iv), 679.21(d)(8) and 679.21(e)(3)(v). The Regional Administrator has determined that in addition to the closures listed above, many of the non-exempt AFA catcher vessel sideboard amounts listed in Table 2 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2004 fishing year. In accordance with § 679.20(d)(1)(iv) the Regional Administrator establishes these amounts as directed fishing allowances. The Regional Administrator finds that many of these directed fishing allowances will be reached before the end of the year. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by non-exempt AFA catcher vessels in the GOA for the species and specified areas in Table 5. These closures will remain in effect until superseded by the final 2004 harvest specifications.

TABLE 5.—2004 NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES IN THE GOA

Species	Regulatory area district	Gear
Pacific cod	Eastern GOA	all
Deep-water flatfish	Western and Eastern GOA	all
Rex sole	Western and Eastern GOA	all
Flathead sole	Eastern GOA	all
Shallow-water flatfish	Eastern GOA	all
Arrowtooth flounder	Eastern GOA	all
Pacific ocean perch	Western GOA	all
Northern rockfish	Western GOA	all
Pelagic shelf rockfish	entire GOA	all
Demersal shelf rockfish	SEO District	all

TABLE 5.—2004 NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES IN THE GOA—Continued

Species	Regulatory area district	Gear
Other species	entire GOA	all

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

Because this action is a final action by NMFS, analyses required under the Magnuson-Stevens Act must be completed and considered by the agency before promulgation of the interim harvest specifications.

Regulations at 50 CFR 679.20(c)(2) require NMFS to specify harvest specifications to be effective January 1 and to remain in effect until superceded by the final specifications. Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open, resulting in disruption within the fishing industry. NMFS cannot publish interim specifications until proposed specifications are completed, because the interim specifications are derived from the proposed specifications, as required by regulations at 50 CFR 679.20(c)(2).

The proposed specifications are based on the preliminary recommendations of the Plan Team, which were reviewed by the Scientific and Statistical Committee, Advisory Panel, and Council in October, 2003 in projecting 2003 biomass amounts, as identified in the 2002 SAFE Report, for the proposed 2004 ABC, overfishing levels, and TAC amounts. The Plan Team recommendations incorporate the most current data available from a number of sources, including current-year industry catch levels, and current-year trawl and hydro-acoustic surveys. These data are not available in time for Council review prior to the October Council meeting, as the surveys are conducted during the summer months, and industry catch levels reflect current year activity. These up-dated data sources represent the best available scientific information. These data provide the basis for the proposed and interim specifications.

The proposed specifications, as required by regulations at 50 CFR 679.20(c)(1)(i)(A), must be published as soon as practicable after consultation with the Council, which occurs at the Council's October meeting. This requirement, along with the requirement of national standard 2 of the Magnuson-Stevens Act to use the best scientific information available, prevents NMFS from publishing the proposed specifications early enough to provide sufficient time to have a public comment period for the interim specifications, which are derived from the proposed specifications, and to have the interim specifications effective on January 1.

As stated above, disruption of the fishing industry, and consequent impacts to fishing communities and the public, would occur if the interim specifications were not effective January 1. Additionally, the public is provided an opportunity to comment on the proposed specifications, from which the interim specifications are derived. For these reasons, good cause exists under 5 U.S.C. 553(b)(B) to waive prior notice and opportunity for public comment on this action as such procedures would be impracticable and contrary to the public interest.

Likewise, the AA finds good cause to waive the 30-day delay in effectiveness date of the interim specifications. Regulations at 50 CFR 679.20(c)(2) requires NMFS to establish interim harvest specifications to be effective on January 1 and to remain in effect until superseded by the publication of final harvest specifications by the Office of the Federal Register. NMFS interprets regulations at § 679.20(c)(2) as requiring the filing of interim specifications with the Office of the Federal Register before any harvest of groundfish is authorized. The interim specifications are based on the proposed 2004 specifications.

The interim specifications rely on data used to propose the 2004 specifications, and those data are not available until the after summer surveys are conducted (see above). Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open on that date, resulting in disruption of the fishing industry. These reasons constitute good cause pursuant to 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness date.

Because these interim specifications are not required to be issued with prior notice and opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act do not apply. Consequently, no regulatory flexibility analysis has been prepared for this action.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*.

Dated: December 1, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–30282 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 68, No. 234
Friday, December 5, 2003

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–139–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–215–1A10 and CL–215–6B11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–215–1A10 and CL–215–6B11 series airplanes, that currently requires repetitive inspections to detect cracking of main landing gear (MLG) axles that have been reworked by chromium plating, and replacement of cracked axles with serviceable axles. This action would add a dimensional check and follow-on corrective actions, mandate terminating action for certain airplanes, and add three airplanes to the applicability in the existing AD. The actions specified by the proposed AD are intended to prevent cracking of the inner bearing surface of the MLG axles, which could result in failure of an axle, subsequent separation of the wheel from the airplane, and consequent reduced controllability of the airplane during takeoff or landing. 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. 2003–NM–139–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–139–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: David Lawson, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–4227; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–139–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. 2003–NM–139–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 16, 1995, the FAA issued AD 95–22–04, amendment 39–9411 (60 FR 54421, October 24, 1995), applicable to certain Canadair Model CL–215–1A10 and CL–215–6B11 series airplanes, to require inspections to detect cracking of main landing gear (MLG) axles that have been reworked by chromium plating, and replacement of cracked axles with serviceable axles. That action was prompted by reports of fatigue cracking found on several MLG wheel axes that had been chromium-plated during rework. The requirements of that AD are intended to prevent such cracking, which can result in failure of the axle, separation of the wheel from the aircraft, and consequent reduced controllability of the airplane during takeoff or landing.

Actions Since Issuance of Previous AD

Since the issuance of AD 95–22–04, Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, issued Canadian airworthiness directive CF–1993–08R3, dated March 30, 2000; applicable to certain Bombardier Model CL–215–1A10 and CL–215–6B11 series airplanes. The Canadian airworthiness directive was issued to require eventual

replacement of the MLG axles following an evaluation of the service history that showed the maximum number of allowable landings that could be accumulated on the MLG axles before replacement is necessary.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletin 215–A462, Revision 3, dated January 17, 2000 (Canadair Alert Service Bulletin 215–A462, dated June 2, 1993, was referenced for accomplishment of the actions specified in the existing AD). Revision 3 contains the same inspection procedures as those in the original issue of the service bulletin, but a new dimensional check is added to determine whether the MLG axle has been reworked outside the dimensions specified in the Overhaul Manual. If the axle has been reworked outside those dimensions, has unknown rework dimensions, or has an unknown service life, repetitive ultrasonic inspections (as specified in the existing AD) are recommended until the MLG axle is replaced with a serviceable axle. Revision 3 also recommends replacement of the MLG axles after accumulation of the maximum number of allowable landings on the axles. The replacement eliminates the need for the repetitive inspections. TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–1993–08R3, dated March 30, 2000, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

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

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 95–22–04 to continue to require repetitive inspections to detect cracking of MLG axles that have been reworked by chromium plating, and replacement of cracked axles with serviceable axles. The proposed AD would add a dimensional check and follow-on corrective actions, mandate terminating action for certain airplanes, add three airplanes to the applicability in the existing AD, and remove the reporting requirement. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Difference Between Service Bulletin and Proposed AD

The service bulletin referenced in this proposed AD specifies to submit certain inspection findings to the manufacturer; however, this proposed AD does not include such a requirement.

Revised Labor Rate

After the existing AD was issued, we reviewed the figures we use to calculate the labor rate to do the required actions. To account for various inflationary costs in the airline industry, we find it appropriate to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

Cost Impact

There are approximately 3 airplanes of U.S. registry that would be affected by this proposed AD.

The inspections that are currently required by AD 95–22–04 take about 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 currently required inspections on U.S. operators is estimated to be $390, or $130 per airplane, per inspection cycle.

The dimensional check and ultrasonic inspection proposed in this AD action would take about 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 these checks and inspections on U.S. operators is estimated to be $390, or $130 per airplane, per inspection cycle.

The replacement proposed in this AD action, if done, would take about 8 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts would cost approximately $13,000 per assembly (two per airplane). Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $26,520 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 39–9411 (60 FR

54421, October 24, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Bombardier, Inc. (Formerly Canadair): Docket 2003–NM–139–AD. Supersedes AD 95–22–04, Amendment 39–9411.

Applicability: Model CL–215–1A10 (piston) and CL–215–6B11 (turboprop) series airplanes, having serial numbers 1001 through 1125 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking in the inner bearing surface of the main landing gear (MLG) axles, which could result in failure of an axle, subsequent separation of the wheel from the airplane, and consequent reduced controllability of the airplane during takeoff or landing, accomplish the following:

Restatement of Certain Requirements of AD 95–22–04

Repetitive Inspections/Corrective Action

(a) Within 60 days after November 8, 1995 (the effective date of AD 95–22–04, amendment 39–9411), perform either an eddy current inspection or a chemical inspection of the inner bearing surface area of the left and right MLG axles to determine if they have been reworked using chromium plating, in accordance with Bombardier Service Bulletin 215–A462, dated June 2, 1993, or Revision 3, dated January 17, 2000. If the inner bearing surface of the MLG axle has not been reworked using chromium plating, no further action is required by this paragraph for that axle only.

(b) If the inner bearing surface of the MLG axle has been reworked using chromium plating, prior to further flight, perform an ultrasonic inspection to detect cracking in the axle, in accordance with Bombardier Service Bulletin 215–A462, dated June 2, 1993, or Revision 3, dated January 17, 2000.

(1) If no crack is detected during this inspection, repeat the ultrasonic inspection at intervals not to exceed 150 landings.

(2) If any crack is detected during this inspection, prior to further flight, remove the cracked axle and replace it with a serviceable axle that does not have an inner bearing surface that has been reworked using chromium plating, in accordance with the service bulletin.

New Requirements of This AD

Dimensional Check/Follow-on Corrective Actions

(c) Within 150 landings after the effective date of this AD: Do a dimensional check by measuring the diameter of the left and right MLG axles to determine if they have been reworked outside the dimensions specified in Canadair CL–215 Overhaul Manual PSP 298, or if the axle has unknown rework dimensions or the service life of that axle cannot be determined, in accordance with Bombardier Service Bulletin 215–A462, Revision 3, dated January 17, 2000.

(1) If any axle has been reworked outside the specified dimensions, or has unknown rework dimensions, or if the service life of that axle cannot be determined: Prior to further flight, do an ultrasonic inspection to detect cracking of the axle, in accordance with the service bulletin, and replace the axle with a serviceable axle before the accumulation of 1,050 total landings, in accordance with the service bulletin. Such replacement ends the repetitive inspections for that axle only.

(i) If no cracking is detected during the inspection required by paragraph (c)(1) of this AD, repeat the inspection at intervals not to exceed 150 landings, and replace with a serviceable axle before the accumulation of 1,050 total landings.

(ii) If any cracking is detected during the inspection required by paragraph (c)(1) of this AD, prior to further flight, replace the axle with a serviceable axle per the service bulletin.

(2) If the service life of the axle is known, and the axle has not been reworked outside the specified dimensions, no further action is required by this AD for that axle only.

Actions Done Per Previous Issues of Service Bulletin

(d) Inspections and replacements done before the effective date of this AD in accordance with Canadair Alert Service Bulletin 215–A462, dated June 2, 1993; or Bombardier Service Bulletin 215–A462, Revision 1, dated August 26, 1996; or Revision 2, dated March 3, 1999; are considered acceptable for compliance with the applicable actions specified in this AD.

Alternative Methods of Compliance

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

Note 1: The subject of this AD is addressed in Canadian airworthiness directive CF–1993–08R3, dated March 30, 2000.

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

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30221 Filed 12–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–198–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767–200, –300, and –300F series airplanes. This proposal would require performing, for both main landing gear (MLG), gap measurements of the upper and lower joint gaps; an ultrasonic inspection of the outer cylinder of the MLG for cracks between the downlock fitting attach lugs; and follow-on and corrective actions if necessary. This action is necessary to detect and correct cracks in the outer cylinder of the MLG, which could result in collapsed MLG and consequent reduced controllability of the airplane during takeoff and landing. 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–198–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–198–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: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6441; 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–198–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–198–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that a crack was found on the outer cylinder of the main landing gear (MLG) at the attach lugs for the drag strut downlock fitting on a Model 767–300 series airplane. The cause of the crack was due to heat damage from the upper bearing rubbing on the cylinder. Excessive torque on the downlock fitting attachment fasteners during production of Model 767–300 series airplanes produced local deflection of the outer cylinder, causing contact or interference with the upper bearing. This condition, if not corrected, could result in cracks in the outer cylinder of the MLG, which could result in collapsed MLG and consequent reduced controllability of the airplane during takeoff and landing.

Similar Models

The subject area on certain Boeing Model 767–200 and –300F series airplanes is almost identical to that on the affected Boeing Model 767–300 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 767–32A0196, Revision 2, dated May 15, 2003, which describes procedures, for both MLG, for performing gap measurements of the upper and lower joint gaps (includes measuring and recording upper and lower joint gaps twice); an ultrasonic inspection of the outer cylinder of the MLG for cracks between the downlock fitting attach lugs; and follow-on and corrective actions if necessary. The follow-on action includes restoring the MLG (includes installing shims as applicable, electrical bracket, and cotter pins; and marking the MLG). The corrective actions include overhauling the outer cylinder of the MLG; replacing the outer cylinder of the MLG with an interchangeable outer cylinder, and contacting the manufacturer if there is any crack in the outer cylinder that cannot be removed within the repair limits. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

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

Difference Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Cost Impact

There are approximately 833 airplanes of the affected design in the worldwide fleet. The FAA estimates that 353 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 16 work hours per airplane to accomplish the proposed gap measurement and inspection, 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 $367,120, or $1,040 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Manufacturer warranty remedies may be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2002–NM–198–AD.

Applicability: Model 767–200, –300, and –300F series airplanes, line numbers 1 through 883 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracks in the outer cylinder of the main landing gear (MLG), which could result in collapsed MLG and consequent reduced controllability of the airplane during takeoff and landing, accomplish the following:

Service Bulletin References

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Service Bulletin 767–32A0196, Revision 2, dated May 15, 2003.

Inspection and Corrective Actions

(b) Within 18 months after the effective date of this AD, for both MLG, do a gap measurement of the upper and lower joint gaps (includes measuring and recording upper and lower joint gaps twice); and an ultrasonic inspection of the outer cylinder of the main landing gear for cracks between the downlock fitting attach lugs, per Part 1 of the service bulletin.

(c) If no crack is found during the inspection required by paragraph (b) of this AD, before further flight, do the restoration (includes installing shims as applicable, electrical bracket, and cotter pins; and marking the main landing gear) per the service bulletin.

(d) If any crack is found during the inspection required by paragraph (b) of this AD: Before further flight, overhaul the outer cylinder of the MLG or replace the outer cylinder of the MLG with an interchangeable outer cylinder per Part 2 of the service bulletin, except as provided by paragraph (e) of this AD.

(e) If any crack is found in the outer cylinder that cannot be removed within the repair limits specified in the service bulletin, during the overhaul specified in paragraph (d) of this AD, and the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Note 1: When the outer cylinder is re-installed, attach the downlock fittings onto the outer cylinder as specified in the applicable Boeing Component Maintenance Manual (CMM), document number 161T1000, Section 32–11–19, temporary revision (TR) 32–61, dated March 26, 2002 or Section 32–11–19 pages 712 through 716 dated July 01, 2002, or dated July 01, 2003; or CMM 32–11–20, TR 32–62, dated March 26, 2002, or Section 32–11–20 pages 718 through 722 dated July 01, 2002, or dated July 01, 2003.

Actions Accomplished Per Previous Issue of Service Bulletin

(f) Accomplishment of the applicable actions before the effective date of this AD per Boeing Service Bulletin 767–32A0196, dated August 1, 2002; or, Revision 1, dated September 26, 2002; are considered acceptable for compliance with the corresponding action specified in this AD.

Parts Installation

(g) As of the effective date of this AD, no person may install a MLG on any airplane, unless the outer cylinder of the MLG has been inspected and follow-on and corrective actions have been accomplished per Boeing Service Bulletin 767–32A0196, Revision 2, dated May 15, 2003.

Alternative Methods of Compliance

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

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

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30220 Filed 12–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–174–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes. That AD currently requires a one-time general visual inspection of the seat locks and seat tracks of the flightcrew seats to ensure that the seats lock in position and to verify that lock nuts and bolts of adequate length are installed on the rear track lock bracket, and corrective action, if necessary. This action would revise the applicability of the existing AD by adding airplanes. The actions specified by the proposed AD are intended to prevent uncommanded movement of the flightcrew seats during acceleration and take-off of the airplane, which could result in reduced controllability of the airplane. 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–174–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–174–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: Shannon Lennon, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 917–6435; 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–174–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–174–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On May 18, 2000, the FAA issued AD 2000–10–21, amendment 39–11745 (65 FR 34063, May 26, 2000), applicable to certain Boeing Model 737 airplanes, to require a one-time general visual inspection of the seat locks and seat tracks of the flightcrew seats to ensure that the seats lock in position and to verify that lock nuts and bolts of adequate length are installed on the rear track lock bracket, and corrective action, if necessary. That action was prompted by reports indicating instances of the pilot seat sliding to the aft-most position during acceleration and take-off on certain Boeing Model 737 series airplanes. The requirements of that AD are intended to prevent uncommanded movement of the flightcrew seats during acceleration and take-off of the airplane, which could result in reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the airplane manufacturer has informed the FAA that additional airplanes may be equipped with IPECO flightcrew seats that are subject to the identified unsafe condition. Those seats may have been installed on airplanes out of operators' stock or from an airplane not yet modified per AD 2000–10–21, amendment 39–11745.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin 737–25A1363, Revision 1, dated March 28, 2002, which revises the effectivity of the initial release (which was referenced as the appropriate source of service information for the actions required by AD 2000–10–21) of the service bulletin by adding additional airplanes. The procedures for a one-time general visual inspection and corrective actions if necessary specified in Revision 1 are essentially identical to those described in the initial release of the service bulletin. No more work is necessary on airplanes changed per the initial release of this service bulletin. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Boeing Alert Service Bulletin 737–25A1363, Revision 1, dated March 28, 2002, refers to IPECO Service Bulletin A001–25–47, dated January 13, 1992, as an additional source of service information for accomplishment of the inspection of the seat locks and seat tracks of the flightcrew seats and corrective action, if necessary.

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 supersede AD 2000–10–21 to continue to require a one-time general visual inspection of the seat locks and seat tracks of the flightcrew seats to ensure that the seats lock in position and to verify that lock nuts and bolts of adequate length are installed on the rear track lock bracket, and corrective action, if necessary. The proposed AD would also revise the applicability of the existing AD by adding airplanes. The actions would be required to be accomplished in accordance with the Boeing alert service bulletin described previously, except as discussed below.

Difference Between Service Bulletin and Proposed AD

Operators should note that, although the Boeing alert service bulletin does not recommend a compliance time for accomplishment of the described actions, the FAA has determined that a 90-day compliance time would address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this proposed AD, we considered the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the actions. In light of all of these factors, we find a 90-day compliance time for completion of the actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Explanation of Change Made to Existing Requirements

For clarification, we have revised the definition of a ''general visual inspection'' in this proposed AD.

Cost Impact

There are approximately 1,385 airplanes of the affected design in the worldwide fleet. The FAA estimates that 282 airplanes of U.S. registry would be affected by this proposed AD.

For Group 1 airplanes listed in Boeing Alert Service Bulletin 737–25A1363, Revision 1: The actions that are currently required by AD 2000–10–21 take approximately 3 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 U.S. operators is estimated to be $195 per airplane.

For Group 2 airplanes listed in Boeing Alert Service Bulletin 737–25A1363, Revision 1: The new actions that are proposed in this AD action would take approximately 3 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 $195 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 39–11745 (65 FR 34063, May 26, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2002–NM–174–AD. Supersedes AD 2000–10–21, Amendment 39–11745.

Applicability: Model 737–300, –400, and –500 series airplanes equipped with IPECO flightcrew seats, as listed in Boeing Alert Service Bulletin 737–25A1363, Revision 1, dated March 28, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded movement of the flightcrew seats during acceleration and take-off of the airplane, which could result in reduced controllability of the airplane, accomplish the following:

One-Time Inspection

(a) Perform a one-time general visual inspection of the seat locks and seat tracks of the flightcrew seats to ensure that the seats lock in position and to verify that lock nuts and bolts of adequate length are installed on the rear track lock bracket, at the applicable time and per the Work Instructions of the applicable service bulletin specified in Table 1 of this AD. Table 1 follows:

TABLE 1.—COMPLIANCE TIME/SERVICE BULLETIN

Airplanes—	Compliance Time—	Service Bulletin—
For Group 1 airplanes listed in Boeing Alert Service Bulletin 737–25A1363, Revision 1, dated March 28, 2002.	Within 90 days after September 26, 2001 (the effective date AD 2000–10–21, amendment 39–11745).	Boeing Alert Service Bulletin 737–25A1363, dated November 5, 1998.
For Group 2 airplanes listed in Boeing Alert Service Bulletin 737–25A1363, Revision 1, dated March 28, 2002.	Within 90 days after the effective date of this AD.	Boeing Alert Services Bulletin 737–25A1363, Revision 1, dated March 28, 2002.

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

Corrective Action

(1) If the seat lock pin fully engages in all lock positions of the seat track, and the rear track lock bracket is correctly installed: No further action is required by this AD.

(2) If the seat lock pin does not fully engage in all positions of the seat track, and lock nuts and bolts of adequate length are not installed on the rear track lock bracket: Prior to further flight, install lock nuts and bolts of adequate length on the track lock bracket and verify proper seat movement and seat lock operation, in accordance with the applicable service bulletin.

Note 2: Boeing Alert Service Bulletin 737–25A1363, Revision 1, dated March 28, 2002, refers to IPECO Service Bulletin A001–25–47, dated January 13, 1992, as an additional source of service information for accomplishment of the actions required by paragraph (a) of this AD.

Actions Accomplished Per Previous Issue of Service Bulletin

(b) For Group 2 airplanes: Inspections and corrective actions accomplished before the effective date of this AD per Boeing Alert Service Bulletin 737–25A1363, dated November 5, 1998, are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance

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

(2) Alternative methods of compliance, approved previously per AD 2000–10–21, amendment 39–11745, are approved as alternative methods of compliance with the requirements of this AD.

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

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30219 Filed 12–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–215–AD]

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 Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and Model MD–88 airplanes. This proposal would require replacement of certain freeze protection ribbon heaters in the lavatory water supply system, and flushing, cleaning, and sterilizing the potable water system; disconnecting, coiling, and stowing the wiring of the freeze protection ribbon heater; or removal of freeze protection heaters. This action is necessary to prevent failure of freeze protection ribbon heaters, which could result in the charring, scorching, smoking, and shorting out of freeze protection ribbon heaters in the lavatory water supply system. This condition, if not corrected, could also result in electrical arcing of freeze protection ribbon heaters, leading to fire and damage to water lines and components under the lavatory sink. 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–215–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002-NM–215-AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Cheyenne Del Carmen, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5338; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002-NM–215-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–215-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of charring, scorching, smoking, and shorting out of freeze protection ribbon heaters in the lavatory water supply system of 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. We also received reports of burning and scorching to water lines and components under the lavatory sink. Investigation revealed that the freeze protection ribbon heaters were failing. This condition, if not corrected, could result in electrical arcing of freeze protection ribbon heaters, leading to fire and damage to water lines and components under the lavatory sink.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD80–25A381, dated August 5, 2002. This service bulletin describes procedures for replacing the existing freeze protection ribbon heater in the lavatory water supply system with a new, reidentified heater hose assembly, and flushing, cleaning, and sterilizing the potable water system; disconnecting, coiling, and stowing the wiring of the freeze protection ribbon heater in the lavatory water supply system; or removing the freeze protection ribbon heater from the lavatory water supply system. Accomplishment of the actions specified in the Boeing service bulletin is intended to adequately address the identified unsafe condition.

Boeing Alert Service Bulletin MD80–25A381 refers to Jamco Corporation Service Bulletin MD080–25–829, dated February 14, 2002, as an additional source of service information for instructions on replacing the existing freeze protection ribbon heater with a new, reidentified heater hose assembly for 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.

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 Boeing service bulletin described previously.

Cost Impact

There are approximately 1,180 airplanes of the affected design in the worldwide fleet. The FAA estimates that 724 airplanes of U.S. registry would be affected by this proposed AD, and that each airplane has approximately 3 lavatories, and that the average 1 labor rate is $65 per work hour. Table 1 shows the estimated cost impact, based upon the action taken, for airplanes affected by this proposed AD.

TABLE 1.—COST IMPACT

Action	Work hours per lavatory	Parts cost per lavatory	Cost per lavatory	Total cost
Replace the existing freeze protection ribbon heater with a new, reidentified heater hose assemply; and flush, clean, and sterilize the potable water system; or.	6	$2,344 to $3,208 (Depending on lavoratory module configuration).	$2,734 to $3,598 (Depending on lavoratory module configuration).	$5,938,248 to $7,814,856 (Depending on lavatory module configuration) or $8,202 to $10,794 per airplane.
Disconnect, coil, and stow the wiring of the freeze protection ribbon heater; or.	2	$0	$130	$282,360 or $390 per airplane.
Remove the freeze protection ribbon heater	3	$0	$195	$423,540 or $585 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 2002–NM–215–AD.

Applicability: 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, as listed in Boeing Alert Service Bulletin MD80–25A381, dated August 5, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of freeze protection ribbon heaters, which could result in the charring, scorching, smoking, and shorting out of freeze protection ribbon heaters in the lavatory water supply system and could also result in electrical arcing of freeze protection ribbon heaters, leading to fire and damage to water lines and components under the lavatory sink; accomplish the following:

Corrective Actions

(a) Within 18 months of the effective date of this AD, do the actions specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD per the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–25A381, dated August 5, 2002.

(1) Replace the existing freeze protection ribbon heater in the lavatory water supply system with a new, reidentified heater hose assembly. Flush, clean, and sterilize the potable water system; or

(2) Disconnect, coil, and stow the wiring of the freeze protection ribbon heater in the lavatory water supply system; or

(3) Remove the freeze protection ribbon heater from the lavatory water supply system.

Note 1: Boeing Alert Service Bulletin MD80–25A381 refers to Jamco Corporation Service Bulletin MD080–25–829, dated February 14, 2002, as an additional source of service information for instructions on replacing the existing freeze protection ribbon heater with a new, reidentified heater hose assembly for Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and Model MD–88 airplanes.

Alternative Methods of Compliance

(b) 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.

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

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30218 Filed 12–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–226–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 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 Dornier Model 328–100 series airplanes. This proposal would require a one-time inspection of certain engine control cables to determine the batch number on the end fitting, and replacement of affected cables with new cables. This action is necessary to prevent failure of defective engine control cables, which could result in loss of the engine controls, and consequent reduced controllability of the airplane. 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–226–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–226–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 AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. 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–226–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–226–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that, during testing, the manufacturer of the engine control cables, SARMA, found evidence of cracking on the end fittings of two specific batches of parts, due to a manufacturing problem. Such cracking, if not corrected, could result in failure of the engine control cables, subsequent loss of the engine controls, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328–76–409, Revision 1, dated May 17, 2002, which describes procedures for inspecting engine control cables having part number 001A761A1130–016 to determine the manufacturing batch number, and replacing affected engine control cables with new cables. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 2002–252, dated September 5, 2002, to ensure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

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

Explanation of Requirements of Proposed AD

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

Differences Between the Service Bulletin and Proposed AD

Although the service bulletin specifies to send any engine control cable removed from the airplane to the parts manufacturer, this proposed AD does not require that action.

Clarification of Compliance Time

Operators should note that the service bulletin recommends doing the inspection at the ''next scheduled maintenance event,'' and replacing any affected engine control cable at ''the next scheduled C-check (4,000 FH).'' The German airworthiness directive recommends replacing any affected engine control cable ''not later than the next scheduled C-check.'' Because ''C-check'' schedules vary among operators, this proposed AD would require accomplishment of the inspection within 4,000 flight hours after the effective date of the AD, and replacement of any affected cable before further flight. We find that compliance within 4,000 flight hours after the effective date of this AD is appropriate for affected airplanes to continue to operate without compromising safety.

Cost Impact

We estimate that 53 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately one work hour per airplane to accomplish the proposed actions, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,445, or $65 per airplane.

Replacement of an engine control cable, if required, would take approximately 8 work hours, at an average labor rate of $65 per work hour. Parts would be provided at no cost to operators. Based on these figures, the cost impact of the proposed replacement of the engine control cables is $520 per cable.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this 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:

Fairchild Dornier GMBH (Formerly Dornier Luftfahrt GmbH): Docket 2002–NM–226–AD.

Applicability: Model 328–100 series airplanes, as listed in Dornier Service Bulletin SB–328–76–409, Revision 1, dated May 17, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of defective engine control cables, which could result in loss of the engine controls, and consequent reduced controllability of the airplane, accomplish the following:

Identification of Manufacturing Batch Number

(a) Within 4,000 flight hours after the effective date of this AD, do a detailed inspection of the engine control cables for cables that have part number (P/N) 001A761A1130–016, engraved with manufacturing batch number (MBN) 1000125850 or 1000144210 installed. Inspect in accordance with the Accomplishment Instructions of Dornier Service Bulletin SB–328–76–409, Revision 1, dated May 17, 2002.

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

(1) If no engine control cable has a P/N and an MBN specified in paragraph (a) of this AD, no further action is required by this paragraph.

(2) If any engine control cable having the P/N or an MBN specified in paragraph (a) of this AD is found, before further flight, replace the cable in accordance with the Accomplishment Instructions of the service bulletin. Although the service bulletin specifies to send any engine control cable that has been removed from the airplane to the part manufacturer, this AD does not require that action.

Parts Installation

(b) As of the effective date of this AD, no person may install an engine control cable having P/N 001A761A1130–016, engraved with MBN 1000125850 or 1000144210, on any airplane.

Alternative Methods of Compliance

(c) 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 2: The subject of this AD is addressed in German airworthiness directive 2002–252, dated September 5, 2002.

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

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30225 Filed 12–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–333–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 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 Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes. This proposal would require repetitive general visual inspections, lubrication, and tests of the release mechanism for the service/emergency door; and corrective actions if necessary. This proposal also provides an optional terminating action for the repetitive inspections and lubrication. This action is necessary to prevent failure of the release mechanism on the service/emergency door, which could result in the inability to open the service/emergency door during an emergency evacuation. 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. 2001–NM–333–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–333–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 Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. 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 2001–NM–333–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. 2001–NM–333–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on certain Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes. The CAA–NL advises that it has received reports that, during evacuation training, the service/emergency door release mechanism was unable to release the door rollers, which resulted in the inability to open the service/emergency door. Investigation revealed that the release mechanism did not operate properly due to lack of lubrication on the door rollers. Service experience has shown that the reliability of the release mechanism can degrade if it is not regularly maintained (inspected, lubricated, and tested). Improperly maintained service/emergency door release mechanisms, if not corrected, could result in the inability to open the service/emergency door during an emergency evacuation.

Explanation of Relevant Service Information

Fokker Services B.V. has issued Fokker Service Bulletin F28/52–118, dated June 25, 2001, which describes procedures for repetitive inspections, lubrication, and tests of the release mechanism for the service/emergency door; and corrective actions if necessary. These procedures include inspection and lubrication of the four roller assemblies, actuating mechanism (including measurement of the torque of the torsion spring), and Bowden cables; adjustment of the Bowden cables; and measurement of the operating force for the emergency release button. The corrective actions include rework/repair or replacement of damaged or corroded parts with new parts of the same type.

Fokker Service B.V. has also issued Fokker Service Bulletin F28/52–89, dated October 31, 1983, which describes procedures for replacing the service/emergency door by removing the Bowden cable-operated door and installing a push-pull rod-operated door. Accomplishment of this service bulletin eliminates the need for the repetitive inspections and lubrication. For certain airplanes, Fokker Service Bulletin F28/52–89 recommends prior or concurrent accomplishment of Part VII of Fokker Service Bulletin F28/52–55, Revision 1, dated February 28, 1977. Part VII describes procedures for modification of the roller assemblies in the service/emergency door by installing a second pull-up mechanism.

Accomplishment of the actions specified in Service Bulletin F28/52–118, dated June 25, 2001, is intended to adequately address the identified unsafe condition. The CAA–NL classified Fokker Service Bulletin F28/52–118 as mandatory and issued Dutch airworthiness directive 2001–094, dated July 31, 2001, to ensure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA–NL has kept the FAA informed of the situation described above. The FAA has examined the findings of the

CAA–NL, 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 rule would require accomplishment of the actions specified in Fokker Service Bulletin F28/52–118, dated June 25, 2001, described previously, except as discussed below.

Differences Between Dutch Airworthiness Directive, Service Bulletin, and Proposed Rule

Fokker Service Bulletin F28/52–118 and the Dutch airworthiness directive specify that if any discrepancy or corroded part is found during any inspection, the applicable corrective action must be accomplished within 1,500 flight hours or 18 months after finding the discrepancy or corroded part, whichever occurs first. We have determined that, because of the safety implications of a potentially inoperative emergency door, this proposed rule would require accomplishment of the applicable corrective action before further flight. This difference has been coordinated with the CAA–NL.

Also, where the service bulletin and the Dutch airworthiness directive specify inspections of various parts of the release mechanism for the service/emergency door, this proposed rule identifies these as general visual inspections. A note has been added to the proposed rule to define that type of inspection.

Cost Impact

The FAA estimates that 6 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 15 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 $5,850, or $975 per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this 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:

Fokker Services B.V.: Docket 2001–NM–333–AD.

Applicability: Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes as listed in the effectivity of Fokker Service Bulletin F28/52–118, dated June 25, 2001; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the release mechanism on the service/emergency door, which could result in the inability to open the service/emergency door during an emergency evacuation, accomplish the following:

Inspection, Lubrication, Testing, and Corrective Actions

(a) Within 12 months after the effective date of this AD: Do a general visual inspection (including measurement of the torque for the actuating mechanism torsion spring), lubricate, and test to verify proper operation of the emergency release mechanism of the service/emergency door by accomplishing all of the actions specified in paragraphs A. through R. of the Accomplishment Instructions of Fokker Service Bulletin F28/52–118, dated June 25, 2001.

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

(1) If no discrepant or corroded part is found during the inspection required by paragraph (a) of this AD: Repeat the actions specified in paragraph (a) of this AD thereafter at intervals not to exceed 1,500 flight hours or 18 months, whichever occurs first.

(2) If any discrepancy (including a torque value which exceeds the limits specified in the applicable service bulletin, improperly installed part, or damaged part) is found, or if a corroded part is found, during any inspection required by paragraph (a) of this AD: Before further flight, do the applicable corrective action in accordance with the Accomplishment Instructions of the service bulletin. Repeat the actions specified in paragraph (a) of this AD thereafter at intervals not to exceed 1,500 flight hours or 18 months, whichever occurs first.

Optional Terminating Action and Concurrent Service Bulletin

(b) Replacement of the Bowden cable-operated service/emergency door with a push-pull rod-operated service/emergency door, in accordance with Fokker Service Bulletin F28/52–89, dated October 31, 1983, constitutes terminating action for the repetitive inspections and lubrication required by paragraph (a) of this AD.

(c) For airplanes with serial numbers 11003 to 11051 inclusive, 11991, and 11992: Prior to or concurrent with paragraph (b) of this AD, accomplish the modification specified in part VII of Fokker Service Bulletin F28/52–55, Revision 1, dated February 28, 1977.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116,

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

Note 2: The subject of this AD is addressed in Dutch airworthiness directive 2001–094, dated July 31, 2001.

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

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30224 Filed 12–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–284–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340–200 and –300 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 Airbus Model A330 and A340–200 and –300 series airplanes. This proposal would require repetitive inspections for proper installation of the parachute pins located in the escape slides/rafts at the door 3 Type I emergency exits on the left and right sides of the airplane; a one-time inspection of the associated electrical harnesses for the escape slides/rafts for proper routing and installation; and corrective actions if necessary. This proposal also would require adjustment of the speed lacing for the soft covers of the escape slides/rafts, which would terminate the repetitive inspections. This action is necessary to prevent failure of the escape slides/rafts to deploy correctly at door 3 Type I emergency exits, which could result in the escape slides/rafts being unusable during an emergency evacuation, and consequent injury to passengers or crew members. 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. 2001–NM–284–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM284–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 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: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; 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 2001–NM–284–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. 2001–NM–284–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340–200 and –300 series airplanes. The DGAC advises that, during a scheduled maintenance operation, an escape slide/raft at a door 3 Type I emergency exit did not deploy. Further investigation revealed that the parachute pin was not correctly installed and had rotated from its normal position and dropped through the first section of lacing on the soft cover of the escape slide/raft, which prevented the soft cover from opening the escape slide/raft. During another inspection it was discovered that the electrical harness associated with the escape slide/raft was not correctly installed and was not properly routed. Incorrect installation and/or routing of the electrical harness could prevent slide/raft detachment from the door after inflation. These conditions, if not corrected, could result in failure of the escape slides/rafts to deploy correctly at door 3 Type I emergency exits, on the left and right sides of the airplane, which could result in the escape slides/rafts being unusable during an emergency evacuation, and consequent injury to passengers or crew members.

Explanation of Relevant Service Information

Airbus has issued All Operator Telexes (AOT) A330–25A3154 (for Model A330 series airplanes) and A340–25A4172 (for Model A340–200 and –300 series airplanes), both dated July 26, 2001. These AOTs describe procedures for repetitive inspections for proper installation of the parachute pins located in the escape slides/rafts at the door 3 Type I emergency exits, on the

left and right sides of the airplane, a one-time detailed inspection for proper installation and routing of the associated electrical harnesses; and corrective actions if necessary. Corrective actions for the parachute pins include adjustment of the speed lacing for the soft cover of the escape slides/rafts to prevent the parachute pins from moving from their original position. This action eliminates the need for the repetitive inspections of the parachute pins. Corrective actions for the electrical harnesses include relocating the quick-disconnect connectors. Accomplishment of the actions specified in the AOTs is intended to adequately address the identified unsafe condition. The DGAC classified these AOTs as mandatory and issued French airworthiness directives 2001–359(B) R3, dated October 30, 2002, and 2001–360(B) R1, dated February 6, 2002, to ensure the continued airworthiness of these airplanes in France.

Both AOTs reference Goodrich Aircraft Evacuation Systems Alert Service Bulletin 7A1509–25A324, dated July 16, 2001, as an additional source of service information for adjusting the speed lacing.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 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 applicable Airbus AOT described previously, except as discussed below.

Difference Between Proposed Rule and Referenced AOTs

Operators should note that, although the referenced AOTs describe procedures for reporting inspection results to Airbus, this proposed AD would not require those actions. The FAA does not need this information from operators.

Cost Impact

The FAA estimates that 14 Model A330 series airplanes of U.S. registry would be affected by this proposed AD, and that it would take approximately 1 work hour per airplane to accomplish the proposed inspections at the average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspections on U.S. operators is estimated to be $910, or $65 per airplane.

It would take approximately 3 work hours per airplane to adjust the speed lacing for the escape slide/raft soft cover at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed adjustment of the speed lacing for the escape slide/raft soft cover on U.S. operators is estimated to be $2,730, or $195 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this 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.

Currently, there are no Model A340 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would require 1 work hour per airplane to accomplish the proposed inspections and 3 work hours per airplane to accomplish the proposed adjustment of the speed lacing for the escape slide/raft soft cover, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed AD for Model A340 operators would be $260 per airplane.

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:

Airbus: Docket 2001–NM–284–AD.

Applicability: Model A330 and A340–200 and –300 series airplanes equipped with an escape slide/raft having any part number (P/N) 7A1509–101 through 7A1509–117 inclusive, and any serial number AD001 through AD0855 inclusive, at door 3 Type I emergency exits; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the escape slides/rafts to deploy correctly at door 3 Type I emergency exits, which could result in the escape slides/rafts being unusable during an emergency evacuation, and consequent injury to passengers or crew members, accomplish the following:

Inspections

(a) Within 550 flight hours after the effective date of this AD: Do a detailed inspection of the escape slides/rafts located at door 3 Type I emergency exits, on the left and right sides of the airplane, for correct installation of the parachute pins, and a one-time detailed inspection of the associated electrical harnesses for correct installation of the quick-disconnect connector, in accordance with paragraphs 4.1 and 4.2 of Airbus All Operator Telex (AOT) A330–25A3154 (for Model A330 series airplanes) or A340–25A4172 (for Model A340–200 and –300 series airplanes), dated July 26, 2001; as

applicable. If any parachute pin or quick disconnect connector is incorrectly installed, before further flight, do the corrective actions per the applicable AOT. Repeat the inspections of the parachute pins thereafter at intervals not to exceed 1,000 flight hours until accomplishment of paragraph (b) of this AD.

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

Note 2: Repetitive inspections of the electrical harnesses are not required.

Terminating Action for Repetitive Inspections

(b) Within 18 months after the effective date of this AD: Adjust the speed lacing for the soft covers of the escape slides/rafts located at door 3 Type I emergency exits, in accordance with paragraph 4.3 of Airbus AOT A330–25A3154 (for Model A330 series airplanes) or A340–25A4172 (for Model A340–200 and –300 series airplanes), both dated July 26, 2001; as applicable. This adjustment terminates the repetitive inspections of the parachute pins required by paragraph (a) of this AD.

Note 3: The AOTs reference Goodrich Aircraft Evacuation Systems Alert Service Bulletin 7A1509–25A324, dated July 16, 2001, as an additional source of service information for adjusting the speed lacing.

Parts Installation

(c) As of the effective date of this AD, no person may install on any airplane an escape slide/raft having any P/N 7A1509–101 through 7A1509–117 inclusive unless the parachute pin has been inspected and the speed lacing has been adjusted in accordance with paragraphs (a) and (b) of this AD.

Alternative Methods of Compliance

(d) 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 4: The subject of this AD is addressed in French airworthiness directives 2001–359(B) R3, dated October 30, 2002, and 2001–360(B) R1, dated February 6, 2002.

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

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30223 Filed 12–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–272–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146–100A and –200A 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 all BAE Systems (Operations) Limited Model BAe 146–100A and –200A series airplanes. This proposal would require an inspection to determine the part number of the inner links of the side stays for the main landing gear (MLG), and replacement of the inner links with new parts, if necessary. This action is necessary to prevent the failure of the MLG, which could result in damage to the airplane structure or injury to airplane occupants. 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. 2001–NM–272–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9–anm–nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–272–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 British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; 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 2001–NM–272–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. 2001–NM–272–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for

the United Kingdom, notified the FAA that an unsafe condition may exist on all BAE Systems (Operations) Limited Model BAe 146–100A and –200A series airplanes. The CAA advises that the safe life for the inner links of the main landing gear (MLG) side stays is listed incorrectly in the Airworthiness Limitations section of the Aircraft Maintenance Manual (AMM) at Issue 73. The safe life is listed incorrectly in the AMM as 60,000 total landings, rather than the actual safe life of either 57,500 total landings for BAe 146–100A series airplanes, or 37,400 total landings for BAe 146–200A series airplanes. Inner links with certain part numbers could be subject to failure if allowed to remain in service past the actual safe life for the part. This condition, if not corrected, could result in the failure of the MLG and subsequent damage to the airplane structure or injury to airplane occupants.

Explanation of Relevant Service Information

BAE Systems (Operations) Limited has issued Service Bulletin ISB.32–166, dated May 28, 2001, which describes procedures for an inspection to determine the part number of the side stay inner links for the MLG, and replacement of the side stay inner links with new parts, if necessary. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 005–05–2001 in order to assure the continued airworthiness of this airplane in the United Kingdom.

The BAE Systems (Operations) Limited service bulletin references Messier-Dowty Service Bulletin 146–32–153, dated May 29, 2001, as an additional source of service information for accomplishment of the inspection and replacement, if necessary.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, 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.

Differences Between Proposed Rule and Referenced Service Bulletins

Although Messier-Dowty Service Bulletin 146–32–153, and BAE Systems (Operations) Limited Service Bulletin ISB.32–166, specify to submit certain information to each manufacturer, this proposed AD does not include such requirements.

Although Messier-Dowty Service Bulletin 146–32–153 specifies that operators may contact the manufacturer for information on the safe remaining life of side stays used at different operating weights, this proposed AD would require operators to determine the safe remaining life per a method approved by either the FAA or the CAA (or its delegated agent). In light of the type of action that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, an appropriate action approved by either the FAA or the CAA would be acceptable for compliance with this proposed AD.

Cost Impact

The FAA estimates that 15 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 inspection, 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 $975, 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:

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket 2001–NM–272–AD.

Applicability: All Model BAe 146–100A and –200A series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the failure of the main landing gear (MLG), which could result in damage to the airplane structure or injury to airplane occupants, accomplish the following:

Inspection To Determine Part Number

(a) Within 50 landings or 31 days after the effective date of this AD, whichever occurs first: Inspect the inner link of the side stays

of the main landing gear (MLG) to determine the part number, per the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin ISB.32–166, dated May 28, 2001. Although this service bulletin specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Note 1: BAE Systems (Operations) Limited Service Bulletin, ISB.32–166, dated May 28, 2001, references Messier-Dowty Service Bulletin 146–32–153, dated May 29, 2001, as an additional source of service information for accomplishment of the inspection and replacement required by this AD. Although the Messier-Dowty service bulletin specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Replacement at New Reduced Safe Life

(b) Replace any side stay which, during the inspection required by paragraph (a) of this AD, is found to have part number 200884319, 200884320, 200884331, 200884332, 200884342, or 200884343. Replace the side stay with a new side stay having the same part number, at the applicable compliance time specified in paragraph 1.D. ''Compliance'' of BAE Systems (Operations) Limited Service Bulletin ISB.32–166, dated May 28, 2001, as measured from the effective date of this AD.

Safe Remaining Life

(c) If any side stay having part number 200884319, 200884320, 200884331, 200884332, 200884342, or 200884343 has been used at different operating weights, and the service bulletin recommends contacting Messier-Dowty for appropriate action based on the safe remaining life of the side stay; contact the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, (or its delegated agent); for appropriate action.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in British airworthiness directive 005–05–2001.

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

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30222 Filed 12–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–45–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–7, PC–12, and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2002–01–09, which applies to all Pilatus Aircraft Ltd. (Pilatus) Models PC–7, PC–12, and PC–12/45 airplanes that incorporate a certain engine-driven pump. AD 2002–01–09 currently requires you to inspect the joints between the engine-driven pump housing, the relief valve housing, and the relief valve cover for signs of fuel leakage and extruding gasket material; replace any engine-driven pump with any of the above problems; and ensure that the relief valve attachment screws are adequately torqued and re-torque as necessary. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. This proposed AD would retain the actions from AD 2002–01–09, would add certain engine-driven pumps to the applicability, and would require eventual replacement of the pump with an improved design pump to assure that the unsafe condition does not recur. We are issuing this proposed AD to detect and correct gasket material extruding from the engine-driven pump housing and detect and correct relief valve attachment screws with inadequate torque. These conditions could lead to fuel leakage and result in a fire in the engine compartment.

DATES: We must receive any comments on this proposed AD by January 6, 2004.

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

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–45–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2003–CE–45–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

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

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–45–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. 2003–CE–45–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Discussion

Has FAA Taken Any Action to This Point?

Reports of fuel leaking from certain engine-driven pumps on Pilatus Models PC–7, PC–12, and PC–12/45 airplanes caused FAA to issue AD 2002–01–09,

Amendment 39–12600 (67 FR 2323, January 17, 2002). AD 2002–01–09 currently requires the following on all Pilatus Models PC–7, PC–12, and PC–12/45 airplanes:

—Inspecting the joints between the engine-driven pump housing, the relief valve housing, and the relief valve cover for signs of fuel leakage and extruding gasket material;
—Replacing any engine-driven pump with signs of fuel leakage or extruding gasket material; and
—Ensuring that the relief valve attachment screws are adequately torqued and re-torquing as necessary.

What Has Happened Since AD 2002–01–09 To Initiate This Proposed Action?

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA of the need to change AD 2002–01–09. The CAA reports that problems are occurring on other engine-driven pumps that could be installed on the affected airplanes, and that the affected airplanes should have a certain engine-driven pump installed to ensure this unsafe condition does not reoccur.

What Are the Consequences if the Condition Is Not Corrected?

Gasket material extruding from the engine-driven pump housing and relief valve attachment screws with inadequate torque, if not detected and corrected, could lead to fuel leakage and result in a fire in the engine compartment.

Is There Service Information That Applies to This Subject?

Pilatus has issued the following service information:

—Pilatus PC–7 Service Bulletin No. 28–007, Revision No. 1, dated October 1, 2002, which includes procedures for changing the diaphragm and valve housing assembly of the engine-driven pump, Lear Romec part number (P/N) RG9570M1 (Pilatus P/N 968.84.51.105) or Lear Romec P/N RG9570M (Pilatus P/N 968.84.51.103). This service bulletin also specifies incorporating Crane Lear Romec Service Bulletin SB9570–73–002 or Crane Lear Romec Service Bulletin RG9570–73–006;
—Pilatus PC–12 Service Bulletin No. 28–010, dated September 16, 2002, which includes procedures for changing the diaphragm and valve housing assembly of the engine-driven pump, Lear Romec P/N RG9570R1 (Pilatus P/N 968.84.51.106). This service bulletin also specifies incorporating Crane Lear Romec Service Bulletin SB9570–73–002; and
—Pilatus PC–7 Service Bulletin No. 28–008, Revision 1, dated September 24, 2002, which specifies procedures for inspecting the engine-driven pump, Lear Romec P/N RG9570M (Pilatus P/N 968.84.51.103) for signs of fuel leakage or extruding gasket material and correcting relief valve torque on the screws.

Does the Service Information From AD 2002–01–09 Still Apply?

Yes. Pilatus PC–7 Service Bulletin No. 28–006 and Pilatus PC–12 Service Bulletin No. 28–009, both dated August 10, 2001, are still valid and provide information on the inspection and replacement of the engine-driven pumps, Romec P/N RG9570M1 (Pilatus P/N 968.84.51.105) and Lear Romec P/N RG9570R1 (Pilatus P/N 968.84.51.106).

What Action Did the FOCA Take?

The FOCA classified these service bulletins as mandatory and issued FOCA AD HB 2003–392, dated September 15, 2003; and FOCA AD HB 2003–251, dated June16, 2003, to ensure the continued airworthiness of these airplanes in Switzerland.

Did the FOCA Inform the United States Per the Bilateral Airworthiness Agreement?

These Pilatus Models PC–7, PC–12, and PC–12/45 airplanes are manufactured in Switzerland 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.

Under this bilateral airworthiness agreement, the FOCA has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What Has FAA decided?

We have examined the FOCA's findings, 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.

Since the unsafe condition described previously is likely to exist or develop on other Pilatus Models PC–7, PC–12, and PC–12/45 airplanes of the same type design that are registered in the United States, we are proposing AD action to detect and correct gasket material extruding from the engine-driven pump housing and detect and correct relief valve attachment screws with inadequate torque. These conditions could lead to fuel leakage and result in a fire in the engine compartment.

What Would This Proposed AD Require?

This proposed AD would supersede

AD 2002–01–09 with a new AD that would:

—Retain the actions from AD 2002–01–09;
—Add certain engine-driven pumps to the applicability; and
—Require eventual replacement of the pump with an improved design pump to assure that the unsafe condition does not reoccur.

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

On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to 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 Would This Proposed AD Impact?

We estimate that this proposed AD affects 278 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspections and re-torque:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $65 per hour = $130	Not Applicable	$130	$130 × 278 = $36,140.

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
1 workhour × $65 per hour = $65	$3,900 per new pump	$3,965 per airplane.

What Is the Difference Between the Cost Impact of This Proposed AD and the Cost Impact of AD 2002–01–09?

The only difference between this proposed AD and AD 2002–01–09 is the addition of affected engine-driven pumps. The number of airplanes that could have an affected pump installed and the costs associated with inspection and replacement are the same.

Compliance Time of This Proposed AD

What Would Be the Compliance Time of the Proposed Inspection?

The compliance time of the inspections that would be required by this proposed AD is ''within 20 hours time-in-service (TIS) after the effective date of this AD or within the next 30 days after the effective date of this AD, whichever occurs first.''

Why Is the Compliance Time of the Proposed Inspection Presented in Both Hours TIS and Calendar Time?

The deterioration and potential extrusion of the gasket occurs over time and is not a condition of repetitive airplane operation. However, the relief valve attachment screws becoming inadequately torqued occurs as a result of airplane operation if the compression set of the gasket and diaphragm after thermal cycling causes the gasket of the engine-driven pump to extrude between the relief valve housing and the engine-driven pump housing.

Therefore, to ensure that the unsafe condition defined in this document is detected and corrected in a timely manner, we are stating the compliance in both calendar time and hours TIS.

Regulatory Findings

Would This Proposed AD Impact Various Entities?

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD 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.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed 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 proposed 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–45–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2002–01–09, Amendment 39–12600 (67 FR 2323, January 17, 2002), and by adding a new AD to read as follows:

Pilatus Aircraft Ltd.: Docket No. 2003–CE–45–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by January 6, 2004.

What Other ADs Are Affected By This Action?

(b) This AD supersedes AD 2002–01–09, Amendment 39–12600.

What Airplanes Are Affected by This AD?

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

Model	Serial Nos.
(1) PC–7	All manufacturer serial numbers (MSN) equipped with either a Lear Romec part number (P/N) RG9570M (Pilatus P/N 968.84.51.103) engine-driven pump or a Lear Romec P/N RG9570M1 (Pilatus P/N 968.84.51.105) engine-driven pump.
(2) PC–12 and PC–12/45	All MSN equipped with a Lear Romec P/N RG9570R1 (Pilatus P/N 968.84.51.106) engine-driven pump.

Note: Pilatus installed these engine-driven pumps on MSN 101 through MSN 406 and MSN 408 through 419 of the Models PC–12 and PC–12/45 airplanes and MSN 101 through MSN 618 of the Model PC–7 airplanes. These engine-driven pumps could be installed through field approval on any MSN of the Models PC–7, PC–12, and PC–12/45 airplanes.

What Is the Unsafe Condition Presented in This AD?

(d) The actions specified in this AD are intended to detect and correct gasket material extruding from the engine-driven pump housing and detect and correct relief valve attachment screws with inadequate torque. These conditions could lead to fuel leakage and result in a fire in the engine compartment.

What Must I Do To Address This Problem?

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

(1) *Inspection:* Inspect the joints between the engine-driven pump housing, the relief valve housing, and the relief valve cover for signs of fuel leakage and extruding gasket material as follows:

Engine-driven pump P/N	Compliance	Procedures
(i) Lear Romec P/N RG9570M1 (Pilatus P/N 968.84.51.105) or Lear Romec P/N RG9570R1 (Pilatus P/N 968.84.51.106).	Within the next 20 hours time-in-service (TIS) after February 28, 2002 (the effective date of AD 2002–01–09) or within the next 30 days after February 28, 2002 (the effective date of AD 2002–01–09), whichever occurs first, unless already done.	Follow Pilatus PC–7 Service Bulletin No. 28–006 or Pilatus PC–12 Service Bulletin No. 28–009, both dated August 10, 2001, as applicable.
(ii) Lear Romec P/N RG9570M (Pilatus P/N 968.84.51.103).	Within 20 hours TIS after the effective date of this AD or within 30 days after the effective date of this AD, whichever occurs first, unless already done.	Follow Pilatus PC–7 Service Bulletin No. 28–008, Revision 1, dated September 24, 2003.

(2) *Replacement/Modification:* Replace the engine-driven pump with one of the following prior to further flight after the inspection in paragraph (e)(1) of this AD if you find signs of fuel leakage or extruding gasket material or within 6 months after the effective date of this AD if you do not find signs of fuel leakage or extruding gasket material, whichever occurs first, unless already done:

Models	Pump replacement P/N	Procedures
(i) PC–7	Lear Romec P/N RG9570M1/M (Pilatus P/N 968.84.51.107).	Pilatus PC–7 Service Bulletin No. 28–007, Revision No. 1, dated October 1, 2002.
(ii) PC–12 and PC–12/45	Lear Romec P/N RG9570R1/M (Pilatus P/N 968.84.51.108).	Pilatus PC–12 Service Bulletin No. 28–010, dated September 16, 2002.

(3) *Relief Valve Attachment Screw Torque:* Prior to further flight after the inspection (if you find no fuel leakage or extruding gasket material) and replacement required by this AD, ensure that the relief valve attachment screws are adequately torqued and re-torque as necessary using the following:

(i) *For Pilatus Model PC–7 Airplanes:* Pilatus PC–7 Service Bulletin No. 28–006, dated August 10, 2001, or Pilatus PC–7 Service Bulletin No. 28–008, Revision 1, dated September 24, 2002.

(ii) *For Pilatus Models PC–12 and PC–12/45 Airplanes:* Pilatus PC–12 Service Bulletin No. 28–009, both dated August 10, 2001.

(4) *Spares:* As of the effective date of this AD, only install an engine-driven pump that is of a part number referenced in paragraphs (e)(2)(i) and (e)(2)(ii) of this AD. Prior to further flight after installation, do the relief valve attachment screw torque check as required by paragraph (e)(3) of this AD.

(5) *Unless Already Done Credit:* This AD retains actions from AD 2002–01–09.

(i) You may take inspection credit if you have one of the engine-driven pumps installed affected by AD 2002–01–09 and the specific actions are already done.

(ii) The actions of this AD do not apply if you have one of the engine-driven pumps installed that is referenced in paragraphs (e)(2)(i) and (e)(2)(ii) of this AD.

May I Request an Alternative Method of Compliance?

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

May I Get Copies of the Documents Referenced in This AD?

(g) You may get copies of the documents referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Is There Other Information That Relates to This Subject?

(h) FOCA (Switzerland) AD HB 2003–392, dated September 15, 2003; and FOCA (Switzerland) AD HB 2003–251, dated June 16, 2003, also address the subject of this AD.

Issued in Kansas City, Missouri, on November 26, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30256 Filed 12–4–03; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL

28 CFR Part 901

[NCPPC 105]

Proposed Amendments to the Fingerprint Submission Requirements Rule

AGENCY: National Crime Prevention and Privacy Compact Council.

ACTION: Proposed amendments to the rule, request for comments.

SUMMARY: The Compact Council, established pursuant to the National Crime Prevention and Privacy Compact (Compact), is amending its Fingerprint Submission Requirements Rule which interprets the Compact's fingerprint-submission requirements as they relate to the use of the Interstate Identification Index (III) System for noncriminal justice record checks during an emergency situation when the health and safety of a specified group may be endangered. In addition, pursuant to the rule, the Compact Council approved an amended proposal from a State requesting the delayed submission of fingerprints when conducting criminal history records checks in connection with the temporary placement of children with temporary custodians during exigent circumstances.

DATES: Written comments must be submitted on or before January 5, 2004.

ADDRESSES: Send all written comments concerning the proposed amendments to the Compact Council Office, 1000 Custer Hollow Road, Module C3, Clarksburg, WV 26306; Attention: Todd C. Commodore. Comments may also be submitted by fax at (304) 625–5388 or by electronic mail at *tcommodo@leo.gov.* To ensure proper handling, please reference ''Amended Fingerprint Submission Requirements'' on your correspondence.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Jeffrey D. Harmon, Compact Council Chairman, Maine State Police, 36 Hospital Street, Augusta, Maine

04333–0042, telephone number (207) 624–7060.

SUPPLEMENTARY INFORMATION: The National Crime Prevention and Privacy Compact (Compact), 42 U.S.C. 14616, establishes uniform standards and processes for the interstate and Federal-State exchange of criminal history records for noncriminal justice purposes. The Compact eliminates barriers to the sharing of criminal history record information among the compact parties for noncriminal justice purposes. Article VI of the Compact provides for a Compact Council that has the authority to promulgate rules and procedures governing the use of the III System for noncriminal justice purposes.

The Compact requires that subject's fingerprints or other approved forms of positive identification ''shall be submitted with all requests for criminal history record checks for noncriminal justice purposes.'' *See* 42 U.S.C. 14616, Article V(a). The Compact Council recognizes the extreme reliability of fingerprint-based identifications and believes that the above quoted provision requires that, whenever feasible, fingerprints should be submitted contemporaneously with search requests. In promulgating the Fingerprint Submission Requirements Rule (28 CFR Part 901), however, the Council acknowledged that there are exigent circumstances in which time is a critical factor in decision making and in which the immediate fingerprinting of the subject is not feasible. In such emergency circumstances, the Council interpreted the Compact to permit preliminary name searches of the III System for noncriminal justice purposes, provided that fingerprints are obtained and submitted within a time frame specified by the Council. This procedure allows access to criminal history record information in a timely manner in exigent circumstances with follow-up positive identification assured by fingerprint submissions.

Part 901 authorizes state criminal history record repositories and the FBI, upon approval by the Compact Council, to grant access to the III System in emergency situations on a delayed fingerprint submission basis, predicated upon a statute approved by the U.S. Attorney General pursuant to Public Law 92–544 and Article III (c) of the Compact. Access authorized by part 901 must adhere to both the Criminal Justice Information Services Security Policy and applicable state security policies.

Subsequent to the publication of Part 901, states that were authorized to conduct the name-based checks articulated varying interpretations of the fingerprint submission time frame. In order to eliminate these disparate interpretations, the Compact Council is amending the rule to define the term ''time frame'' by adding a sentence at the end of Subsection 901.3(b).

Section 901.3 is also amended by adding paragraph (d) to clarify that part 901 is also applicable to Federal agencies authorized to access criminal history records pursuant to Federal statute or Executive Order for noncriminal justice purposes. The original rule identified only state agencies, and per the Compact's definition of ''state'', an amendment to the rule is necessary. *See* 42 U.S.C. 14616, Article I(22).

Recently, the FBI CJIS Division expanded its Audit Unit programs to include reviews of noncriminal justice agencies with direct access to the III System for emergency placement of children. Though the Background section of the original **Federal Register** publication establishing part 901 included verbiage addressing audits and sanctions, no such language was included in the Rule. The Compact Council has now approved the addition of language in the rule addressing audits and sanctions in order to reduce the potential for misinterpretation. Section 901.4 identifies the State Compact Officer or, in nonparty states, the Chief Administrator of the Criminal History Record Repository, as the responsible party to ensure that audits are conducted of approved state agencies, and the responsible Federal Service Coordinator will ensure that similar audits are conducted of authorized Federal agencies. The audits will verify adherence to the provisions of part 901 and the FBI Criminal Justice Information Services Security Policy. Section 901.4 also includes the details of records an authorized agency must maintain related to this III access under part 901 and requires that mechanisms to calculate the specified time frame for fingerprint submissions be included in the audit and compliance reviews.

Sanctions for noncompliance as related to the audit methodology spelled out in section 901.4 are addressed in section 901.5. This section states that the Compact Council, or the FBI in consultation with the Compact Council, may impose sanctions according to rules, procedures, or standards established by the Council. Approved access to criminal history record information systems is subject to cancellation for violation of the National Crime Prevention and Privacy Compact Act or for failure to comply with part 901 or the FBI Criminal Justice Information Services Security Policy. The state's Compact Officer, the Chief Administrator of the Criminal History Record Repository in a nonparty state, or the Federal Service Coordinator may take similar actions, as applicable, against a State or Federal agency for failure to comply with applicable security policies.

Administrative Procedures and Executive Orders

Administrative Procedures Act

This rule is published by the Compact Council as authorized by the National Crime Prevention and Privacy Compact (Compact), an interstate/Federal compact which was approved and enacted into law by Congress pursuant to Pub. L. 105–251. The Compact Council is composed of 15 members (with 11 state and local governmental representatives), and is authorized by the Compact to promulgate rules and procedures for the effective and proper use of the Interstate Identification Index (III) System for noncriminal justice purposes. The Compact specifically provides that the Council shall prescribe rules and procedures for the effective and proper use of the III System for noncriminal justice purposes, and mandates that such rules, procedures, or standards established by the Council shall be published in the **Federal Register**. *See* 42 U.S.C. 14616, Articles II(4), VI(a)(1), and VI(e). This publication complies with those requirements.

Executive Order 12866

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

Executive Order 13132

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

Executive Order 12988

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

Unfunded Mandates Reform Act

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects in 28 CFR Part 901

Crime, Health, Privacy, Safety.

Accordingly, the Compact Council proposes to amend part 901 as follows:

PART 901—FINGERPRINT SUBMISSION REQUIREMENTS

1. The authority citation for part 901 continues to read as follows;

Authority: 42 U.S.C. 14616.

2. Amend § 901.3 as follows;

a. By redesignationg paragraph (c) as paragraph (d);

b. By designating the text following paragraph (b) as new paragraph (c) and adding a sentence to the end of the paragraph;

c. By adding a new paragraph (e).

The added text reads as follows:

§ 901.3 Approval of delayed fingerprint submission request.

* * * * *

(c) * * * For the purposes of this rule, ''time frame'' means the number of days that elapse between the date on which the name search was conducted and the date on which the state repository either positively identifies the fingerprint subject or forwards the fingerprints to the FBI or the date a Federal agency forwards the fingerprints to the FBI.

* * * * *

(e) Part 901 is also applicable to any federal agency authorized to access criminal history records pursuant to Federal statute or Executive Order for noncriminal justice purposes.

3. Amend part 901 by adding §§ 901.4 and 901.5 to read as follows:

§ 901.4 Audits.

(a) Audits of authorized State agencies that access the III System shall be conducted by the State's Compact Officer or, in absence of a Compact Officer, the chief administrator for the criminal history record repository. The responsible Federal service coordinator shall ensure that similar audits are conducted of authorized Federal agencies. Such audits shall be conducted to verify adherence to the provisions of part 901 and the FBI's Criminal Justice Information Services (CJIS) Security Policy.

(b) Authorized agencies shall cause to be collected an appropriate record of each instance of III System access through a manual or electronic log. The log shall be maintained for a minimum one-year period to facilitate the audits and compliance reviews. Such records shall be maintained in accordance with the CJIS Security Policy. (For information on this security policy, contact your State Control Terminal Officer or Federal Service Coordinator.)

(c) The audit and compliance reviews must include mechanisms to determine whether fingerprints were submitted within the time frame specified by the Compact Council.

(d) In addition to the audits as stated above, the FBI CJIS Audit staff shall also conduct routine systematic compliance reviews of State repositories, Federal agencies, and as necessary other authorized III System user agencies.

§ 901.5 Sanction for noncompliance.

The Compact Council, or the FBI in consultation with the Compact Council, may impose sanctions in accordance with rules, procedures, or standards as established by the Council. The approval for access to criminal history record information systems for noncriminal justice purposes is subject to cancellation or discontinuance for violation of the National Crime Prevention and Privacy Compact Act, failure to comply with the provisions of part 901, or failure to comply with the FBI Criminal Justice Information Services Security Policy (*See* § 901.4(b)). The State's Compact Officer, the chief administrator of the criminal history record repository or the Federal Service Coordinator may take similar actions, as applicable, against a State or Federal agency for failure to comply with applicable security policies.

Dated: November 5, 2003.

Jeffrey D. Harmon,

Compact Council Chairman.

[FR Doc. 03–29567 Filed 12–4–03; 8:45 am]

BILLING CODE 4410–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE072 1042b; FRL–7593–4]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; MOBILE6-based Motor Vehicle Emission Budgets for the Delaware Portion of the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the Delaware State Implementation Plan (SIP). Specifically, EPA is proposing approving amendments to the 2005 highway (on road) motor vehicle emission inventory for the Delaware portion of the Philadelphia-Wilmington-Trenton area's (the Philadelphia area) 1-hour ozone attainment plan as a revision to the Delaware SIP. This revision also serves to amend the 2005 motor vehicle emission budgets (MVEBs) used for determining transportation conformity under the Clean Air Act. The revised MVEBs were developed using MOBILE6, the most recent version of EPA's mobile source emission factor model. Revision of the MVEBs was a requirement of EPA's prior approval of Delaware's 1-hour ozone attainment demonstration plan for the Philadelphia severe ozone nonattainment area. In the final rules section of this **Federal Register**, EPA is approving Delaware's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

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

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Robert Kramer, Chief, Energy, Radiation and Indoor Environment Branch, Mailcode 3AP23,

U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *kramer.robert@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in the **SUPPLEMENTARY INFORMATION** section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and at the Delaware Department of Natural Resources and Environmental Control, 156 South State Street, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Larry Budney, (215) 814–2184, or by e-mail at *budney.larry@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number DE072–1042 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

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

i. E-mail. Comments may be sent by electronic mail (e-mail) to *kramer.robert@epa.gov,* attention DE072–1042. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

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

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

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

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

Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Considerations When Preparing Comments to EPA

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

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

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

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

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

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

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: November 20, 2003.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03–30042 Filed 12–4–03; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1809, 1837, and 1852

RIN 2700–AC60

Contractor Access to Confidential Information

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the NASA Federal Acquisition Regulation (FAR) Supplement (NFS) to provide guidance on how NASA will acquire services to support management activities and administrative functions, when performing those services requires the contractor to have access to confidential information submitted by other contractors. NASA's increased use of contractors to support management activities and administrative functions, coupled with implementing Agency-wide electronic information systems, requires establishing consistent procedures for protecting confidential information from unauthorized use or disclosure.

DATES: Comments should be submitted on or before February 3, 2004 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to David Forbes, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments may also be submitted by e-mail to: *David.P.Forbes@nasa.gov*.

FOR FURTHER INFORMATION CONTACT: David Forbes, (202) 358–2051, e-mail: *David.P.Forbes@nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

In accomplishing its mission, NASA expends about eighty-five percent of its appropriations through contracts. As part of the process of awarding and performing contracts, offerors and contractors must provide information, some of which they claim to have developed at private expense and that may embody trade secrets or constitute commercial or financial and confidential information (''confidential information''). Confidential information includes technical, financial, proprietary, commercial, privileged, or otherwise sensitive business information. As a result, NASA receives and retains a substantial amount of confidential information, contained in paper files and electronic administrative systems.

Generally, the information in question is not in the public domain and may be subject to the Trade Secrets Act, the Procurement Integrity Act (FAR 3.104), and other laws and regulations relating to ethics, organizational conflicts of interest, and corruption in the Federal procurement process. To the extent that an exception to the Freedom of Information Act applies, government agencies may also generate confidential information, including pre-negotiation analyses and positions and pre-decisional advice on a variety of subjects. NASA has long recognized a responsibility to protect this type of information from unauthorized use and disclosure. To this end, NASA has traditionally allowed only civil servants to have access to confidential information in the Government's possession. Practical realities, coupled with new policy initiatives compel NASA to reconsider its approach to managing contractor-related information.

The practical pressure to reconsider NASA's approach has emerged from years of ''downsizing'' the civil service workforce. Simply put, NASA no longer has enough employees to manage and safeguard all of the information in question. Of necessity, NASA is increasing its use of service contractors to assist in performing many administrative, financial, and technical functions that had been performed previously by government employees only. The types of services NASA will be procuring run the gamut from routine clerical support such as data entry and invoice processing, to more complex in-plant reviews, contract closeout processing, system administration, and safety and quality assurance activities. Service contractors may soon be supporting most of these activities and functions throughout the Agency. NASA must, therefore, find new, more streamlined ways to receive from offerors and contractors confidential information that may be entitled to protection and to disclose it to third party service providers, without compromising the information received.

As NASA releases more confidential information provided by offerors or contractors to other contractors, the risk increases that unauthorized uses and disclosures will occur. One aspect of this increased risk is the potential that organizational conflicts of interest may arise when the Agency discloses one contractor's confidential information to another contractor. FAR Subpart 9.5 prescribes general rules for managing organizational conflicts of interest and gives four specific examples of situations that may give rise to problems. One of those examples deals directly with NASA's current dilemma, that is, providing one contractor access to other contractors' confidential information. Specifically, when one contractor gains access to other companies' ''proprietary'' information, FAR 9.505–4 directs the service provider to enter into agreement(s) with the other companies to protect their information from unauthorized use or disclosure and to refrain from using the information for any purpose other than that for which it was furnished. Additionally, FAR 9.505–4 requires the contracting officer to obtain copies of these third party agreements and ensure that they are properly executed.

In the past, NASA contracts rarely required access to another contractor's proprietary or other forms of confidential information, making this FAR procedure quite manageable. The current environment, however, raises the question whether use of FAR 9.505–4 continues to be workable for NASA. For example, in providing contract closeout services, the contractor and its employees may have access to hundreds of contract files, each of which should document all pre and post award activities for a particular contract. Typically, the contracts to be closed out will include multiple subcontractors. Many subcontractors will also have lower-tier subcontracts. To ensure that all of these companies have properly executed ''non-disclosure agreements'' among themselves could result in a huge number of interrelated agreements. Moreover, the contract closeout function is but one example of the types of services that may require one NASA contractor to have access to another contractor's confidential information before performance can proceed. Without obtaining even more support services, NASA cannot be responsible for managing this potentially enormous universe of interrelated non-disclosure agreements.

In today's environment, NASA must rely heavily on private sector service contractors for support in performing essential management activities and administrative functions. For contracts requiring this type of support, the Assistant Administrator for Procurement has determined that it is not in the NASA's interest to follow the

general rule stated in FAR 9.505–4(b) and, in accordance with FAR 9.503, has waived its application. Rather than demand an unworkable mass of interrelated third party non-disclosure agreements, NASA will implement the policy and procedures described in the proposed 1837.203–70 to manage the risks associated with one contractor having access to another contractor's confidential information and to assure those that submit this type of information that NASA will protect it from unauthorized use or disclosure.

As one element of this new approach, 1837.203–70(d)(1) requires that contractors receiving access to confidential information must have developed a comprehensive organizational conflicts of interest avoidance plan. Recognizing that developing this plan may take considerable time and effort, proposals need only summarize the offeror's analysis of the potential organizational conflicts of interest that may arise from having access to another contractor's confidential information, or to Government-generated information that is subject to an exception to the Freedom of Information Act. Each offeror's analysis, together with the other elements of each proposal, will be considered in selecting a contractor for award. After award, the contractor must develop and submit to the contracting officer for review and approval a comprehensive organizational conflict of interest avoidance plan that identifies all potential problems and proposes specific methods to control, mitigate, or eliminate any organizational or ethical concerns noted. This plan must also commit the contractor to take all corrective actions necessary to address any failures to protect confidential information from unauthorized use or disclosure. Once the contracting officer approves this plan, he/she will incorporate the document into the resulting contract.

NASA proposes two clauses to implement the above policies in solicitations and contracts. The first clause at 1852.237–72, Access to Confidential Information, would go into service contracts that involve access to information in the Government's possession that is necessary to support NASA's management activities and administrative functions. This clause would delineate the service contractor's responsibilities to limit to the purposes specified in the contract its use of any of this information that is confidential, to safeguard the information from unauthorized outside disclosure, and to train employees and obtain their written commitments to handle the information in an authorized manner, only.

The second clause at 1852.237–73, Release of Confidential Information, would go in all solicitations and contracts to notify offerors and contractors that NASA may release their confidential information to other contractors supporting NASA's management activities and administrative functions. Recognizing that this announcement may cause concerns for these offerors and contractors, the clause recites the protections embodied in the receiving, support service contract through the new clause at 1852.237–72. Essentially, the clause at 1852.237–73 announces NASA's intent to release companies' confidential information to support service contractors. But, in announcing this intent, the clause also promises that the support contractors will implement specific and enumerated safeguards and procedures to protect the information.

B. Regulatory Flexibility Act

NASA certifies that this proposed rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, *et. seq.*), because the proposed new, streamlined approach of having each service contractor implement specific safeguards and procedures should offer the same or better protection for confidential information belonging to small business entities than does the current system of third party agreements, envisioned by FAR 9.505–4. This proposed rule should ease the burden on small business entities by not requiring them to enter multiple, interrelated third party agreements with the numerous service contractors that support NASA's management activities and administrative functions.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the NFS do not impose any recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 USC 3501, *et. seq.*

List of Subjects in 48 CFR Parts 1809, 1837, and 1852

Government Procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 48 CFR parts 1809, 1837, and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 1809, 1837, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1809—CONTRACTOR QUALIFICATIONS

2. Add section 1809.505–4 to read as follows:

1809.505–4 Obtaining access to confidential information.

(b) In accordance with FAR 9.503, the Assistant Administrator for Procurement has determined that it would not be in the Government's interests for NASA to comply strictly with FAR 9.505-4(b) when acquiring services to support management activities and administrative functions. The Assistant Administrator for Procurement has, therefore, waived the requirement that before gaining access to other companies' proprietary or confidential (see 1837.203–70) information contractors must enter specific agreements with each of those other companies to protect their information from unauthorized use or disclosure. Accordingly, NASA will not require contractors and subcontractors and their employees in procurements that support management activities and administrative functions to enter into separate, interrelated third party agreements to protect confidential information from unauthorized use or disclosure. As an alternative to numerous, separate third party agreements, 1837.203–70 prescribes detailed policy and procedures to protect contractors from unauthorized use or disclosure of its confidential information. Nothing in this section waives the requirements of FAR 37.204 and 1837.204.

PART 1837—SERVICE CONTRACTING

3. Add sections 1837.203–70, 1837.203–71, and 1837.203–72 to read as follows:

1837.203–70 Providing contractors access to confidential information.

(a)(1) As used in this subpart, ''confidential information'' refers to information that the contractor has developed at private expense or that the Government has generated that qualifies

for an exception to the Freedom of Information Act, which is not currently in the public domain, may embody trade secrets or commercial or financial information, and may be confidential or privileged.

(2) As used in this subpart, ''requiring organization'' refers to the NASA organizational element or activity that requires specified services to be provided.

(3) As used in this subpart, ''receiving entity'' refers to the service-providing contractor that receives confidential information from NASA to provide services to the requiring organization.

(b) To support management activities and administrative functions, NASA relies on the services of numerous contractors. Contractors providing these services may require access to confidential information in the Government's possession, which may be entitled to protection from unauthorized use or disclosure. NASA shall require any service contractor that receives access to confidential information to take the steps contained in the clause at 1852.237–72, Access to Confidential Information, to protect it from unauthorized use or disclosure.

(c) The requiring organization is responsible for identifying when a requirement will require access to confidential information and making the determination that providing access is necessary for accomplishing the Agency's mission. The requiring organization is responsible for reviewing any contractor requests for access to information to determine whether the access is necessary and whether the information requested is considered confidential as defined in paragraph (a) of this section.

(d)(1) Solicitations for services that require contractor access to confidential information shall require each offeror (potential receiving entity) to submit with its proposal a preliminary analysis of possible organizational conflicts of interest that might flow from the award of a contract. After selection, the new service contractor must submit for approval a comprehensive organizational conflict of interest avoidance plan, based on the preliminary analysis. This plan should thoroughly analyze all organizational conflicts of interest that might arise because the service contractor has access to other companies' confidential information. This analysis should propose specific methods to control, mitigate, or eliminate all problems identified. The contracting officer shall incorporate the approved plan into the resulting contract, as a compliance document.

(2) If the contractor will be operating an information technology system for NASA that contains confidential information, the operating contract shall include the clause at 1852.204–76, Security Requirements for Unclassified Information Technology Resources, which requires the implementation of an Information Technology Security Plan to protect information processed, stored, or transmitted from unauthorized access, alteration, disclosure, or use.

1837.203–71 Release of contractors' confidential information.

(a) By submitting offers or performing contracts, offerors and contractors agree that NASA may provide non-NASA employees access to their confidential information, subject to the safeguards and protections delineated in the clause at 1852.237–72, Access to Confidential Information.

(b) As required by the clause at 1852.237–73, Release of Confidential Information, or another contract clause or solicitation provision, contractors must identify confidential information submitted as part of a proposal or in performance of a contract. The contracting officer shall evaluate the contractor's claim to have submitted ''confidential information'' in deciding whether NASA and its service contractors must expend time and resources to protect and safeguard the information in accordance with the clause at 1852.237–72.

1837.203–72 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.237–72, Access to Confidential Information, in all solicitations and contracts for services that require access to confidential information belonging to other companies or generated by the Government.

(b) The contracting officer shall insert the clause at 1852.237–73, Release of Confidential Information, in all solicitations, contracts, and basic ordering agreements .

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Add sections 1852.237–72 and 1852.237–73 to read as follows:

1852.237–72 Access to Confidential Information.

As prescribed in 1837.203–72(a), insert the following clause:

ACCESS TO CONFIDENTIAL INFORMATION (XX/XX)

(a) As used in this clause, ''confidential information'' refers to information that a contractor has developed at private expense, or that the Government has generated that qualifies for an exception to the Freedom of Information Act, which is not currently in the public domain, and may embody trade secrets or commercial or financial information, and may be confidential or privileged.

(b) To assist NASA in accomplishing management activities and administrative functions, the Contractor shall provide the services specified elsewhere in this contract. Performing these services may require access to confidential information that other companies have furnished to the Government in the course of providing supplies or services, or that the Government has generated.

(c) In performing this contract, the Contractor agrees to—

(1) Utilize any confidential information coming into its possession only for the purposes of performing the services specified in this contract, and never to improve its own competitive position in another procurement.

(2) Safeguard confidential information coming into its possession from unauthorized use and disclosure.

(3) Allow access to confidential information only to those employees that need it to perform services under this contract.

(4) Preclude access and disclosure of confidential information to persons and entities outside of the Contractor's organization.

(5) Train employees who may require access to confidential information about their obligations to utilize it only to perform the services specified in this contract and to safeguard it from unauthorized use and disclosure.

(6) Obtain an express, binding written agreement from each employee who receives access to confidential information to protect it from unauthorized use or disclosure and to utilize it only for the purposes of performing this contract.

(7) Establish a monitoring process to ensure that employees comply with all reasonable security procedures, report any breaches to the Contracting Officer, and implement any necessary corrective actions.

(d) The Contractor will comply with all procedures and obligations specified in its Organizational Conflict of Interest Avoidance Plan, which the Contracting Officer has approved and incorporated into this contract.

(e) The nature of the work on this contract may subject the Contractor and its employees a variety of laws and regulations relating to ethics, conflicts of interest, corruption, and other criminal or civil matters relating to the award and administration of government contracts. Recognizing that this contract establishes a high standard of accountability and trust, the Government will carefully review the Contractor's performance in relation to the mandates and restrictions found in these laws and regulations.

(f) The Contractor shall include the substance of this clause, including this

paragraph (f), suitably modified to reflect the relationship of the parties, in all subcontracts that may involve access to confidential information.

(End of clause)

1852.237–73 Release of Confidential Information.

As prescribed in 1837.203–72(b), insert the following clause:

RELEASE OF CONFIDENTIAL INFORMATION (XX/XX)

(a) As used in this clause, ''confidential information'' refers to information, not currently in the public domain, that the Contractor has developed at private expense, may embody trade secrets or commercial or financial information, and that may be confidential or privileged.

(b) In accomplishing management activities and administrative functions, NASA relies heavily on the services of various contractors. To perform these services, contractors, as well as their subcontractors and their individual employees, may need access to confidential information submitted by the Contractor under this contract.

(c)(1) The Contractor shall mark or otherwise identify any confidential information submitted in support of this proposal or in performing this contract. The Contracting Officer will evaluate the Contractor's claim to have submitted ''confidential information,'' as defined above, in deciding whether NASA and its service contractors must protect and safeguard the information in accordance with the clause at 1852.237–72, Access to Confidential Information. Unless the Contracting Officer decides to challenge the Contractor's ''confidential information'' marking, NASA and its service contractors and their employees shall apply all of the conditions and safeguards listed in the clause at 1852.237–72.

(2) For information already in NASA's possession, the Contracting Officer shall attempt to identify the owner and afford that entity a reasonable opportunity to assert confidentiality in accordance with the principles and criteria delineated in the FAR. For purposes of asserting confidentiality, the parties may agree to use the procedures delineated in the clause at FAR 52.227–14 as a guide.

(d) Any entity that receives access to confidential information needed to assist NASA in accomplishing management activities and administrative functions must be operating under a contract that contains the clause at 1852.237–72, Access to Confidential Information. This clause obligates the receiving entity to do the following:

(1) Comply with all procedures and obligations specified in its contract, including the Organizational Conflict of Interest Avoidance Plan, which the Contracting Officer has approved and incorporated into its contract.

(2) Utilize any confidential information coming into its possession only for the purposes of performing the services specified in its contract.

(3) Safeguard confidential information coming into its possession from unauthorized use and disclosure.

(4) Allow access to confidential information only to those employees that need it to perform services under its contract.

(5) Preclude access and disclosure of confidential information to persons and entities outside of the contractor's organization.

(6) Train employees who may require access to confidential information about their obligations to utilize it only to perform the services specified in its contract and to safeguard it from unauthorized use and disclosure.

(7) Obtain an express, binding written agreement from each employee who receives access to confidential information to protect it from unauthorized use or disclosure and to utilize it only for the purposes of performing the contract.

(8) Establish a monitoring process to ensure that employees comply with all reasonable security procedures, report any breaches to the Contracting Officer, and implement any necessary corrective actions.

(e) When the receiving entity will have primary operational responsibility for an information technology system for NASA that contains confidential information, the entity's contract shall include the clause at 1852.204–76, Security Requirements for Unclassified Information Technology Resources. The Security Requirements clause requires the receiving entity to implement an Information Technology Security Plan to protect information processed, stored, or transmitted from unauthorized access, alteration, disclosure, or use. Receiving entity personnel requiring privileged access or limited privileged access to these information technology systems are subject to screening using the standard National Agency Check (NAC) forms appropriate to the level of risk for all. The Contracting Officer may allow the receiving entity to conduct its own screening, provided this entity employs substantially equivalent screening procedures.

(f) This clause does not affect NASA's responsibilities under the Freedom of Information Act.

(g) The Contractor shall insert this clause, including this paragraph (g), suitably modified to reflect the relationship of the parties, in all subcontracts that may require the furnishing of confidential information.

(End of clause)

[FR Doc. 03–29930 Filed 12–4–03; 8:45 am]

BILLING CODE 7510–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 031125288–3288–01; I.D. 110303A]

RIN 0648–AR35

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 16–2

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 16–2 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 16–2 amends the FMP to include overfished species rebuilding plans for lingcod, canary rockfish, darkblotched rockfish, and Pacific ocean perch (POP) within the FMP. Amendment 16–2 is intended to address the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to protect and rebuild overfished species managed under a Federal FMP. Amendment 16–2 is also intended to partially respond to a Court order, in which NMFS was ordered to provide Pacific Coast groundfish rebuilding plans as FMPs, FMP amendments, or regulations, per the Magnuson-Stevens Act.

DATES: Comments must be submitted in writing by January 5, 2004.

ADDRESSES: Comments on Amendment 16–2 or supporting documents should be sent to D. Robert Lohn, Administrator, Northwest Region, NMFS, Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070. Attn: Becky Renko.

Copies of Amendment 16–2 and its associated environmental impact statement/regulatory impact analysis/initial regulatory flexibility analysis (EIS/RIR/IRFA) are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280.

FOR FURTHER INFORMATION CONTACT: Becky Renko (Northwest Region, NMFS), phone: 206–526–6150; fax: 206–526–6736 and; e-mail: becky.renko@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the internet at the website of the Office of the **Federal Register**'s website at: *http://www.gpoaccess.gov/fr/index.html.*

Amendment 16–2 revises the FMP to include overfished species rebuilding plans for lingcod, canary rockfish, darkblotched rockfish, and POP and adds specific rebuilding parameters to the Code of Federal Regulations (CFR) at 50 CFR 660.370, for each overfished species. This rulemaking is necessary to implement the rebuilding plans specified by Amendment 16–2.

Amendment 16–2 address the requirements of the Magnuson-Stevens Act) to protect and rebuild overfished species managed under a Federal FMP. Amendment 16–2 is also intended to partially respond to a Court order in *Natural Resources Defense Council, Inc.* v. *Evans*, 168 F. Supp. 2d 1149 (N.D. Cal 2001,), in which NOAA Fisheries was ordered to provide Pacific Coast groundfish rebuilding plans as FMPs, FMP amendments, or regulations, per the Magnuson-Stevens Act. A Notice of Availability for Amendment 16–2 was published on November 7, 2003 (68 FR 63053).

This proposed rule is based on recommendations of the Council, under the authority of the Pacific Coast Groundfish FMP and the Magnuson-Stevens Act. Background information and the Council's recommendations are summarized below. Further detail appears in the EIS/RIR/IRFA prepared by Council staff for Amendment 16–2.

Background

In the fall of 2000, NMFS had approved the first three rebuilding plans for lingcod, boccacio, and POP (September 5, 2000, 65 FR 53646). Subsequently, requirements for developing overfished species rebuilding plans were addressed in Amendment 12 to the FMP, which were submitted for public review (September 8, 2000, 65 FR 54475) and approved by NMFS on December 7, 2000.

During NMFS's review of Amendment 12, the agency considered whether the three previously approved rebuilding plans met the requirements of Amendment 12 and concluded that the plans did not. As a result, NMFS instructed the Council to re-submit the rebuilding plans for lingcod, boccacio, and POP. The final rule to implement Amendment 12 describes NMFS's revocation of the lingcod, boccacio, and POP rebuilding plans (December 29, 2000, 65 FR 82947). In the absence of final rebuilding plans approved by NMFS, the groundfish fishery has continued to operate under interm rebuilding measures for these species.

While NMFS and the Council were developing rebuilding plans that were consistent with the requirements of Amendment 12, NMFS notified the Council that canary rockfish and cowcod were overfished and that Council must submit rebuilding plans for these species (On January 4, 2000 65 FR 221). On January 11, 2001 (66 FR 2338), NMFS notified the Council that darkblotched and widow rockfish were overfished and that Council must submit rebuilding plans for these species.

On August 20, 2001, a Federal magistrate ruled in *National Resources Defense Council, Inc.* v. *Evans* (N.D. Cal. 2001) that rebuilding plans under the FMP must be in the form of a plan amendment or proposed regulations as specified by the Magnuson-Stevens Act, 16 U.S.C. 1854 (e)(3). In accordance with the Court ruling, the magistrate issued an order setting aside those portions of Amendment 12 dealing with rebuilding plans (Amendment 12 provided a framework for rebuilding plans that were not themselves plan amendments or proposed regulations). As a result of the magistrate's decision, the Council was required to amend the FMP to make rebuilding plans consistent with the Magnuson-Stevens Act.

On January 11, 2002 (67 FR 1555), NMFS notified the Council that yelloweye rockfish was overfished and that the Council must submit a rebuilding plan. On April 15, 2002 (67 FR 18117), NMFS notified the Council that Pacific whiting was overfished and that the Council must submit a rebuilding plan.

Amendment 16–1 was prepared in part to respond to the court order. Amendment 16 1 establishes a process for and standards by which the Council will specify rebuilding plans for groundfish stocks that are declared overfished. Amendment 16–1 also amends the FMP to require that Pacific Coast groundfish overfished species rebuilding plans be added into the FMP via FMP amendment, and implemented through Federal regulations. Amendment 16 1 is intended to ensure that overfished species rebuilding plans meet the requirements of the Magnuson-Stevens Act, in particular National Standard 1 on overfishing and section 304(e), which addresses rebuilding of overfished fisheries. NMFS approved Amendment 16–1 on November 14, 2003. A proposed rule to codify provisions of Amendment 16–1 was published in the **Federal Register** on September 5, 2003 (68 FR 52732).

For each approved overfished species rebuilding plan, the following parameters will be specified in the FMP: estimates of unfished biomass (B_0) and target biomass (B_{MSY}), the year the stock would be rebuilt in the absence of fishing (T_{MIN}), the year the stock would be rebuilt if the maximum time period permissible under National Standard Guidelines were applied (T_{MAX}) and the target year in which the stock would be rebuilt under the adopted rebuilding plan (T_{Target}). Other relevant information listed in Amendment 16–1 will also be included in the FMP, including the probability of the stock attaining B_{MSY} by T_{MAX} (P_{MAX}). These estimated rebuilding parameters will serve as management benchmarks in the FMP and the FMP will not be amended if the values for these parameters change after new stock assessments are completed, as is likely to happen.

As required by the standards established by Amendment 16–1, the rebuilding plans being adopted under Amendment 16–2 for lingcod, canary rockfish, darkblotched rockfish, and POP include B_0, B_{MSY}, T_{MIN}, T_{MAX}, and T_{Target} for each species. If adopted, Amendment 16–2 would add these parameters to section 4.5.4. of the FMP. Other relevant information on each of these overfished stocks, such as stock distribution, fishery interaction, and the rebuilding strategy would also be added to section 4.5.4 of the FMP if the rebuilding plans proposed under Amendment 16–2 are adopted.

Amendment 16–1 specified two rebuilding parameters that are to be codified in Federal regulations for individual species rebuilding plans. This proposed rule adds these rebuilding parameters to the Code of Federal Regulations (CFR) at 50 CFR 660.370. These parameters are the target year for rebuilding and the harvest control rule that is to be used during the rebuilding period. The target rebuilding year is the year in which there is a 50 percent likelihood that the stock will have been rebuilt with a given mortality rate. The harvest control rule expresses a given fishing mortality rate that is to be used over the course of rebuilding. These parameters would be used to establish the annual optimum yields (OYs). Conservation and management goals defined in the FMP require the Council and NMFS to manage to the appropriate harvest levels for a species or species groups, including those harvest levels established for rebuilding overfished species.

If, after a new stock assessment, the Council and NMFS conclude that either

or both of the parameters defined in regulation should be revised, the revision will be implemented through the Federal rulemaking process, and the updated values codified in the Federal regulation. Generally, the target year should only be changed in unusual circumstances. Two such unusual circumstances include (1) if, it is determined, based on new information, that the existing target year is later that the maximum rebuilding time (T_{MAX}), (2) or if the harvest control rule calculated from the new information is estimated to result in such a low OY as to cause substantial socio-economic impacts. Any change to a harvest control rule must be fully supported by a corresponding analysis and updated through the Federal rulemaking process which would include opportunity for public notice and comment.

An approved rebuilding plan will be implemented through setting OYs and establishing management measures necessary to maintain the fishing mortality within the OYs to achieve objectives related to rebuilding requirements.

At the Council's June 2003 meeting, rebuilding plans for lingcod, canary rockfish, darkblotched rockfish, and POP were adopted and include the parameters listed below. When making the recommendation to implement these rebuilding plans, the Council sought to balance the rebuilding risks to each stock with the short and long-term socio-economic costs borne by groundfish buyers, commercial harvesters, and recreational operators as a result of constraining the fisheries to reduce total mortality of these overfished species.

Amendment 16–2 will be followed by Amendment 16–3. A notice of intent to prepare an Environmental Impact Statement (EIS) was published on September 12, 2003 (68 FR 53712) for Amendment 16–3. If approved, Amendment 16–3 will contain rebuilding plans for bocaccio, cowcod, widow rockfish and yelloweye rockfish. The Council is scheduled to take final action on the Amendment 16–3 rebuilding plans at its April 2004 meeting. A Draft EIS is scheduled for publication in June 2004.

Lingcod

Lingcod are irregularly distributed coastwide in hard bottom areas and around rocky reefs and are encountered in a variety of commercial and recreational fisheries. Lingcod is also an important recreational species coastwide. North of 40°10′ N. lat., limited entry trawl and limited entry fixed gear vessels have historically landed a substantial portion of the lingcod landings in that area. The open access sector, which is comprised of many types of fixed gear and uses a variety of strategies, has also accounted for a substantial portion of the lingcod mortality.

Date declared overfished: March 3, 1999.

Status of the stock when declared overfished: In 1999 the biomass was believed to be at 10 percent of its unfished biomass level. A coastwide assessment was conducted in 2000 and confirmed that the stock was overfished coastwide.

B_0: 22,882 mt north and 20,971 mt south

B_{MSY}: 9,153 mt north and 8,389 south

T_{MIN}: 2007

T_{MAX}: 2009

P_{MAX}: 60 percent

T_{TARGET}: 2009

Harvest control rule: F=0.00531 north and F=0.061 south

Rebuilding strategy at the time of rebuilding plan adoption: Management measures intended to limit bycatch of lingcod include the use of Rockfish Conservation Areas (RCAs) to restrict fishing in areas where overfished species are most likely to occur, and the use of cumulative trip limits. Small trip limits are allowed in the trawl fishery to accommodate true incidental catch. Lingcod landings by the limited entry fixed gear and open access fisheries are severely limited during the summer months and have been prohibited during the winter months. Lingcod are vulnerable to these gears during the winter nesting period, but have a high rate of survival when released alive. In addition to recreational bag limits, similar season restrictions have been used in the California and Washington recreational fisheries during the winter months.

Canary rockfish

Canary rockfish prefer rocky areas on the continental shelf (shelf) and are encountered in a wide variety of commercial and recreational fisheries. Limited entry vessels targeting flatfish and arrowtooth flounder have accounted for a large portion of the landed catch north of 40°10′ N. lat. Smaller amounts are taken during the primary whiting season and DTS (Dover sole-thornyhead-sablefish complex) trawl fishery, as well as by fixed gear vessels targeting groundfish on the shelf. Recreational vessels, mainly off the coast of northern California, account for most of the recreational catch of canary rockfish.

Date declared overfished: January 4, 2000 (65 FR 221)

Status of the stock when declared overfished: 22 percent of its unfished biomass level north of Cape Blanco and 8 percent of its unfished biomass level south of Cape Blanco.

B_0: 31,550 mt

B_{MSY}: 12,620 mt

T_{MIN}: 2057

T_{MAX}: 2076

P_{MAX}: 60 percent

T_{TARGET}: 2074

Harvest control rule: F=0.022

Rebuilding strategy at the time of rebuilding plan adoption: Management measures intended to limit bycatch of canary rockfish include the use of RCAs and cumulative trip limits. Bottom trawling is prohibited in the trawl RCA, which covers depths where canary rockfish have been most frequently caught. Cumulative limits are structured to discourage targeting while allowing very low levels of incidental take to be landed. In addition, differential trip limits have been used for large and small footrope trawl gear. By allowing greater limits for large footrope gear and prohibiting its use in nearshore areas, there is an incentive for vessels to fish in deeper waters, beyond the range of canary rockfish.

Recreational fisheries are managed through bag limits, size limits and seasons. As necessary, seasons can be shortened and bag limits reduced to stay within the OY.

Darkblotched rockfish

Darkblotched rockfish occurs on the outer shelf and continental slope (slope), mainly north of Point Reyes (38° N. lat.). Because of their deeper distribution, they are caught exclusively by commercial vessels. Most landings have been made by bottom trawl vessels targeting flatfish on the shelf, and rockfish and the DTS species on the slope.

Date declared overfished: January 11, 2001 (66 FR 2338)

Status of the stock when declared overfished: following a 2000 stock assessment the coastwide stock was believed to be at 22 percent of its unfished biomass level.

B_0: 29,044 mt

B_{MSY}: 11,618 mt

T_{MIN}: 2014

T_{MAX}: 2047

P_{MAX}: 80 percent

T_{TARGET}: 2030

Harvest control rule: F=0.027

Rebuilding strategy at the time of rebuilding plan adoption: Management measures intended to limit bycatch of darkblotched rockfish include the use of RCAs and cumulative trip limits. The boundaries of the RCAs vary by season and fishing sector and may be modified in response to new information about

geographical and seasonal distribution of bycatch. The seaward boundary of the trawl RCA was set at a depth that was likely to keep fishing effort in deeper waters and away from areas where the bycatch of darkblotched rockfish was highest. During the winter months, modifications to the line allow for the harvest of flatfish while minimizing the impacts on darkblotched rockfish.

Cumulative limits for the minor slope rockfish species (the complex that darkblotched rockfish is managed under) north of 40°10′ N. lat. and splitnose rockfish were lowered to reduce the potential take of darkblotched rockfish. As needed, trip limits for other co-occurring species may be adjusted to reduce darkblotched rockfish bycatch.

POP

POP tend to occur in similar depths as darkblotched rockfish, although they have a more northern geographic distribution. POP are caught in similar fisheries as darkblotched rockfish north of 40°10′ N. lat. Limited entry trawl vessels targeting flatfish, including petrale sole and arrowtooth flounder, account for more than 90 percent of all POP landings. POP are not an important component of the recreational fisheries.

Date declared overfished: March 3, 1999

Status of the stock when declared overfished: following a 1998 stock assessment of POP in the Vancouver and Columbia area, the stock was believed to be at 13 percent of unfished biomass level.

B_0: 60,212 units of spawning output

B_{MSY}: 24,084 units of spawning output

T_{MIN}: 2012

T_{MAX}: 2042

P_{MAX}: 70 percent

T_{TARGET}: 2027

Harvest control rule: F=0.0082

Rebuilding strategy at the time of rebuilding plan adoption: Management measures intended to limit the bycatch of POP include the use of RCAs to restrict fishing in areas where overfished species are found and cumulative trip limits. Because POP co-occur with darkblotched rockfish, measures to reduce the incidental catch of darkblotched rockfish benefit POP. These measures include seaward trawl RCA boundaries that are established to keep fishing effort in deeper water where POP are less abundant, and cumulative limits for POP and minor slope rockfish that are intended to discourage targeting while allowing low levels of incidental catch to be landed. As needed, trip limits for other co-occurring species may be adjusted to reduce darkblotched rockfish bycatch.

Classification

At this time, NMFS has not determined whether Amendment 16–2, which this proposed rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared a draft Environmental Impact Statement (EIS) that discusses the effects on the environment as a result of this action. A notice of availability was published on September 19, 2003 (68 FR 54900). A copy of the EIS is available from the Council office. (see **ADDRESSES**)

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

The Council has prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A copy of the full analysis is available from the Council office (see **ADDRESSES**). A summary of the analysis follows.

The purpose of this proposed action is to implement rebuilding plans for four overfished species, lingcod, canary rockfish, darkblotched rockfish and POP. This action is necessary to meet the Magnuson-Seven Act requirements for overfished stocks which are defined in the National Standard Guidelines (50 CFR 600.310). National Standard 1 requires that remedial action be taken by preparing an FMP, FMP amendment or proposed regulation to end overfishing if it is occurring, rebuild overfished stocks to the maximum sustainable yield (MSY) level within an appropriate time frame, and to prevent stocks from becoming overfished if they are approaching an overfished threshold. The objective of this proposed rule is to implement rebuilding parameters that will result in lingcod, canary rockfish, darkblotched rockfish and POP stocks returning to their MSY biomass levels.

There are no recordkeeping, reporting, or other compliance issues forthcoming from this proposed rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

The EIS/RIR/IRFA for this rule defines six alternative actions that were considered for each of the four overfished species. The alternatives present a range of rebuilding strategies in terms of rebuilding probabilities for each species. The no action alternative would be based on the ''40–10 harvest policy'', which is the default rebuilding policy for setting OYs. Under the 40–10 harvest policy, stocks with biomass levels below B40% have OYs set in relation to the biomass level. At B40%, an OY may be set equal to the ABC. However, if a stock's spawning biomass declines below B40%, the OY is scaled downward until at 10 percent (B10%) the harvest OY is set at zero unless modified for a species-specific rebuilding plan. In comparison to the other alternatives, (except the maximum conservation alternative) the 40–10 policy can result in lower OYs in the short term, when a stock is at a low biomass level, but allow greater harvests when a stock is at higher biomass levels. For further information on the 40–10 policy see the preamble for the annual specifications and management measures published on January 8, 1999 (64 FR 1316) or Section 5.3 of the FMP. The 40–10 policy alternative could require short-term reductions in OYs for stocks at lower biomass levels than would be required under the other alternatives, except the maximum conservation alternative. Such reductions could result in reduced profits, income, and employment in a wide range of groundfish fisheries over a longer period of time than would occur with the other alternatives.

The maximum conservation alternative, based on a harvest mortality rate of zero, would be in place for each stock until the individual stock was rebuilt, resulting in the target rebuilding period for each stock being equal to TMIN. Each stock could be expected to rebuild fastest under this alternative, but at considerable socioeconomic cost. Because canary and darkblotched rockfish are caught in a wide range of other fisheries, a zero harvest mortality rate would likely result in the closure of other fisheries. The rebuilding of these stocks, even in the absence of fishing, is likely to result in many current participants in the commercial recreational fisheries as well as supporting businesses going out of business.

The maximum harvest alternative for each overfished species was based on a 50 percent probability of rebuilding the stocks to their MSY biomass levels by T_{MAX}. This alternative would delay rebuilding for the longest period of time with the intent of keeping harvests at the highest allowable levels for the duration of rebuilding. As a result, this alternative would have the least socioeconomic impact, in the short-term. Delaying the rebuilding period under the maximum harvest alternative

can also be expressed as the level of risk to the overfished stocks. Further delay in rebuilding could have a greater socioeconomic impact than the other alternatives, if currently healthy stocks were overfished.

Intermediate alternatives were defined for each overfished species and were based on 60-,70–and 80–percent probabilities of rebuilding the stocks to their MSY biomass by T_{MAX}. The socio-economic impacts of the intermediate values fall within the range of the other alternatives that were fully analyzed in EIS analysis. Quantifying the differences between these alternatives is difficult given the lack of detailed socio-economic data.

The mixed stock exception alternative would allow higher harvests of canary rockfish and could be combined with any of alternatives (except the no action alternative). Since the demands of rebuilding canary rockfish will affect a range of fisheries, (because it constrains stocks), relaxing this constraint under any of the alternatives would allow a higher harvest level in some fisheries. However, fisheries with little or no canary rockfish bycatch, but with bycatch of other overfished species, would not necessarily benefit. This alternative was not considered for POP or lingcod, since they do not constrain stocks in fisheries where they are targeted or incidentally caught.

The last set of alternatives considered were the Council's preferred alternatives for each species and are as follows: lingcod - 60 percent probability of rebuilding the stock to its MSY biomass by T_{max} with a T_{TARGET} of 2009 and a harvest rate of 0.0531 in the North and 0.0610 in the south; canary rockfish - 60 percent probability of rebuilding the stock to its MSY biomass by T_{MAX} with a T_{TARGET} of 2074 and a harvest rate of 0.0220, darkblotched rockfish - 80–percent probability of rebuilding the stock to its MSY biomass by T_{MAX} with a T_{TARGET} of 2030 and a harvest rate of 0.027, and POP - 70–percent probability of rebuilding the stock to its MSY biomass by T_{MAX} with a T_{TARGET} of 2027 and a harvest rate of 0.0082. The Council's preferred alternatives, were taken from the range of intermediate alternatives for each species.

A fish-harvesting business is considered a ''small'' business by the Small Business Administration (SBA) if it has annual receipts not in excess of $3.5 million. The economic impacts of implementing these rebuilding plans will be shared among the participants. Approximately 1,560 vessels participate in the West Coast groundfish fisheries. Of those, about 410 vessels are registered to limited entry permits issued for either trawl, longline, or pot gear. About 1,150 vessels land groundfish against open access limits while either directly targeting groundfish or taking groundfish incidentally in fisheries directed at non-groundfish species. All but 10–20 of those vessels are considered small businesses by the SBA. Of the 450 groundfish buyers that regularly purchase groundfish, 38 buyers purchased groundfish product in excess of $1,000,000 in 2002. In the 2001 recreational fisheries, there were 106 Washington charter vessels engaged in salt water fishing outside of Puget Sound, 232 charter vessels active on the Oregon coast and 415 charter vessels active on the California coast. NMFS does not know the proportion of recreational charter vessel operations that would be considered large businesses, but the agency believes that the majority of these businesses would be considered ''small'' businesses by the SBA. This proposed rule is not expected to yield disproportionate economic impacts between those small and large entities.

Implementation of specific rebuilding plans may entail substantial economic impacts on some groundfish buyers, commercial harvesters, and recreational operators. The Council preferred rebuilding alternatives specify annual OY levels for the overfished species that are sufficient to mitigate some of the adverse economic impacts on these entities, while not compromising the statutory requirement for timely rebuilding. NMFS welcomes comments on this issue (see **ADDRESSES**) and will notify the public of its final determination as to whether the action will result in a significant impact on a substantial number of small entities and will advise the SBA in the final rule for this action.

This action was developed after meaningful consultation and collaboration with tribal representatives on the Council who have agreed with the provisions that apply to tribal vessels and is, therefore, compliant with Executive Order 13175 (Consultation and coordination with Indian tribal governments).

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: December 2, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. Section 660.370, ''Overfished species rebuilding plans'' is added to read as follows:

§ 660.370 Overfished species rebuilding plans.

(a) *Canary rockfish*. The target date for rebuilding the canary rockfish stock to B_{MSY} is 2074. The harvest control rule to be used to rebuild the canary rockfish stock is an annual harvest rate of F=0.022.

(b) *Darkblotched rockfish*. The target year for rebuilding the darkblotched rockfish stock to B_{MSY} is 2030. The harvest control rule to be used to rebuild the darkblotched rockfish stock is an annual harvest rate of F=0.027.

(c) *Lingcod*. The target year for rebuilding the lingcod stock to B_{MSY} is 2009. The harvest control rule to be used to rebuild the lingcod stock is an annual harvest rate of F=0.0531 in the area north of 40°10 N. lat. and F=0.061 for the area south of 40°10 N. lat.

(d) *Pacific ocean perch (POP)*. The target year for rebuilding the POP stock to B_{MSY} is 2027. The harvest control rule to be used to rebuild the POP stock is an annual harvest rate of F=0.0082.

[FR Doc. 03–30284 Filed 12–4–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031125292–3292–01; I.D. 111703E]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Proposed 2004 Harvest Specifications for Groundfish

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

ACTION: Proposed 2004 harvest specifications for groundfish; request for comments.

SUMMARY: NMFS proposes 2004 harvest specifications for groundfish, reserves and apportionment thereof, Pacific halibut prohibited species catch (PSC) limits, for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits for groundfish during the 2004 fishing year. The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

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

ADDRESSES: Comments must be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments also may be sent via facsimile (fax) to 907–586–7557. Comments will not be accepted if submitted via e-mail or Internet.

Copies of the final 2002 Stock Assessment and Fishery Evaluation (SAFE) reports, dated November 2002, are available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK, 99510 or from its home page at *http://www.fakr.noaa.gov/npfmc.* Copies of the draft Environmental Assessment/Initial Regulatory Flexibility Analysis (EA/IRFA) prepared for this action are available from NMFS (see **ADDRESSES**) and comments must be received by January 5, 2004.

FOR FURTHER INFORMATION CONTACT: Tom Pearson, Sustainable Fisheries Division, Alaska Region, 907–481–1780 or e-mail at *tom.pearson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan (FMP) for Groundfish of the GOA. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

The FMP and implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and for the ''other species'' category, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt) (§ 679.20(a)(1)(ii)). Regulations at § 679.20(c)(1) further require NMFS to publish annually, and solicit public comment on, proposed annual TACs, halibut PSC amounts, and seasonal allowances of pollock, and inshore/offshore Pacific cod. The proposed specifications set forth in Tables 1 through 9 of this document satisfy these requirements. For 2004, the sum of the proposed TAC amounts is 277,797 mt. Under § 679.20(c)(3), NMFS will publish the final specifications for 2004 after (1) considering comments received within the comment period (see **DATES**), (2) consulting with the Council at its December 2003 meeting, and (3) considering new information presented in the EA and the final 2003 SAFE reports prepared for the 2004 fisheries.

Regulations at § 679.20(c)(2)(i) provide that one-fourth of each proposed TAC and apportionment thereof (not including the reserves and the first seasonal allowances of pollock and Pacific cod), one-fourth of the proposed halibut PSC amounts, and the proposed first seasonal allowances of pollock and Pacific cod will become effective 0001 hours, Alaska local time (A.l.t.) January 1, 2004, on an interim basis and remain in effect until superseded by the final harvest specifications, which will be published in the **Federal Register**. Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open on that date, which would result in disruption to the fishing industry. The interim harvest specifications will be published by NMFS in the **Federal Register** prior to January 1, 2004.

Proposed Acceptable Biological Catch (ABC) and TAC Specifications

The proposed ABC and TAC for each species or species group are based on the best available biological and socioeconomic information, including projected biomass trends, information on assumed distribution of stock biomass, and revised methods used to calculate stock biomass. The Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC) reviewed current biological and harvest information about the condition of groundfish stocks in the GOA in October 2003. Most of this information was initially compiled by the Council's GOA Plan Team (Plan Team) and is presented in the final 2002 SAFE report for the GOA groundfish fisheries, dated November 2002. The Plan Team annually produces such a document as the first step in the process of specifying TACs. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the GOA ecosystem and the economic condition of the groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an ABC for each species category. The 2002 SAFE report will be updated to include new information collected during 2003. Revised stock assessments will be made available by the Plan Team in November 2003 and will be included in the final 2003 SAFE report, which will be available in December 2003.

Based on the recommendations from the SSC for overfishing levels (OFLs) and from the SSC and AP for ABCs, the Council recommended the OFLs and ABCs for stocks in tiers 3 and above, except for pollock, be based on biomass projections as set forth in the 2002 SAFE report and estimates of groundfish harvests through the 2003 fishing year. The Council recommended that OFL and ABC levels for those stocks in tiers 4 and below, for which projections cannot be made, remain unchanged from 2003 levels (Table 1).

The SSC adopted the OFL and ABC recommendations from the Plan Team for all groundfish species. In the 2002 SAFE report, the ABC projection for 2004 is 65,400 mt for the combined Western, Central, and West Yakutat (W/C/WYK) GOA stock of pollock. The Plan Team did not endorse the ABC projection because the NMFS 2003 winter Shelikof survey estimates indicate that the biomass level is lower than projected and because it represents a substantial increase from the 2003 ABC. The Plan Team recommended that the 2003 ABC of 47,890 mt for the W/C/WYK pollock stock be rolled over in the proposed specifications given the apparent pessimistic survey results from the NMFS winter survey in the GOA. The SSC concurred with the pollock assessment recommendation that OFL and ABC levels be unchanged from 2003 levels until a formal stock assessment can be completed.

As in 2003, the SSC's, AP's and Council's recommendation for the method of apportioning the sablefish ABC among management areas includes commercial fishery and survey data. NMFS stock assessment scientists believe that the use of unbiased commercial fishery data reflecting catch-per-unit effort provides a desirable input for stock distribution assessments. The use of commercial

fishery data is evaluated annually to assure that unbiased information is included in stock distribution models. The Council's recommendation for sablefish area apportionments also takes into account the prohibition on the use of trawl gear in the Southeast Outside (SEO) District of the Eastern GOA and makes available 5 percent of the combined Eastern GOA ABCs to trawl gear for use as incidental catch in other directed groundfish fisheries in the West Yakutat District.

The AP and Council recommended that the ABC for Pacific cod in the GOA be apportioned among regulatory areas based on the three most recent NMFS summer trawl surveys. As in previous years, the Plan Team, SSC, and Council recommended that total removals of Pacific cod from the GOA not exceed ABC recommendations. Accordingly, the Council recommended that the TACs be adjusted downward from the ABCs by amounts equal to the 2004 guideline harvest levels (GHL) established for Pacific cod by the State of Alaska (State) for the state managed fisheries in the GOA. The effect of the State's GHL on the Pacific cod TAC is discussed in greater detail below. For 2004, NMFS proposes to establish an A season directed fishing allowance (DFA) for the Pacific cod fisheries in the GOA based on the management area TACs less the recent average A season incidental catch of Pacific cod in each management area before June 10 (*see* § 679.20(d)(1)). The DFA and incidental catch before June 10 will be managed such that harvest in the A season will be no more than 60 percent of the annual TAC. Incidental catch taken after June 10 will continue to be taken from the B season TAC. NMFS believes that this action would better reflect the intention behind management measures analyzed in the 2001 Steller Sea Lion Protection Measures Supplemental Environmental Impact Statement to achieve temporal dispersion of the Pacific cod fisheries. NMFS believes that this action would reduce the likelihood of harvest exceeding 60 percent of the annual TAC in the A season (January 1 through June 10). The Council will continue to explore and analyze management alternatives for the Pacific cod fisheries through its Steller Sea Lion Mitigation Committee and in the development of its Gulf Rationalization Plan.

For 2004, the Councils recommended and NMFS proposed the ABCs listed in Table 1. These amounts reflect harvest amounts that are less than the specified overfishing amounts. The sum of 2004 ABCs for all assessed groundfish is 409,690 mt, which is lower than the 2003 ABC total of 416,600 mt.

Specification and Apportionment of TAC Amounts

The Council adopted the AP's proposals for the 2004 GOA TAC amounts. The Council recommended TACs that are equal to ABCs for pollock, deep-water flatfish, rex sole, sablefish, shortraker and rougheye rockfish, northern rockfish, pelagic shelf rockfish, thornyhead rockfish, demersal shelf rockfish, and Atka mackerel. The Council-recommended TACs that are less than the ABCs for Pacific cod, flathead sole, shallow-water flatfish, arrowtooth flounder, Pacific ocean perch, and other rockfish.

The apportionment of annual pollock TAC among the Western and Central Regulatory Areas of the GOA reflects the seasonal biomass distribution and is discussed in greater detail below. The annual pollock TAC in the Western and Central Regulatory Areas of the GOA is divided into four equal seasonal apportionments. Twenty-five percent of the annual TAC in the Western and Central Regulatory Areas of the GOA is apportioned to each of the A season (January 20 through February 25), the B season (March 10 through May 31), the C season (August 25 through September 15), and the D season (October 1 through November 1) in Statistical Areas 610, 620, and 630 of the GOA (see § 679.23(d)(2)(i) through (iv) and § 679.20(a)(5)(iii)(B)).

The 2004 Pacific cod TAC is affected by the state's developing fishery for Pacific cod in state waters in the Central and Western GOA, as well as in Prince William Sound (PWS). The SSC, AP, and Council recommended that the sum of all state and Federal water Pacific cod removals should not exceed the ABC. Accordingly, the Council recommended that Pacific cod TAC be reduced from ABC levels to account for State GHLs in each regulatory area of the GOA so that the TAC for (1) the Eastern GOA be lower than the ABC by 290 mt, (2) the Central GOA be lower than the ABC by 6,038 mt, and (3) the Western GOA be lower than the ABC by 4,662 mt. These amounts reflect the sum of State's 2004 GHLs in these areas, which are 10 percent, 23 percent, and 25 percent of the Eastern, Central, and Western GOA ABCs, respectively.

NMFS is also establishing seasonal apportionments of the annual Pacific cod TAC in the Western and Central Regulatory Areas at 60 percent of the annual TAC to the A season for hook-and-line, pot or jig gear from January 1 through June 10 and for trawl gear from January 20 through June 10; and at 40 percent of the annual TAC to the B season for hook-and-line, pot or jig gear from September 1 through December 31 and for trawl gear from September 1 through November 1 (*see* §§ 679.23(d)(3) and 679.20(a)(11)). These seasonal apportionments of the annual Pacific cod TAC are discussed in greater detail below.

The FMP specifies that the TAC for the ''other species'' category is calculated as 5 percent of the combined TAC amounts for target species. The 2004 GOA-wide ''other species'' TAC is 10,847 mt, which is 5 percent of the sum of the combined TAC amounts (216,950 mt) for the assessed target species. The sum of the TACs for all GOA groundfish is 227,797 mt, which is within the OY range specified by the FMP. The sum of the 2004 TACs is lower than the 2003 TAC sum of 236,440 mt. NMFS finds that the Council's recommendations for proposed OFL, ABC, and TAC amounts are consistent with the biological condition of groundfish stocks as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the required OY range of 116,000 to 800,000 mt. The proposed 2004 ABCs, TACs, and OFLs are shown in Table 1.

In October 2003, the Council took final action on Amendment 63 to the GOA FMP. This action, if approved, would remove skates from the ''other species'' assemblage in the GOA and establish OFL and ABC levels for skates on an annual basis. The EA/RIR/IRFA for Amendment 63 is included in the EA/IRFA for the annual specifications and is available from NMFS (*see* ADDRESSES). The EA for Amendment 63 examines a range of alternatives for the management of skates in the GOA. The alternatives range from a single gulfwide OFL, ABC, and TAC for all skate species in the GOA to multiple OFLs, ABCs, and TACs by management area (the Western, Central, and Eastern GOA) and by skate species targeted in directed fisheries (big skate, longnose skate, and all other skate species). At its October meeting, the Council did not recommend specific amounts for the 2004 OFL, ABC, and TAC levels for skates in the GOA pending an updated skate assessment using the most recent data collected in 2003. The updated skate assessment will be included in the final 2003 SAFE report, which will not be available for the Council's consideration until December 2003. At that time, the Council will make final recommendations for skate OFL, ABC, and TAC amounts in the GOA for the 2004 fishing year. These will be

reflected in the final harvest specifications for the 2004 fishing year.

TABLE 1.—PROPOSED 2004 ABCS, TACS, AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA

[Values are rounded to the nearest metric ton]

Species/Area [1]	ABC	TAC	Overfishing
Pollock:[2]			
Shumagin (610)	16,788	16,788	.....
Chirikof (620)	19,685	19,685	.....
Kodiak (630)	10,339	10,339	.....
WYK (640)	1,078	1,078	.....
Subtotal: W/C/WYK	47,890	47,890	90,900
SEO (650)	6,460	6,460	8,610
Total	54,350	54,350	99,510
Pacific cod:[3]			
W	18,649	13,987	.....
C	26,254	20,215	.....
E	2,897	2,607	.....
Total	47,800	36,809	63,700
Flatfish [4] (deep-water):			
W	180	180	.....
C	2,220	2,220	.....
WYK	1,330	1,330	.....
SEO	1,150	1,150	.....
Total	4,880	4,880	6,430
Rex sole:			
W	1,280	1,280	.....
C	5,540	5,540	.....
WYK	1,600	1,600	.....
SEO	1,050	1,050	.....
Total	9,470	9,470	12,320
Flathead sole:			
W	14,916	2,000	.....
C	18,914	5,000	.....
WYK	2,634	2,634	.....
SEO	1,136	1,136	.....
Total	37,600	10,770	46,600
Flatfish [5] (shallow-water):			
W	23,480	4,500	.....
C	21,740	13,000	.....
WYK	1,160	1,160	.....
SEO	2,960	2,960	.....
Total	49,340	21,620	61,810
Arrowtooth flounder:			
W	18,670	8,000	.....
C	117,320	25,000	.....
WYK	18,877	2,500	.....
SEO	6,133	2,500	.....
Total	161,000	38,000	188,300
Sablefish [6]			
W	1,968	1,968	.....
C	4,931	4,931	.....
WYK	1,776	1,776	.....
SEO	2,726	2,726	.....
Subtotal E	4,502	4,502	.....
Total	11,400	11,400	16,500
Pacific [7] ocean perch:			
W	2,728	2,700	.....
C	8,597	8,510	.....
WYK	818	810	.....
SEO	1,657	1,640	.....

TABLE 1.—PROPOSED 2004 ABCS, TACS, AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

Species/Area [1]	ABC	TAC	Overfishing
Subtotal E	.....	.....	.....
Total	13,800	13,660	16,400
Short raker/rougheye: [8]			
W	220	220	.....
C	840	840	.....
E	560	560	
Total	1,620	1,620	2,340
Other rockfish [9,10]			
W	90	90	.....
C	550	550	.....
WYK	270	150	.....
SEO	4,140	200	.....
Total	5,050	990	6,610
Northern rockfish: [10,12,15]			
W	789	789	.....
C	4,111	4,111	.....
E	N/A	N/A	.....
Total	4,900	4,900	5,800
Pelagic shelf rockfish: [13]			
W	510	510	.....
C	3,480	3,480	.....
WYK	640	640	.....
SEO	860	860	.....
Total	5,490	5,490	8,220
Thornyhead rockfish:			
W	360	360	.....
C	840	840	.....
E	800	800	.....
Total	2,000	2,000	3,050
Demersal self rockfish: [11] SEO	390	390	540
Atka mackerel: GW	600	600	6,200
Other [14] species:	GW	N/A	10,847
Total [16]	409,690	227,797	544,330

[1] Regulatory areas and districts are defined at § 679.2.

[2] Pollock is apportioned in the Western/Central Regulatory areas among three statistical areas. During the A season, the apportionment is based on an adjusted estimate of the relative distribution of pollock biomass at 25 percent, 56 percent, and 19 percent in Statistical Areas 610, 620, and 630, respectively. During the B season, the apportionment is based on the relative distribution of pollock biomass at 25 percent, 66 percent, and 9 percent in Statistical Areas 610, 620, and 630, respectively. During the C and D seasons, the apportionment is based on the relative distribution of pollock biomass at 47 percent, 23 percent, and 30 percent in Statistical Areas 610, 620, and 630, respectively. These seasonal apportionments are shown in Table 3. In the West Yakutat and Southeast Outside Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

[3] The annual Pacific cod TAC is apportioned 60 percent to an A season and 40 percent to a B season in the Western and Central Regulatory Areas of the GOA. Pacific cod is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Seasonal apportionments and component allocations of TAC are shown in Table 4.

[4] ''Deep water flatfish'' means Dover sole, Greenland turbot, and deepsea sole.

[5] ''Shallow water flatfish'' means flatfish not including ''deep water flatfish,'' flathead sole, rex sole, or arrowtooth flounder.

[6] Sablefish is allocated to trawl and hook-and-line gears (Table 2).

[7] ''Pacific ocean perch'' means *Sebastes alutus.*

[8] ''Shortraker/rougheye rockfish'' means *Sebastes borealis* (shortraker) and *S. aleutianus* (rougheye).

[9] ''Other rockfish'' in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category ''other rockfish'' in the Southeast Outside District means Slope rockfish.

[10] ''Slope rockfish'' means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), and *S. reedi* (yellowmouth). In the Eastern GOA only, ''slope rockfish'' also includes northern rockfish, *S. polyspinous.*

[11] ''Demersal shelf rockfish'' means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

[12] ''Northern rockfish'' means *Sebastes polyspinis.*

[13] ''Pelagic shelf rockfish'' means *Sebastes ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).

[14] ''Other species'' means sculpins, sharks, skates, squid, and octopus. The TAC for ''other species'' equals 5 percent of the TACs of assessed target species.

[15] N/A means not applicable.

[16] The total ABC and OFL is the sum of the ABCs and OFLs for assessed target species.

Proposed Apportionment of Reserves

Regulations implementing the FMP require 20 percent of each TAC for pollock, Pacific cod, flatfish, and the ''other species'' category be set aside in reserves for possible apportionment at a later date (*see* § 679.20(b)(2)). In 2003, NMFS reapportioned all of the reserves in the final harvest specifications. Between 1997 and 2000, NMFS retained the Pacific cod reserve to provide for a management buffer to account for excessive fishing effort and incomplete or late catch reporting. NMFS believes this is no longer necessary as estimates of catch and incidental catch needs in other directed fisheries have improved in recent years. For 2004, NMFS proposes apportionment of all of the reserve for pollock, Pacific cod, flatfish, and ''other species''. Specifications of TAC shown in Table 1 reflect apportionment of reserve amounts for these species and species groups.

Proposed Allocations of the Sablefish TAC Amounts to Vessels Using Hook-and-Line and Trawl Gear

Under § 679.20(a)(4)(i) and (ii), sablefish TACs for each of the regulatory areas and districts are allocated to hook-and-line and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is allocated to hook-and-line gear and 20 percent of each TAC is allocated to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is allocated to hook-and-line gear and 5 percent is allocated to trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be used to support incidental catch of sablefish in directed fisheries for other target species. In recognition of the trawl ban in the SEO District of the Eastern Regulatory Area, the Council recommended that 5 percent of the combined Eastern GOA sablefish be allocated to trawl gear in the WYK District and the remainder to vessels using hook-and-line gear. In the SEO District, 100 percent of the sablefish TAC is allocated to vessels using hook-and-line gear. This recommendation results in an allocation of 225 mt to trawl gear and 1,551 mt to hook-and-line gear in the WYK District and 2,726 mt to hook-and-line gear in the SEO District. Table 2 shows the allocations of the proposed 2004 sablefish TACs between hook-and-line gear and trawl gear.

TABLE 2.—PROPOSED 2004 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ALLOCATIONS THEREOF TO HOOK-AND-LINE AND TRAWL GEAR

[Values are rounded to the nearest metric ton]

Area/District	TAC	Hook-and-line allocation	Trawl allocation
Western	1,968	1,574	394
Central	4,931	3,945	986
West Yakutat	1,776	1,551	225
Southeast Outside	2,726	2,726	0
Total	11,400	9,796	1,605

Proposed Apportionments of Pollock TAC Among Seasons and Regulatory Areas, and Allocations for Processing by Inshore and Offshore Components

In the GOA, pollock is apportioned by season and area, and is further allocated for processing by inshore and offshore components. Under regulations at § 679.20(a)(5)(iii)(B), the annual pollock TAC specified for the Western and Central Regulatory Areas of the GOA is apportioned into four equal seasonal allowances of 25 percent. As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 through February 25, March 10 through May 31, August 25 through September 15, and October 1 through November 1, respectively.

Pollock TACs in the Western and Central Regulatory Areas of the GOA in the A and B seasons are apportioned among statistical areas 610, 620, and 630 in proportion to the distribution of pollock biomass as determined by a composite of NMFS winter surveys and in the C and D seasons in proportion to the distribution of pollock biomass as determined by the four most recent NMFS summer surveys. As in 2003, the Council recommended that during the A season, the winter and summer distribution of pollock be averaged in the Central Regulatory Area to better reflect the distribution of pollock and the performance of the fishery in the area during the A season. Within any fishing year, the underage or overage of a seasonal apportionment may be added to or subtracted from subsequent seasonal apportionments in a manner to be determined by the Regional Administrator, Alaska Region, NMFS, provided that the sum of the revised seasonal allowances does not exceed 30 percent of the annual TAC apportionment for the Central and Western Regulatory Areas in the GOA (§ 679.20(a)(5)(iii)(B)). For 2004, 30 percent of the proposed annual TAC for the Central and Western Regulatory Areas is 14,044 mt. The WYK and SEO District pollock TACs of 1,078 mt and 6,460 mt, respectively, are not allocated seasonally.

Regulations at § 679.20(a)(6)(i) require that 100 percent of the pollock TAC in all regulatory areas and all seasonal allowances thereof be allocated to vessels catching pollock for processing by the inshore component after subtraction of amounts that are projected by the Regional Administrator to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. The amount of pollock available for harvest by vessels harvesting pollock for processing by the offshore component is that amount actually taken as incidental catch during directed fishing for groundfish species other than pollock, up to the maximum retainable amounts allowed under regulations at § 679.20(e) and (f). At this time, these incidental catch amounts are unknown and will be determined during the fishing year.

The proposed seasonal biomass distribution of pollock in the Western and Central GOA, area apportionments, and seasonal allowances for the A, B, C, and D seasons are summarized in Table 3.

TABLE 3.—PROPOSED DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GULF OF ALASKA; SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC IN 2004

[Values are rounded to the nearest metric ton]

Season	Shumagin (Area 610) (biomass distribution)	Chirikof (Area 620) (biomass distribution)	Kodiak (Area 630) (biomass distribution)	Total (biomass distribution)
A	2,894 (25%)	6,535 (56%)	2,274 (19%)	11,703 (100%)
B	2,894 (25%)	7,778 (66%)	1,031 (9%)	11,703 (100%)
C	5,500 (47%)	2,686 (23%)	3,517 (30%)	11,703 (100%)
D	5,500 (47%)	2,686 (23%)	3,517 (30%)	11,703 (100%)
Annual Total	16,788	19,685	10,339	46,812

Proposed Seasonal Apportionments of Pacific Cod TAC and Allocations for Processing of Pacific Cod TAC Between Inshore and Offshore Components

Pacific cod fishing is divided into two seasons in the Western and Central Regulatory Areas of the GOA. For hook-and-line, pot and jig gear, the A season is January 1 through June 10, and the B season is September 1 through December 31. For trawl gear, the A season is January 20 through June 10, and the B season is September 1 through November 1, (§ 679.23(d)(3)). After subtraction of incidental catch, 60 percent and 40 percent of the annual TAC will be available for harvest during the A and B seasons, respectively, and will be apportioned between the inshore and offshore processing components as provided in § 679.20(a)(6)(ii). Between the A and the B seasons, directed fishing for Pacific cod is closed and fishermen participating in other directed fisheries may retain Pacific cod up to the maximum retainable amounts allowed under regulations at § 679.20(e) and (f). For purposes of clarification, NMFS points out that the dates for the A season and the B season Pacific cod fisheries differ from those of the A, B, C, and D seasons for the pollock fisheries. In accordance with § 679.20(a)(11)(ii), any overage or underage of Pacific cod harvest from the A season may be subtracted from or added to the subsequent B season.

Regulations at § 679.20(a)(6)(ii) require that the TAC apportionment of Pacific cod in all regulatory areas be allocated to vessels catching Pacific cod for processing by the inshore and offshore components. Ninety percent of the Pacific cod TAC in each regulatory area is allocated to vessels catching Pacific cod for processing by the inshore component. The remaining 10 percent of the TAC is allocated to vessels catching Pacific cod for processing by the offshore component. These seasonal apportionments and allocations of the proposed 2004 Pacific cod TAC are shown in Table 4.

TABLE 4.—PROPOSED 2004 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS

[Values are rounded to the nearest metric ton]

Season	Regulatory area	TAC	Component allocation	
			Inshore (90%)	Offshore (10%)
	Western	13,987	12,588	1,399
A Season (60%)		8,392	7,553	839
B Season (40%)		5,595	5,035	560
	Central	20,215	18,193	2,022
A Season (60%)		12,129	10,916	1,213
B Season (40%)		8,086	7,277	809
	Eastern	2,607	2,346	261
Total		36,809	33,127	3,682

"Other Species" TAC

The FMP specifies that the amount for the "other species" category is calculated as 5 percent of the combined TAC amounts for target species. The GOA-wide "other species" TAC is calculated as 10,847 mt, which is 5 percent of the sum of combined TAC amounts for the target species. As discussed above, if Amendment 63 is approved, skates would be removed from the "other species" assemblage and the Council would recommend final OFL, ABC, and TAC amounts for skates and an adjusted TAC for the "other species" category for the 2004 fishing year in the final 2004 harvest specifications for groundfish in the GOA.

Proposed Pacific Halibut PSC Mortality Limits

Under § 679.21(d), annual Pacific halibut PSC limits are established and apportioned to trawl and hook-and-line gear and may be established for pot gear. In October 2003, the Council

recommended to maintain the 2003 halibut PSC limits of 2,000 mt for the trawl fisheries and 300 mt for the hook-and-line fisheries, with 10 mt of the hook-and-line limit allocated to the demersal shelf rockfish (DSR) fishery in the Southeast Outside District and the remainder to the remaining hook-and-line fisheries. NMFS concurs with this recommendation. The DSR fishery is defined at § 679.21(d)(4)(iii)(A) and historically has been apportioned this amount in recognition of its small scale harvests. Although observer data are not available to verify actual bycatch amounts because most vessels in the DSR fishery are less than 60 ft (18.3 m) length overall (LOA) and are exempt from observer coverage, halibut bycatch in the DSR fishery is assumed to be low because of the short gear soak times and duration of the DSR fishery. Also, the DSR fishery occurs in the winter when less overlap occurs in the distribution of DSR and halibut. If Amendment 63, which removes skates from the ''other species'' assemblage is approved, the Council, at its December 2003 meeting, may recommend a separate halibut PSC allowance for hook-and-line gear in the skates fishery for 2004.

Regulations at § 679.21(d)(4) authorize exemption of specified nontrawl fisheries from the halibut PSC limit. The Council recommended that pot gear, jig gear, and the hook-and-line sablefish fishery be exempted from the nontrawl halibut limit for 2004. The Council recommended these exemptions because the low halibut bycatch mortality experienced in the pot gear fisheries (4 mt in 2001, 2 mt in 2002, and 14 mt in 2003), and because of the 1995 implementation of the sablefish and halibut Individual Fishing Quota (IFQ) program that requires legal-sized halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder is aboard and is holding unused halibut IFQ. This provision results in reduced halibut discard in the sablefish fishery. Halibut mortality for the jig gear fleet cannot be estimated because these vessels do not carry observers. However, halibut mortality is assumed to be very low given the small amount of groundfish harvested by this gear type (336 mt in 2001, 277 mt in 2002, and 294 mt in 2003) and the assumed high survival rate of any halibut that are incidentally taken by jig gear and released. Because of these reasons, NMFS concurs with the Council's recommendations.

Under § 679.21(d)(5), NMFS seasonally apportions the halibut PSC limits based on recommendations from the Council. The FMP and regulations require that the following information be considered by the Council and NMFS in seasonally apportioning halibut PSC limits: (1) Seasonal distribution of halibut, (2) seasonal distribution of target groundfish species relative to halibut distribution, (3) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catch of target groundfish species, (4) expected bycatch rates on a seasonal basis, (5) expected changes in directed groundfish fishing seasons, (6) expected actual start of fishing effort, and (7) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

The final rule establishing the final 2003 groundfish and PSC specifications (68 FR 9924, March 3, 2003) summarizes Council and NMFS findings with respect to each of the FMP considerations set forth above. At this time, the Council's and NMFS' findings are unchanged from those set forth in 2003. Proposed Pacific halibut PSC limits, and apportionments thereof, are presented in Table 5. Regulations at § 679.21(d)(5)(iii) and (iv) specify that any overages or shortfalls in a seasonal apportionment of a PSC limit will be deducted from or added to the next respective seasonal apportionment within the 2004 fishing year.

TABLE 5.—PROPOSED 2004 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS

[The Pacific halibut PSC limit for hook-and-line gear is allocated to the demersal shelf rockfish (DSR) fishery and fisheries other than DSR. The hook-and-line sablefish fishery is exempt from halibut PSC limits. (Values are in metric tons)]

Trawl gear		Hook-and-line gear			
		Other than DSR		DSR	
Dates	Amount	Dates	Amount	Dates	Amount
January 20–April 1	550 (27.5%)	January 1–June 10	250 (86%)	January–December 31	10 (100%)
April 1–July 4	400 (20%)	June 10–September 1	5 (2%)		
July 4–September 1	600 (30%)	September 1 –December 31	35 (12%)		
September 1–October 1	150 (7.5%)				
October 1–December 31	300 (15%)				
Total	2,000 (100%)		290 (100%)		10 (100%)

Regulations at § 679.21(d)(3)(ii) authorize apportionments of the trawl halibut PSC limit to be further apportioned to trawl fishery categories, based on each category's proportional share of the anticipated halibut bycatch mortality during a fishing year and the need to optimize the amount of total groundfish harvest under the halibut PSC limit. The fishery categories for the trawl halibut PSC limits are: deep-water species complex, comprised of sablefish, rockfish, deep-water flatfish, rex sole and arrowtooth flounder; and shallow-water species complex, comprised of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species'' (§ 679.21(d)(3)(iii)). The proposed apportionment for these two fishery complexes is presented in Table 6.

TABLE 6.—PROPOSED 2004 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX

[Values are in metric tons]

Season	Shallow-water	Deep-water	Total
January 20–April 1	450	100	550
April 1–July 4	100	300	400
July 4–September 1	200	400	600
September 1–October 1	150	(1)	150
Subtotal:			
January 20–October 1	900	800	1,700
October 1–December 31	.....	.....	300
Total	.....	.....	2,000

[1] No apportionment between shallow-water and deep-water fishery complexes during the 5th season (October 1–December 31).

Based on public comment and information contained in the final 2003 SAFE report, which will be available in December 2003, the Council may recommend, or NMFS may make, some changes in the seasonal, gear-type, and fishing-complex apportionments of halibut PSC limits for the final 2004 harvest specifications. NMFS will consider the following types of information in setting final halibut PSC limits.

(A) Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is data collected by observers during 2003. The calculated halibut bycatch mortality by trawl, hook-and-line, and pot gear through October 11, 2003, is 1,915 mt, 294 mt, and 14 mt, respectively, for a total halibut mortality of 2,223 mt.

Halibut bycatch restrictions seasonally constrained trawl and hook-and-line gear fisheries during the 2003 fishing year. Trawling was closed during the second season for the shallow-water complex on June 19 (68 FR 37094, June 23, 2003), during the fourth season for the shallow-water complex on September 12 (68 FR 54395, September 17, 2003), during the second season for the deep-water fishery complex on May 16 (68 FR 27479, May 20, 2003), and during the fifth season for all trawling on October 15 (68 FR 59889, October 20, 2003). The use of hook-and-line gear for groundfish other than DSR and sablefish closed during the second season on August 1 (68 FR 46502, August 6, 2003) and for the remainder of the year on September 28 (68 FR 56788, October 2, 2003).

The amount of the groundfish TACs that vessels using trawl gear might have harvested if halibut catch limitations had not restricted the season in 2003 is unknown.

(B) Expected Changes in Groundfish Stocks

Proposed 2004 ABCs for arrowtooth flounder and Pacific ocean perch are higher than those established for 2003. Proposed 2004 ABCs are lower for Pacific cod, flathead sole, sablefish, and northern rockfish than those established for 2003. Proposed 2004 ABC levels for the remaining target species are unchanged from 2003. More information on these changes is included in the final SAFE report (November 2002) and in the Council and SSC October 2003 meeting minutes.

(C) Expected Changes in Groundfish Catch

The total of the proposed 2004 TACs for the GOA is 227,797 mt, a decrease of 3.7 percent from the 2003 TAC total of 236,440 mt. Those fisheries for which the 2004 TACs are lower than in 2003 are Pacific cod (decreased to 36,809 mt from 40,540 mt), flathead sole (decreased to 10,770 mt from 11,150 mt), sablefish (decreased to 11,400 mt from 14,890 mt), northern rockfish (decreased to 4,900 mt from 5,530 mt), and ''other species'' (decreased to 10,847 mt from 11,260 mt). There are no species for which the proposed 2004 TACs are higher than in 2003.

(D) Current Estimates of Halibut Biomass and Stock Condition

The International Pacific Halibut Commission (IPHC) conducted the most recent halibut stock assessment in December 2002. The halibut resource is considered to be healthy, with total catch near record levels. The current exploitable halibut biomass for 2003 is estimated to be 263,086 mt. This is similar to the estimate of 273,950 mt in 2002.

The exploitable biomass of the Pacific halibut stock apparently peaked at 326,520 mt in 1988. According to the IPHC, the long-term average reproductive biomass for the Pacific halibut resource was estimated at 118,000 mt. Long-term average yield was estimated at 26,980 mt, round weight. The species is fully utilized. Recent average catches (1994–96) were 33,580 mt for the U.S. and 6,410 mt for Canada, for a combined total of 39,990 mt for the entire Pacific halibut resource. This catch was 48 percent higher than long-term potential yield, which reflects the good condition of the Pacific halibut resource. In January 2003, the IPHC recommended commercial catch limits totaling 36,812 mt (round weight) for Alaska in 2003, the same as in 2002. Through December 31, 2002, commercial hook-and-line harvests of halibut in Alaska total 37,219 mt (round weight).

At its January 2003 meeting, IPHC staff reported on the assessment of the halibut stock in 2002. There were some significant technological changes in the assessment as a result of changes in the underlying data being analyzed and the persistence of smaller sizes at age in the central portion of the halibut range. Analyses were conducted for the 2002 assessment to ensure that the stock is not being overharvested. However, the IPHC staff intends to resolve these technical issues with the assessment in 2003. In addition, IPHC staff are investigating a new harvest policy that may result in greater stability in the yield from the fishery and insulate the process of setting catch limits from technological changes in the assessment. This harvest policy will also be reviewed by the IPHC. The resolution of technical issues of the assessment may indicate a larger estimate of biomass in the central region of the stock distribution, but application of the proposed harvest policy might dictate slightly lower yields. Because these two processes may be somewhat

counterbalancing, IPHC staff intend to complete their investigations before recommending any changes to the present catch limits or the harvest policy. While the trajectory of the halibut stock biomass is downward, the biomass is still above the long-term average level and is expected to remain above this level for the next several years.

Additional information on the Pacific halibut stock assessment and the proposed harvest policy may be found in the IPHC's 2002 Pacific halibut stock assessment (December 2002), available from the IPHC on its Web site at *http://www.iphc.washington.edu/hal.com.* IPHC will consider the 2003 Pacific halibut stock assessment for 2004 at its January 2004 annual meeting when it sets the 2004 commercial halibut fishery quotas.

(E) Other Factors

The allowable commercial catch of halibut will be adjusted to account for the overall halibut PSC mortality limit established for groundfish fisheries. The 2004 groundfish fisheries are expected to use the entire proposed halibut PSC limit of 2,300 mt. The allowable directed commercial catch is determined by accounting for the recreational and subsistence catch, waste, and bycatch mortality and then providing the remainder to the directed fishery. Groundfish fishing is not expected to adversely affect the halibut stocks.

Methods available for reducing halibut bycatch include:

(1) Reducing halibut bycatch rates through the Vessel Incentive Program (described below); (2) publication of individual vessel bycatch rates on the NMFS Alaska Region home page at *www.fakr.noaa.gov;* (3) modifications to gear; (4) changes in groundfish fishing seasons; (5) individual transferable quota programs; and (6) time/area closures.

Reductions in groundfish TAC amounts provide no incentive for fishermen to reduce bycatch rates. Costs that would be imposed on fishermen as a result of reducing TAC amounts depend on the species and amounts of groundfish foregone.

Trawl vessels carrying observers for purposes of complying with observer coverage requirements (§ 679.50) are subject to the Vessel Incentive Program. This program encourages trawl fishermen to avoid high halibut bycatch rates while conducting groundfish fisheries by specifying bycatch rate standards for various target fisheries.

Current regulations (*see* § 679.2 Authorized fishing gear, number 12) specify requirements for biodegradable panels and tunnel openings for groundfish pots to reduce halibut bycatch. As a result, low bycatch and mortality rates of halibut in pot fisheries have justified exempting pot gear from PSC limits.

The regulations also define pelagic trawl gear in a manner intended to reduce bycatch of halibut by displacing fishing effort off the bottom of the sea floor when certain halibut bycatch levels are reached during the fishing year. The definition provides standards for physical conformation (§ 679.2, see Authorized fishing gear number (11)) and performance of the trawl gear in terms of crab bycatch (§ 679.7(a)(14)). Furthermore, all hook-and-line vessel operators are required to employ careful release measures when handling halibut bycatch (§ 679.7(a)(13)). These measures are intended to reduce handling mortality, thereby lowering overall halibut bycatch mortality in the groundfish fisheries, and to increase the amount of groundfish harvested under the available halibut mortality bycatch limits.

NMFS and the Council will review the methods available for reducing halibut bycatch listed here to determine their effectiveness, and will initiate changes, as necessary, in response to this review or to public testimony and comment.

Halibut Discard Mortality Rates

The Council recommended that the recommended halibut discard mortality rates (DMRs) developed by the staff of the IPHC for the 2003 GOA groundfish fisheries be used to monitor halibut bycatch mortality limits established for the 2004 GOA groundfish fisheries. NMFS concurs with this recommendation. The IPHC recommended use of long-term average DMRs for the 2001–2003 groundfish fisheries. The IPHC also recommended a provision that DMRs could be revised should analysis indicate that a fishery's annual DMR diverges substantially (up or down) from the long-term average. Most of the IPHC's assumed DMRs were based on an average of mortality rates determined from NMFS observer data collected between 1990 and 1999. DMRs were lacking for some fisheries, so rates from the most recent years were used. For the ''other species'' fishery, where insufficient mortality data are available, the mortality rate of halibut caught in trawl, hook-and-line, and pot gear Pacific cod fisheries were recommended as a default rate. The DMRs proposed for 2004 are unchanged from those used in 2003 in the GOA. The proposed DMRs for hook-and-line targeted fisheries range from 8 to 24 percent. The proposed DMRs for trawl targeted fisheries range from 58 to 72 percent. The proposed DMRs for all pot targeted fisheries is 14 percent. The proposed 2004 DMRs are listed in Table 7. The justification for these proposed DMRs is discussed in Appendix A of the final SAFE report dated November 2002.

TABLE 7.—PROPOSED 2004 PACIFIC HALIBUT DISCARD MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA

[Listed values are percent of halibut bycatch assumed to be dead]

Gear/Target	Mortality rate
Hook-and-line:	
Pacific cod	14
Rockfish	8
Other species	14
Sablefish	24
Trawl:	
Pelagic pollock	72
Rockfish	69
Shallow-water flatfish	69
Pacific cod	61
Deep-water flatfish	60
Flathead sole	58
Rex sole	61
Non pelagic pollock	61
Arrowtooth flounder	62
Atka mackerel	70
Sablefish	66
Other species	61
Pot:	
Pacific cod	14
Other species	14

Non-exempt American Fisheries Act (AFA) Catcher Vessel Groundfish Harvest and PSC Limitations

One of the provisions implemented by AFA regulations was to place groundfish harvesting and processing limitations, also called sideboards, on AFA catcher/processors and catcher vessels in the GOA. These limitations are considered necessary for fishermen and processors who have received exclusive harvesting and processing privileges under the AFA to protect the interests of fishermen and processors who have not directly benefitted from the AFA. Under the AFA regulations, AFA catcher/processors (§ 679.4 (l)(2)(i)) are prohibited from fishing for any species of fish (§ 679.7(k)(1)(ii)) and from processing any groundfish harvested in Statistical Area 630 of the GOA (§ 679.7(k)(1)(iv)). The Council recommended that certain AFA catcher vessels in the GOA be exempt from groundfish harvest limitations. Exempted AFA catcher vessels in the GOA are those less than 125 ft (38.1 m) LOA whose annual Bering Sea and

Aleutian Islands management area (BSAI) pollock landings totaled less than 5,100 mt and that made 40 or more GOA groundfish landings from 1995 through 1997 (§ 679.64(b)(2)(ii)).

For non-exempt AFA catcher vessels in the GOA, harvest limitations are based on their traditional harvest levels of TAC in groundfish fisheries covered by the GOA FMP. The amounts of the groundfish harvest limits in the GOA are based on the retained catch of non-exempt AFA catcher vessels of each sideboard species from 1995 through 1997 divided by the TAC for that species over the same period (§ 679.64(b)(3)(iii)). These amounts are listed in Table 8. All harvests of sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or bycatch, will be deducted from the sideboard limits in Table 8.

TABLE 8.—PROPOSED 2004 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS

[Values are in metric tons]

Species/apportionments and allocations by area-season-processor-gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2004 TAC	2004 non-exempt AFA catcher vessel sideboard
Pollock:			
A Season (W/C areas only) January 20–February 25:			
Shumagin (610)	0.6112	2,894	1,769
Chirikof (620)	0.1427	6,535	933
Kodiak (630)	0.2438	2,274	554
B Season (W/C areas only) March 10–June 1:			
Shumagin (610)	0.6112	2,894	1,769
Chirikof (620)	0.1427	7,778	1,110
Kodiak (630)	0.2438	1,031	251
C Season (W/C areas only) August 25–September 15:			
Shumagin (610)	0.6112	5,500	3,362
Chirikof (620)	0.1427	2,686	383
Kodiak (630)	0.2438	3,517	857
D Season (W/C areas only) October 1–November 1:			
Shumagin (610)	0.6112	5,550	3,362
Chirikof (620)	0.1427	2,686	383
Kodiak (630)	0.2438	3,517	857
Annual:			
WYK (640)	0.3499	1,078	377
SEO (650)	0.3499	6,460	2,260
Pacific cod:			
A Season [1], January 1–June 10:			
W inshore	0.1423	7,553	1,075
W offshore	0.1026	839	86
C inshore	0.0722	10,916	788
C offshore	0.0721	1,213	87
B Season [2], September 1–December 31:			
W inshore	0.1423	5,035	716
W offshore	0.1026	560	57
C inshore	0.0722	7,277	525
C offshore	0.0721	809	58
Annual:			
E inshore	0.0079	2,346	19
E offshore	0.0078	261	2
Flatfish deep-water:			
W	0.0000	180	0
C	0.0670	2,220	149
E	0.0171	2,480	42
Rex sole:			
W	0.0010	1,280	1
C	0.0402	5,540	223
E	0.0153	2,650	41
Flathead sole :			
W	0.0036	2,000	7
C	0.0261	5,000	131
E	0.0048	3,770	18
Flatfish shallow-water:			
W	0.0156	4,500	70
C	0.0598	13,000	777
E	0.0126	4,120	52
Arrowtooth flounder:			
W	0.0021	8,000	17
C	0.0309	25,000	773
E	0.0020	5,000	10

TABLE 8.—PROPOSED 2004 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS—Continued

[Values are in metric tons]

Species/apportionments and allocations by area-season-processor-gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2004 TAC	2004 non-exempt AFA catcher vessel sideboard
Sablefish:			
W trawl gear	0.0000	394	0
C trawl gear	0.0720	986	71
E trawl gear	0.0488	225	11
Pacific ocean perch:			
W	0.0623	2,700	168
C	0.0866	8,510	737
E	0.0466	2,450	114
Shortraker/Rougheye			
W	0.0000	220	0
C	0.0237	840	20
E	0.0124	560	7
Other rockfish:			
W	0.0034	90	0
C	0.2065	550	114
E	0.0000	350	0
Northern rockfish:			
W	0.0003	789	0
C	0.0336	4,111	150
Pelagic shelf rockfish:			
W	0.0001	510	0
C	0.0000	3,480	0
E	0.0067	1,500	10
Thornyhead rockfish:			
W	0.0308	360	11
C	0.0308	840	26
E	0.0308	800	25
Demersal shelf rockfish: SEO	0.0020	390	1
Atka mackerel: Gulfwide	0.0309	600	19
Other species: Gulfwide	0.0090	10,847	98

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

PSC bycatch limits for non-exempt AFA catcher vessels in the GOA are based on the ratio of aggregate retained groundfish catch by non-exempt AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997 (§ 679.64(b)(4)). These amounts are shown in Table 9.

TABLE 9.—PROPOSED 2004 NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH (PSC) LIMITS FOR THE GOA

[Values are in metric tons]

PSC species/Season	Target fishery	Ratio of 1995–1997 non-exempt AFA CV retained catch to total retained catch	2004 PSC limit	2004 non-exempt AFA catcher vessel PSC limit
Halibut (mortality in mt):				
Trawl 1st Seasonal Allowance	Shallow water targets	0.340	450	153
January 20–April 1	Deep water targets	0.070	100	7
Trawl 2nd Seasonal Allowance	Shallow water targets	0.340	100	34
April 1–July 4	Deep water targets	0.070	300	21
Trawl 3rd Seasonal Allowance	Shallow water targets	0.340	200	68
July 4–September 1	Deep water targets	0.070	400	38
Trawl 4th Seasonal Allowance	Shallow water targets	0.340	150	51
September 1–October 1	Deep water targets	0.070	0	0
Trawl 5th Seasonal Allowance	All targets	0.205	300	61
October 1–December 31	.....do	0.205	300	61

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

NMFS prepared an IRFA for this action in accordance with the provisions of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. Section 603(b)). A copy of this analysis is available from the Council (*see* **ADDRESSES**). This IRFA evaluates the effects of the proposed action on regulated small entities. The reasons for the action, a statement of the objectives of the action, and the legal basis for the proposed rule, are discussed earlier in the preamble.

The small entities affected by this action are those that commercially harvest groundfish under the GOA FMP. Data in the IRFA indicates that 1,115 catcher vessels and 21 catcher-processors may be ''small entities'' under the terms of the RFA.

Using the sectoral first wholesale gross revenue changes as an index the preferred alternative seems to have adverse impacts in the GOA sablefish and Pacific cod sectors. There do not appear to be other adverse impacts associated with the preferred alternative. The model suggests that there will be revenue reductions for flathead sole, rockfish, and other species. However, as reported in the IRFA, the projected revenue reductions for these species appear to be relatively small percentages of the prior year (2003) gross revenue estimates. Given the large confidence intervals believed to be associated with these estimates, these are thought to be minor impacts.

Harvest records indicate that 498 vessels harvested sablefish in the GOA in excess of the minimum harvest threshold adopted to select vessels for the analysis. Of these, 482 were small entities, with revenues under the $3.5 million gross revenues threshold used by the Small Business Administration (SBA) for catcher vessels. These small vessels harvested about 12,395 mt of sablefish in all their sablefish fisheries (some of this tonnage may have come from operations in the BSAI). Another 56 vessels harvested amounts of sablefish below the minimum harvest threshold; these vessels only harvested a total of about 10 mt of sablefish. The 482 small vessels above the threshold averaged about $439,000 in all their fisheries (groundfish, crab, scallops, salmon and herring) in Alaska, and about $121,000 from all their sablefish in Alaska. If the small entity revenue reduction is proportionate to the overall first wholesale ''index'' reduction in the area, and if the small entities catch all of their sablefish in the GOA, the small entity revenue reduction would be about $28,000. This would be about 23.4 percent of their sablefish revenues, and about 6.5 percent of their overall revenues.

Harvest records indicate that 578 vessels harvested Pacific cod in the GOA in excess of the minimum harvest criterion adopted to select vessels for the analysis. Of these, 562 were small entities according to the $3.5 million in gross revenues criteria used by the SBA for catcher vessels. These small vessels harvested about 51,000 mt of Pacific cod in all their Pacific cod fisheries (some of these revenues may have come from operations in the BSAI). Another 263 vessels harvested amounts of Pacific cod below the minimum harvest threshold; these vessels only harvested a total of about 40 mt of Pacific cod. The 562 vessels above the threshold averaged about $331,000 in all their fisheries (groundfish, crab, scallops, salmon and herring) in Alaska, and about $98,000 from all their Pacific cod in Alaska. If the small entity revenue reduction is proportionate to the overall first wholesale ''index'' reduction in the area, and if the small entities catch all of their Pacific cod in the GOA, the small entity revenue reduction would be about $9,000. This would be about 9.2 percent of their Pacific cod revenues, and about 2.7 percent of their overall revenues.

The preferred alternative was compared to the four other alternatives evaluated during the specifications process. These alternatives are defined by TACs set so as to generate different harvest rates (F values). Alternative 1 sets TAC to generate the harvest rate associated with the maximum ABC for each species, Alternative 2 is the preferred alternative, Alternative 3 sets TACs to generate fishing rates that are half those of Alternative 1, Alternative 4 sets TACs to generate fishing rates equal to the most recent five year average rates, and Alternative 5 sets TACs equal to zero. Only Alternative 1 had a smaller adverse impact on small entities than the preferred alternative. However, Alternative 1 would have increased sablefish and Pacific cod harvests and would have failed to meet the objective of protecting the long run health of these stocks.

The action does not impose new recordkeeping or reporting requirements on small entities. The analysis did not reveal any Federal rules that duplicate, overlap or conflict with the proposed action.

Authority: 16 U.S.C. 773 *et seq.* 16 U.S.C 1801 *et seq.*, and 3631 *et seq.*

Dated: December 1, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–30283 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 68, No. 234

Friday, December 5, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–107–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations that provide for the payment of compensation to owners of commercial stone fruit orchards and fruit tree nurseries whose trees or nursery stock were destroyed to eradicate plum pox.

DATES: We will consider all comments that we receive on or before February 3, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–107–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–107–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–107–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: For information regarding the plum pox regulations, contact Mr. Stephen Poe, Operations Officer, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–8899. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Plum Pox Compensation.

OMB Number: 0579–0159.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701–7772) authorizes the Secretary of Agriculture, either independently or in cooperation with the States, to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests, such as plum pox, that are new to or not widely distributed within the United States.

Plum pox is an extremely serious viral disease of plants that can affect many *Prunus* (stone fruit) species, including plum, peach, apricot, almond, nectarine, and sweet and tart cherry. A number of wild and ornamental *Prunus* species may also be susceptible to this disease. Infection eventually results in severely reduced fruit production, and the fruit that is produced is often misshapen and blemished. Plum pox virus is transmitted locally by a variety of aphid species, as well as by budding and grafting with infected plant material, and spreads over longer distances through movement of infected budwood, nursery stock, and other plant parts.

There are no known effective methods for treating trees or other plant material infected with plum pox, nor are there any known effective prophylactic treatments to prevent the disease from occurring in trees exposed to the disease due to their proximity to infected trees or other plant material. Without effective treatments, the only option for preventing the spread of the disease is the destruction of infected and exposed trees and other plant material.

The regulations in ''Subpart—Plum Pox'' (7 CFR 301.74–301.74–5) quarantine areas of the United States where plum pox has been detected, restrict the interstate movement of host material from quarantined areas, and provide for compensation to owners of commercial stone fruit orchards and fruit tree nurseries whose trees or nursery stock were destroyed to eradicate plum pox.

Section 310.74–5 requires applicants for the payment of compensation to complete a form.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.16666 hours per response.

Respondents: Eligible owners of stone fruit orchards and fruit tree nurseries in Pennsylvania.

Estimated annual number of respondents: 6.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 6.

Estimated total annual burden on respondents: 1 hour. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 1st day of December 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–30231 Filed 12–4–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–108–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations for the importation of unshu oranges from Kyushu Island and Honshu Island, Japan, into the United States.

DATES: We will consider all comments that we receive on or before February 3, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–108–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–108–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–108–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: For information regarding regulations for the importation of unshu oranges from Kyushu Island and Honshu Island, Japan, contact Mr. Alan S. Green, Assistant Director, Quarantine Policy, Analysis and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–8311. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Importation of Unshu Oranges.

OMB Number: 0579–0173.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701–7772) authorizes the Secretary of Agriculture to regulate the importation of plants, plant products, and other articles into the United States to prevent the introduction of plant pests and noxious weeds.

The regulations in ''Subpart-Citrus Fruit'' (7 CFR 319.28) allow the importation of unshu oranges from Kyushu Island and Honshu Island, Japan, into the United States under certain conditions. Among other things, the individual boxes in which the oranges are shipped must be stamped or printed with a statement specifying the States into which the oranges may be imported and from which they are prohibited removal under a Federal plant quarantine. The unshu oranges must also be accompanied by a certificate from the Japanese plant protection service certifying that the fruit is apparently free of citrus canker.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.0 hour per response.

Respondents: Full-time, salaried plant health officials of Japan's plant protection service and growers of unshu oranges.

Estimated annual number of respondents: 10.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 10.

Estimated total annual burden on respondents: 10 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 1st day of December 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–30232 Filed 12–4–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–090–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations intended to prevent the interstate spread of fruit flies from Hawaii.

DATES: We will consider all comments that we receive on or before February 3, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–090–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–090–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–090–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: For information regarding regulations to prevent the interstate spread of fruit flies from Hawaii, contact Mr. Alan S. Green, Assistant Director, Quarantine Policy, Analysis and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–8311. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Fruit from Hawaii.

OMB Number: 0579–0123.

Type of Request: Extension of approval of an information collection.

Abstract: In accordance with the Plant Protection Act (7 U.S.C. 7701–7772), the Animal and Plant Health Inspection Service regulates the interstate movement of fruits and vegetables from Hawaii to prevent the interstate spread of fruit flies, including the Mediterranean fruit fly, the melon fly, and the Oriental fruit fly, pests that occur in Hawaii and can cause millions of dollars in damage to U.S. agriculture. The regulations are contained in Subpart—Hawaiian Fruit and Vegetables (7 CFR 318.13 through 318.13–17).

Among other things, the regulations allow the movement of atemoya, longan, rambutan, sapodilla, papaya, carambola, litchi, and other fruits from Hawaii if the fruit is irradiated, either before the interstate movement or at certain locations on the mainland United States.

The provisions of the regulations regarding irradiation require a number of information collection activities, including the use of certificates, limited permits, compliance agreements, requests for treatment facility approval, requests for certification and recertification of testing equipment, and recordkeeping systems.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.1190 hours per response.

Respondents: Fruit producers, shippers, irradiation facility personnel, and State plant regulatory officials.

Estimated annual number of respondents: 300.

Estimated annual number of responses per respondent: 9.15333.

Estimated annual number of responses: 2,746.

Estimated total annual burden on respondents: 327 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 1st day of December, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–30233 Filed 12–4–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–095–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations for importation of seed and screenings.

DATES: We will consider all comments that we receive on or before February 3, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/

commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–095–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–095–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–095–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: For information regarding regulations for importation of seed and screenings, contact Ms. Polly Lehtonen, Botanist, Biological and Technical Services, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–4394. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Imported Seed and Screenings.

OMB Number: 0579–0124.

Type of Request: Extension of approval of an information collection.

Abstract: Under the authority of the Federal Seed Act (FSA) of 1939, as amended (7 U.S.C. 1551 *et seq.*), the U.S. Department of Agriculture (USDA) regulates the importation and interstate movement of certain agricultural and vegetable seeds and screenings. Title III of the FSA, ''Foreign Commerce,'' requires shipments of imported agricultural and vegetable seeds to be labeled correctly and to be tested for the presence of the seeds of certain noxious weeds as a condition of entry into the United States. The Animal and Plant Health Inspection Service's regulations implementing the provisions of title III of the FSA are found in 7 CFR part 361.

The regulations require the use of a number of information collection activities, including declaration of importation, container labeling, notification of seed location, a seed return request, seed analysis certificates, seed identity maintenance, and associated recordkeeping.

We are asking OMB to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.37816 hours per response.

Respondents: Importers of seed and screenings, seed cleaning/processing facility personnel, officials of the Canadian Food Inspection Agency (CFIA), and private seed laboratories accredited by CFIA.

Estimated annual number of respondents: 1,200.

Estimated annual number of responses per respondent: 25.

Estimated annual number of responses: 30,000.

Estimated total annual burden on respondents: 11,345 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 2nd day of December, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–30234 Filed 12–4–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–096–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations under which eligible owners may receive payments to replace trees removed because of citrus canker.

DATES: We will consider all comments that we receive on or before February 3, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–096–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–096–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–096–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: For information regarding the citrus canker regulations, contact Mr. Stephen Poe, Operations Officer, Pest Detection and

Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–8899. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Citrus Canker; Commercial Citrus Tree Replacement Program.

OMB Number: 0579–0163.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701–7772) authorizes the Secretary of Agriculture, either independently or in cooperation with States, to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests, such as citrus canker, that are new to or not widely distributed within the United States.

Citrus canker is a plant disease that affects plant and plant parts, including fresh fruit of citrus and citrus relatives (*Family Rutaceae*). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants that render the fruit unmarketable and cause infected fruit to drop from the trees before reaching maturity. The aggressive A (*Asiatic*) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

Regulations to prevent the interstate spread of citrus canker are contained in 7 CFR 301.75 through 301.75–16. Under § 301.75–15, owners of commercial citrus groves in Florida who have had citrus trees destroyed because of citrus canker may be eligible to receive funds to replace the trees. Owners must complete a form to apply for the funds.

We are asking OMB to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.35 hours per response.

Respondents: Eligible commercial citrus growers in Florida.

Estimated annual number of respondents: 20.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 20.

Estimated total annual burden on respondents: 7 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 1st day of December, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–30235 Filed 12–4–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–097–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations for the importation of artificially dwarfed plants.

DATES: We will consider all comments that we receive on or before February 3, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–097–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–097–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–097–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: For information regarding regulations for the importation of artificially dwarfed plants, contact Mr. Alan S. Green, Assistant Director, Quarantine Policy, Analysis and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–8311. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Importation of Artificially Dwarfed Plants.

OMB Number: 0579–0176.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701–7772) authorizes the Secretary of Agriculture to prohibit or restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States.

The regulations contained in ''Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products'' (7 CFR 319.37 through 319.37–14) prohibit or restrict the importation of

living plants, plant parts, and seeds for propagation.

Among other things, the regulations require artificially dwarfed plants imported into the United States to be accompanied by a phytosanitary certificate issued by the government of the country of origin. This certificate must contain declarations that certain conditions were met in the country of origin to protect against the infestation of the plants by longhorned beetles and other plant pests.

We are asking OMB to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.25 hours per response.

Respondents: Plant health officials of exporting countries.

Estimated annual number of respondents : 20.

Estimated annual number of responses per respondent: 5.

Estimated annual number of responses: 100.

Estimated total annual burden on respondents: 25 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 1st day of December, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–30236 Filed 12–4–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–111–1]

Double-Crested Cormorant Management in the United States; Record of Decision

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice advises the public of the Animal and Plant Health Inspection Service's record of decision for the Double-Crested Cormorant Management in the United States final environmental impact statement.

ADDRESSES: Copies of the record of decision and the final environmental impact statement on which the record of decision is based are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

The record of decision may be viewed on the Wildlife Services Web site at *http://www.aphis.usda.gov/ws/pubs.html.* The final environmental impact statement may also be viewed on the Internet at *http://migratorybirds.fws.gov/issues/cormorant/cormorant.html.*

Copies of the record of decision and the final environmental impact statement may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Mr. David S. Reinhold, Environmental Coordinator, Operational Support Staff, WS, APHIS, 4700 River Road Unit 87, Riverdale, MD 20737–1235; (301) 734–7921.

SUPPLEMENTARY INFORMATION: This notice advises the public that the Animal and Plant Health Inspection Service (APHIS) has prepared a record of decision based on the Double-Crested Cormorant Management in the United States final environmental impact statement (EIS) prepared by the U.S. Fish and Wildlife Service (USFWS). APHIS was a cooperating agency in the preparation of the EIS. The USFWS published the notice of availability for the final EIS in the **Federal Register** on August 11, 2003 (68 FR 47603) and published its Record of Decision on October 8, 2003 (68 FR 58022). APHIS has independently reviewed the EIS and has concluded its comments and suggestions have been satisfied. APHIS has now prepared a record of decision on the adopted EIS and is making it available to the public. This record of decision has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 2nd day of December 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–30229 Filed 12–4–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–112–1]

Vaccination of Wild Bison; Availability of an Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to subcutaneous vaccination of wild, free-ranging bison in the Greater Yellowstone Area with Strain RB51 vaccine to help prevent the spread of brucellosis. The environmental assessment documents our review and analysis of environmental impacts associated with the vaccination and provides a basis for our conclusion that vaccination of the bison will not have a significant impact on the quality of the human environment. We are making the environmental assessment and finding of no significant impact available to the public for review and comment.

DATES: We will consider all comments that we receive on or before January 5, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–112–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–112–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–112–1'' on the subject line.

To obtain copies of the environmental assessment and finding of no significant impact, contact the National Center for Animal Health Programs, Veterinary Services, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–4923. The documents are also available on the Internet at *http://www.aphis.usda.gov/ppd/es/vsdocs.html.*

You may also read the environmental assessment and finding of no significant impact, and any comments we receive on those documents, in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Gertonson, Yellowstone Brucellosis Coordinator, National Center for Animal Health Programs, VS, APHIS, Building B MSC 3E13, 2150 Centre Avenue, Fort Collins, CO 80526–8117; (970) 494–7363.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease caused by *Brucella* bacteria. It can infect cattle, bison, elk, other animals, and humans. In cattle, bison, and elk, the specific disease organism is *Brucella abortus.* In infected cattle and bison, the disease organism localizes in lymph nodes, reproductive organs, and/or the udder, causing abortion in females and systemic effects in both males and females. Brucellosis is transmitted through contaminated and untreated milk and milk products and through direct contact with an infected aborted fetus or calf, afterbirth, or other reproductive tract discharges.

Brucellosis is considered one of the most serious diseases of livestock. While its hallmark symptom is abortion, brucellosis can also result in decreased milk production, weight loss in animals, infertility, and lameness. The Animal and Plant Health Inspection Service (APHIS) has worked for years to eliminate this disease from the United States.

The only known reservoir of *Brucella abortus* in the United States occurs in wild, free-ranging populations of bison and elk in the Greater Yellowstone Area (GYA), which comprises areas of Idaho, Montana, and Wyoming. The significance of wildlife in the GYA as a reservoir of brucellosis and potential source of infection for cattle in the GYA has been widely recognized. Additionally, free-ranging bison herds in the GYA are a natural resource of great importance.

To address the issue of brucellosis in the GYA, the U.S. Department of the Interior's National Park Service, the State of Montana, and their cooperators (including the U.S. Department of Agriculture) developed an Interagency Bison Management Plan for the bison herd in Yellowstone National Park (YNP). One of the disease management requirements of the plan is for eligible bison to be vaccinated against brucellosis.

The Montana Department of Livestock (MDOL) has requested APHIS's assistance with the vaccination against brucellosis of wild, free-ranging bison calves and non-pregnant yearlings that leave YNP and migrate onto State, private, or other Federal lands. The MDOL anticipates starting bison vaccination as early as this winter, using Strain RB51 vaccine, when bison begin to leave YNP in search of vegetation.

APHIS has completed an environmental assessment (EA) that examines the potential environmental effects of APHIS's involvement in the vaccination described above. Our review and analysis are documented in detail in an EA entitled ''Subcutaneous Vaccination of Wild, Free-Ranging Bison in the Greater Yellowstone Area; Environmental Assessment (November 2003).'' Based on that EA, APHIS has determined that subcutaneous vaccination of wild, free-ranging bison of the GYA with Strain RB51 vaccine will not significantly impact human health or the environment. That determination is set forth in a document titled ''Finding of No Significant Impact for Subcutaneous Vaccination of Wild, Free-Ranging Bison in the Greater Yellowstone Area; Environmental Assessment (November 2003).''

We are making the EA and finding of no significant impact (FONSI) available to the public for review and comment. (Instructions for obtaining copies of the EA and FONSI are included under the heading **ADDRESSES** at the beginning of this notice.) We will consider all comments on the EA and FONSI that we receive on or before the date listed under the heading **DATES** at the beginning of this notice. Following the close of the comment period, we will publish a notice in the **Federal Register** in which we will discuss any issues raised by commenters.

The EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and

(4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 2nd day of December, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant health Inspection Service.

[FR Doc. 03–30237 Filed 12–4–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

South Fork Wildfire Salvage Project, Boise National Forest, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare Environmental Impact Statement.

SUMMARY: The Cascade Ranger District of the Boise National Forest will prepare an environmental impact statement (EIS) for a resource management project in the South Fork Salmon River. The entire project area is located within watersheds that drain directly into the South Fork Salmon River or its tributaries, downstream of Warm Lake. The project area is located 25 miles northeast of Cascade, Idaho, and about 120 miles north of Boise, Idaho.

The agency invites written comments and suggestions on the scope of the analysis. The agency also hereby gives notices of the environmental analysis and decision-making process that will occur on the proposal so interested and affected people are aware of how they may participate and contribute to the final decision. At this time no public meetings to discuss the project are planned.

Proposed Action: The primary objective of the project is to capture the value of fire-killed and imminently dead timber not needed to maintain or improve post-fire ecological function in the short (3–15 years) and long term (15+ years). To further the achievement of Forest Plan goals, road maintenance and decommissioning activities have been integrated with the salvage proposal to support identified aquatic and watershed restoration activities. Revenue generated from the salvage operation would be used to accomplish all or some of these road-related activities.

The Proposed Action would harvest fire-killed and imminently dead trees from a total of 2,536 acres in the 6,822-acre project area. Only those trees not needed to maintain or improve post-fire ecological function in the short (3–15 years) and long term (15+ years) would be harvested. An estimated 5.0 MMBF of timber would be available for harvest using ground-based (780 acres) and helicopter (1,756 acres) yarding systems. The Proposed Action would employ the salvage prescription only.

No new road construction or reconstruction, as defined in the Revised Forest Plan, would occur. An estimated 0.1 mile of road 401, 0.9 mile of road 467, and 0.4 mile of road 488 would be restored through maintenance activities to their approved road management objectives to improve fish habitat and hydrologic conditions, and reduce sedimentation. Specifically, three additional culverts and one hardened drive-through dip would be installed and two existing culverts replaced on road 401; eight additional culverts installed and 0.5 mile of the surface graveled on road 467, and; 0.4 mile of the surface graveled on road 488.

An estimated 0.3 mile of existing roads (401C, 487, and 467A), currently closed year-round to motorized traffic, would be decommissioned to prevent unauthorized use. These three roads (401C, 487, and 467A) and their associated arterial roads (487A, 487B, 487B1, 487D, 467A1, and 467A2) would be removed from the transportation system. Decommissioning of this 0.3 mile would effectively prevent unauthorized access on roughly 10 miles of road.

Preliminary Issues: Preliminary concerns with the Proposed Action include potential impacts on: (1) Fish habitat and water quality; (2) inventoried roadless areas; (3) visual quality of the area, and; (4) the suitable Wild and Scenic River corridor.

Possible Alternatives To The Proposed Action: One alternative to the Proposed Action that has been discussed thus far is a no action alternative. Other alternatives will likely be developed as issues are identified and information received.

Decisions To Be Made: The Boise National Forest Supervisor will decide the following. What amount, type, and distribution of dead and imminently dead trees within the wildfire area should be retained to improve or maintain post-fire ecological conditions? If dead and imminently dead trees within the wildfire area are found not to be needed to improve or maintain ecosystem functions, how should they be harvested while still protecting post-fire ecological conditions? Should existing classified roads within the project area receive maintenance activities to improve fish habitat and hydrologic conditions and reduce sedimentation, and if so, where within the project area? Should portions of roads currently closed year-round to motorized traffic be decommissioned to prevent unauthorized use, and if so, which roads? What design features and/or mitigation measures should be applied to proposed activities to help ensure the activities do not retard attainment of post-fire ecological recovery in the short and long term?

DATES: Substantive comments concerning the proposed project and analysis are encouraged and should be postmarked or received within 30 days following publication of this announcement in the **Federal Register**.

ADDRESSES: Substantive comments should be addressed to the Cascade Ranger District, ATTN: Keith Dimmett, P.O. Box 696, Cascade, ID 83611 or sent electronically to *comments-intermtn-boise-cascade@fs.fed.us*. Electronic comments must be submitted in plain text or another format compatible with Microsoft Word. Substantive comments are those within the scope of, are specific to, and have a direct relationship to the proposed action and include supporting reasons that the Responsible Official should consider in reaching a decision. Comments received in response to this request will be available for public inspection and will be released in their entirety if requested pursuant to the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Further information can be obtained from Keith Dimmett at the address mentioned above or by calling 208–382–7400.

Schedule: Draft Environmental Impact Statement (DEIS), February 2004. Final Environmental Impact Statement (FEIS), May 2004.

SUPPLEMENTARY INFORMATION: Roughly half of the project area has been inventoried as roadless, including portions of both the Reeves Creek and Caton Lake Inventoried Roadless Areas. None of the activities associated with the Proposed Action would occur within any inventoried roadless area. With the exception of trees already felled within the powerline corridor, harvest would not occur within streamside riparian conservation areas (RCAs).

The entire project area lies within Management Area 19 (Warm Lake), discussed on pages III–316 through III–331 in the Revised Boise National Land and Resource Management Plan. Several management prescription categories apply within this management area, however only Management Prescription Categories 2.1, 3.2, and 4.2 occur within the project area.

The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the FEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1002 (9th Cir., 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the DEIS 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official: Richard A. Smith, Forest Supervisor, Boise National Forest, 1249 South Vinnell Way, Suite 200, Boise, ID 83709.

Dated: November 26, 2003.

Richard A. Smith,

Forest Supervisor.

[FR Doc. 03–30066 Filed 12–4–03; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must Be Received on or Before: January 4, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Document Destruction, At the following Locations and for the Nonprofit Agencies Indicated: Camarillo Office, IRS (Including the Criminal Investigation Division), 751 Daily Drive, Camarillo, California.

NPA: Goodwill Industries of Southern California, Los Angeles, CA, El Centro Office, IRS, 1699 W. Main Street, El Centro, California.

NPA: Landmark Services, Inc., Santa Ana, California, El Monte Office, IRS (Including the Criminal Investigation Division), 9350 E. Flair Drive, El Monte, California.

NPA: Goodwill Industries of Southern California, Los Angeles, California, El Segundo Office, IRS (Including the Criminal Investigation Division), 222 N. Sepulveda Blvd., El Segundo, California.

NPA: Goodwill Industries of Southern California, Los Angeles, California, Glendale Office, IRS (Including the Criminal Investigation Division), 225 W. Broadway, Glendale, California.

NPA: Goodwill Industries of Southern California, Los Angeles, California, Laguna Niguel Office, IRS (Including the Criminal Investigation Division), 24000 Avila Road, Laguna Niguel, California.

NPA: Landmark Services, Inc., Santa Ana, California, Long Beach Office, IRS (Including the Criminal Investigation Division), 501 W. Ocean Blvd., Long Beach, California.

NPA: Landmark Services, Inc., Santa Ana, California, Los Angeles Office, IRS (Including the Criminal Investigation Division), 300 N. Los Angeles Street, Los Angeles, California.

NPA: Goodwill Industries of Southern California, Los Angeles, California, Norwalk Office, IRS, 12440 E. Imperial Highway, Norwalk, California.

NPA: Goodwill Industries of Southern California, Los Angeles, California, Palm Springs Office, IRS, 980 E. Tahquitz Canyon Way, Palm Springs, California.

NPA: Goodwill Industries of Southern California, Los Angeles, California, San Bernardino Office, IRS (Including the Criminal nvestigation Division), 290 N. ''D'' Street, San Bernardino, California.

NPA: Goodwill Industries of Southern California, Los Angeles, California, San Diego Office, IRS (Including the Criminal Investigation Division), 880 Front Street, and 701 ''B'' Street, San Diego, California.

NPA: Landmark Services, Inc., Santa Ana, California, San Marcos Office, IRS, 1 Civic Center Drive, San Marcos, California.

NPA: Landmark Services, Inc., Santa Ana, California, Santa Ana Office, IRS (Including the Criminal Investigation Division), 34 Civic Center Plaza, Santa Ana, California.

NPA: Landmark Services, Inc., Santa Ana, California, Van Nuys Office, IRS (Including the Criminal Investigation Division), 6230 Van Nuys Blvd., Van Nuys, California.

NPA: Goodwill Industries of Southern California, Los Angeles, California, Woodland Hills Office, IRS, 6340 Variel Ave, Woodlands Hills, California.

NPA: Goodwill Industries of Southern California, Los Angeles, California.

Contract Activity: IRS-Western Area Procurement Branch-APFW, San Francisco, California.

Service Type/Location: Mailing Services, Theodore Levin U.S. Courthouse, U.S. District Court, Eastern District of Michigan, Detroit, Michigan.

NPA: Jewish Vocational Service and Community Workshop, Southfield, Michigan.

Contract Activity: U.S. District Court, Detroit, Michigan.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish

the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Product/NSN: Detergent, General Purpose, 7930–01–055–6121.
NPA: Lighthouse for the Blind, St. Louis, Missouri.
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas.
Product/NSN: Holder, Desk Memorandum, 7520–00–139–3802, 7520–00–290–6445.
NPA: Dallas Lighthouse for the Blind, Inc., Dallas, Texas.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Sponge, Cellulose, 7920–00–559–8462.
NPA: Mississippi Industries for the Blind, Jackson, Mississippi.
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas.
Product/NSN: Strap Set, Webbing, 5342–00–922–2480.
NPA: Huntsville Rehabilitation Foundation, Huntsville, Alabama.
Contract Activity: Defense Supply Center Richmond, Richmond, Virginia.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–30288 Filed 12–4–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

EFFECTIVE DATE: January 4, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On August 29, October 3, and October 10, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 51962, 57403, and 58651) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.
2. The action will result in authorizing small entities to furnish the products and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Fluorescent Highlighter M.R. 1776
Product/NSN: Permanent Marker M.R. 1780
NPA: Dallas Lighthouse for the Blind, Inc., Dallas, Texas
Contract Activity: Defense Commissary Agency, Fort Lee, Virginia
Product/NSN: Polyethylene Waste Disposable Asbestos Bag
8105–LL–S04–7842
8105–LL–S04–7843
8105–LL–S05–0018
NPA: Open Door Center, Valley City, North Dakota
Contract Activity: Fleet and Industrial Supply Center, Bremerton, Washington
Product/NSN: Safety-Walk, Tapes & Treads
7220–00–NIB–0022, 710 Black Coarse Tape
7220–00–NIB–0031, 710 Black Coarse Tape
7220–00–NIB–0032, 610 Black General Purpose
7220–00–NIB–0046, 630 Yellow General Purpose
7220–00–NIB–0053, 510 Black Conformable
7220–00–NIB–0054, 510 Black Conformable
7220–00–NIB–0061, 530 Yellow Conformable
7220–00–NIB–0065, 310 Black Medium Resilient
7220–00–NIB–0075, 370 Gray Medium Resilient
7220–00–NIB–0136, 710 Black Coarse Tape
7220–00–NIB–0137, 610 Black General Purpose
7220–00–NIB–0138, 620 Clear General Purpose
7220–00–NIB–0139, 630 Yellow General Purpose
7220–00–NIB–0140, 660 Brown General Purpose
7220–00–NIB–0141, 510 Black Conformable
7220–00–NIB–0142, 520 Yellow Conformable
7220–00–NIB–0143, 310 Black Medium Resilient
7220–00–NIB–0144, 370 Gray Medium Resilient
NPA: Louisiana Association for the Blind, Shreveport, Louisiana
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York
Product/NSN: Telephone Cards
M.R. 987 (200 Minutes)
M.R. 988 (300 Minutes)
M.R. 993 (400 Minutes)
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia

Services

Service Type/Location: Administrative Services, Federal Protective Service, Southern Field Operation Branch, Los Angeles, California
NPA: Pacific Coast Community Services, Truckee, California
Contract Activity: GSA/PBS, Region 9 PMS, San Francisco, California
Service Type/Location: Custodial Services, U.S. Courthouse (Federal Building), Charlottesville, Virginia
NPA: WorkSource Enterprises, Charlottesville, Virginia
Contract Activity: GSA, Public Buildings Service, Region 3 (3PMT), Philadelphia, Pennsylvania
Service Type/Location: Custodial Services U.S. Mint, West Point, New York
NPA: New Dynamics Corporation, Middletown, New York
Contract Activity: Department of the Treasury, Washington, DC

Deletions

On October 10, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 F.R. 58651/58652) of

proposed deletions to the Procurement List. After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

Product/NSN: Computer Accessories
7045–01–483–7451
7045–01–483–7844
NPA: Wiscraft Inc.—Wisconsin Enterprises for the Blind, Milwaukee, Wisconsin
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York

Product/NSN: Dropcloth, Heavy Duty
8340–00–NIB–0010
NPA: East Texas Lighthouse for the Blind, Tyler, Texas
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas

Product/NSN: Fixture, Lighting Industrial
6210–00–688–4929
NPA: The Chicago Lighthouse for People who are Blind or Visually Impaired, Chicago, Illinois
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas

Product/NSN: Pad, Scouring
7920–01–383–7928
NPA: Beacon Lighthouse, Inc., Wichita Falls, Texas
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas

Product/NSN: Tape, Electronic Data
7045–01–438–7086
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania

Product/NSN: Tape, Electronic Data Processing
7045–01–123–0367
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania
Contract Activity: Defense Supply Center Columbus, Columbus, Ohio

Product/NSN: Towel, Paper
8540–01–494–0910
NPA: The Lighthouse for the Blind in New Orleans, New Orleans, Louisiana
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–30289 Filed 12–4–03; 8:45 am]

BILLING CODE 6353–01–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: December 10, 2003; 1 p.m.–4:30 p.m.

PLACE: Broadcasting Board of Governors, 330 Independence Avenue, SW, Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b. (c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552. (c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b (c)(2) and (6))

FOR FURTHER INFORMATION CONTACT: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: December 2, 2003.

Carol Booker,

Legal Counsel.

[FR Doc. 03–30339 Filed 12–3–03; 10:14 am]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provision of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: U.S. Government Trade Event Information Request.

Agency Form Number: ITA–4136P.

OMB Number: 0625–0238.

Type of Request: Regular Submission.

Burden: 50 hours.

Number of Respondents: 50.

Avg. Hours Per Response: 1 hour.

Needs and Uses: The International Trade Administration's Advocacy Center marshals federal resources to assist U.S. firms competing for foreign government procurements worldwide. The Advocacy Center is under the umbrella of the Trade Promotion Coordinating Committee (TPCC), which is chaired by the Secretary of Commerce and includes 19 federal agencies involved in export promotion. The mission of the Advocacy Center is to promote U.S. exports and create U.S. jobs and coordinate U.S. Government (USG) advocacy among the TPCC. The purpose of the questionnaire is to collect the necessary information to make an evaluation as to whether a firm qualifies for senior-level USG support, in the form of attendance at an event including witnessing a commercial agreement signing. The event could be a company sponsored activity or a foreign or USG sponsored event to highlight a commercial trade success for more than one firm. Without this information we will be unable to determine if a U.S. firm is eligible for USG support for the firm's role in the event.

Affected Public: Businesses or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit; voluntary.

OMB Desk Officer: David Roster, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th Street and Constitution Ave., NW., Washington, DC 20230. E-mail: *dHynek@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent to

David Roster, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: December 1, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–30238 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

[I.D. 120203A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the emergency provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Scup Gear Restricted Area (GRA) Access Program Authorization.

Form Number(s): None.

OMB Approval Number: 0648–0469.

Type of Request: Emergency submission.

Burden Hours: 887.

Number of Respondents: 72.

Average Hours Per Response: 2 minutes for a telephone call to request a GRA authorization; 2 minutes for a notification call at least 5 days prior to a trip; 2 minutes for a transmission for declaring into a GRA when the vessel leaves port; 15 seconds per automated position report from a vessel monitoring system; and 10 minutes for a daily manual vessel monitoring system report of discards (including null reports).

Needs and Uses: This collection of information involves a number of requirements needed to manage the Scup GRA Access Program. The information will be used for enforcement of regulations and for future analysis of the fishery.

Affected Public: Business or other for-profit organizations, and individuals or households.

Frequency: On occasion, daily, hourly.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

SUPPLEMENTARY INFORMATION: Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within December 19, 2003 to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David__Rostker@omb.eop.gov*.

Dated: November 26, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–30285 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 120203B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Human Dimensions of Marine Resource Management.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 3,000.

Number of Respondents: 4,800.

Average Hours Per Response: 0.625.

Needs and Uses: This request is for a generic clearance for social science research related to the human dimensions of the utilization of living marine resources. This process has been initiated in order to expedite the approval process for future specific data collections.

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

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number 202-395-7285, or *David__Rostker@omb.eop.gov*.

Dated: November 26, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–30286 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Census Bureau

Construction Progress Reporting Surveys (CPRS)

ACTION: Proposed collection; comment request.

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 3, 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*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Michael Davis, U.S. Census Bureau, Room 2125, FOB 4, Washington, DC 20233–6900, (301) 763–1605 (or via the Internet at *michael.davis@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request a revision of a currently approved collection for forms C–700, Private Construction Projects; C–700(R), Multifamily Residential Projects; and C–700(SL), State and Local Government Projects. These forms are used to conduct the Construction Progress Reporting Surveys (CPRS) to collect information on the dollar value of construction put in place by private

companies, individuals, private multifamily residential buildings, and state and local governments. Due to the significant growth in construction activity during the past few years and in order to facilitate the publication of construction spending data in more detail by new types of construction, we plan to increase the number of respondents/projects.

The Census Bureau is the preeminent collector and provider of timely, relevant and quality data about the people and economy of the United States. Economic data are the Census Bureau's primary program commitment during nondecennial census years. The Form C–700, Private Construction Projects collects construction put in place data for nonresidential projects owned by private companies or individuals. The Form C–700(R), Multifamily Residential Projects collects construction put in place data for private multifamily residential buildings. Form C–700(SL), State and Local Government Projects, collects construction put in place data for state and local government projects.

The Census Bureau uses the information from these surveys to publish the value of construction put in place series. Published estimates are used by a variety of private business and trade associations to estimate the demand for building materials and to schedule production, distribution, and sales efforts. They also provide various governmental agencies with a tool to evaluate economic policy and to measure progress towards established goals. For example, Bureau of Economic Analysis staff use data to develop the construction components of gross private domestic investment in the gross domestic product. The Federal Reserve Board and the Department of Treasury use the value in place data to predict the gross domestic product, which is presented to the Board of Governors and has an impact on monetary policy.

II. Method of Collection

An independent systematic sample of projects is selected each month according to predetermined sampling rates. Once a project is selected it remains in the sample until completion of the project. Preprinted forms are mailed monthly to respondents to fill in current month data and any revisions to previous months. Some respondents are later called by a Census interviewer and report the data over the phone. Having the information available from a database at the time of the interview greatly helps reduce the time respondents spend on the phone. Interviews are scheduled at the convenience of the respondent, further reducing their burden.

III. Data

OMB Number: 0607–0153.

Form Number: C–700, C–700(R), C–700(SL).

Type of Review: Regular submission.

Affected Public: Individuals, businesses or other for profit, non profit institutions, small businesses or organizations, and State or local governments.

Estimated Number of Respondents: C–700 = 8,500, C–700(R) = 2,500, C–700(SL) = 8,500, Total = 19,500.

Estimated Time Per Response: 15 minutes per month.

Estimated Total Annual Burden Hours: C–700 = 25,500, C–700(R) = 7,500, C–700(SL) = 25,500, Total = 58,500.

Estimated Total Annual Cost: 3.5 million.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

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: December 1, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–30240 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Short Supply Regulations, Unprocessed Western Red Cedar

ACTION: Proposed collection; comment request.

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 3, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Office of the Chief Information Officer, 202–482–0266, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Marna Dove, BIS ICB Liaison, Department of Commerce, BIS Office of the Chief Information Officer, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information is collected as supporting documentation for license applications to export western red cedar logs to enforce the Export Administration Act's prohibition against the export of such logs from state or Federal lands.

II. Method of Collection

Written submission.

III. Data

OMB Number: 0694–0025.

Form Number: BXA–748P.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 35.

Estimated Time Per Response: 30 to 105 minutes per response.

Estimated Total Annual Burden Hours: 36.

Estimated Total Annual Cost: No start-up capital expenditures.

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 will also become a matter of public record.

Dated: December 1, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–30239 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Notice of Final Rescission of Antidumping Duty New Shipper Review: Freshwater Crawfish Tail Meat from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On September 5, 2003, the Department published a preliminary intent to rescind the new shipper review of Zhoushan Huading Seafood Co., Ltd. (Zhoushan Huading) under the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (68 FR 52745). The review covers one sale of the subject merchandise entered into the United States during the period September 1, 2001 through August 31, 2002.

Based on our analysis of the record, including factual information obtained since the preliminary notice of intent to rescind, the Department has determined that Zhoushan Huading's new shipper sale is not *bona fide* and, as a result, we are rescinding this new shipper review. *See* ''Rescission of New Shipper Review'' section below.

EFFECTIVE DATE: December 5, 2003.

FOR FURTHER INFORMATION CONTACT: Douglas Kirby or Thomas Gilgunn, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–3782 or (202) 482–4236, respectively.

SUPPLEMENTARY INFORMATION:

Background

We published the preliminary notice of intent to rescind this new shipper review on September 5, 2003. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Notice of Intent to Rescind New Shipper Administrative Review*, 68 FR 52745 (*Preliminary Notice*). In the *Preliminary Notice*, the Department found that the sale made by Zhoushan Huading in this new shipper review was not *bona fide* based on the following: 1) the price and quantity for Zhoushan Huading's sale of crawfish tail meat were atypical vis-a-vis other exports from the PRC of the subject merchandise into the United States during the period of review; 2) there were conflicting accounts as to who purchased the crawfish tail meat and who paid Zhoushan Huading for the shipment; 3) there remained uncertainty in regard to the commercial reasonableness of the sale; 4) there were inconsistencies in the terms of sale; and, 5) the Department was unable to establish that the importing parties were actual commercial entities. *See also Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, Group III: Freshwater Crawfish Tail Meat from the People's Republic of China: Analysis of Zhoushan Huading's New Shipper Transaction*, dated August 28, 2003 (*Zhoushan Huading Memo*). A public version of this memorandum is on file in the Central Records Unit, room B–099 of the main Commerce Building.

On September 2, 2003, the Department issued a fourth supplemental questionnaire to Zhoushan Huading, and on September 3, 2003, issued supplemental questionnaires to both the reported buyer and the importer of record in order to clarify the terms of sale and payment documentation for the new shipper sale under review. On September 12, 2003, Zhoushan Huading, the reported buyer, and the importer of record submitted their responses to the Department's supplemental questionnaires. Their responses are discussed in the ''Analysis of the *Bona Fides* of the New Shipper Sale'' section below.

Comments

On October 6, 2003, petitioners[1] submitted comments. On October 14, 2003, Zhoushan Huading submitted rebuttal comments. The parties raised only one issue in their briefs: ''Whether The New Shipper Review of Zhoushan Huading Should Be Rescinded for Lack of a *Bona Fide* Sale.'' All arguments raised in the case and rebuttal briefs filed by parties to this new shipper review are addressed in the *Issues and Decision Memorandum for the Final Rescission of the New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China for Zhoushan Huading Seafood Co., Ltd.*, dated November 25, 2003 (*Decision Memo*), which is hereby adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendation in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Commerce Building. In addition, a complete version of the *Decision Memo* can be accessed directly on the internet at *http://ia.ita.doc.gov*. The paper copy and electronic version of the *Decision Memo* are identical in content.

Scope of the Antidumping Duty Order

The product covered by this order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the new HTS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by U.S. Customs and Border Protection (CBP) in 2000, and HTS items 0306.19.00.10 and 0306.29.00, which are reserved for fish and crustaceans in general. The HTS subheadings are provided for convenience and CBP purposes only. The written description of the scope of this order is dispositive.

Analysis of the *Bona Fides* of the New Shipper Sale

The Department has not acquired nor received any additional information that would alter our preliminary determination that the extremely high price and the unusually low quantity of

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[1] The Crawfish Processors Alliance, its members (together with the Louisiana Department of Agriculture and Forestry and Bob Odom, Commissioner), and several individual crawfish producers, collectively called the Domestic Parties.

Zhoushan Huading's new shipper sale were not consistent with other imports of freshwater crawfish tail meat entered into the U.S. during the period of review. *See Preliminary Notice; see also Zhoushan Huading Memo*.

Furthermore, since the publication of the *Preliminary Notice*, the Department solicited additional information through the issuance of supplemental questionnaires to all three parties that were involved in this new shipper sale. The Department's goal in seeking additional information was to address the issues identified in the *Preliminary Notice*, particularly, who paid whom, and to seek clarification of the terms of sale for the shipment of subject merchandise under review. All parties responded to the supplemental questionnaires issued.

In regard to payment information, both Zhoushan Huading and the reported buyer, in their questionnaire responses, provided documents demonstrating a wire transfer from the reported buyer to Zhoushan Huading. Both responses also provide a copy of a cashier's check as evidence of payment by the importer of record to the reported buyer. This documentation overcomes the uncertainty regarding who paid whom for the merchandise, and establishes that Zhoushan Huading was paid in the manner, and by the party, identified in the questionnaire responses. However, this documentation also provides evidence that the sale was commercially unreasonable, due to the fact that the dollar amounts on the cashier's check and the wire transfer documentation are identical. Therefore, since the amounts paid by the reported buyer and the importer of record are identical, the record indicates that the reported buyer sold Zhoushan Huading's shipment of subject merchandise to the importer of record at a loss, *i.e.*, by selling the subject merchandise for the exact same dollar amount as they purchased it for, the reported buyer must have absorbed all of the administrative and selling costs associated with executing both transactions (the purchase and the sale).

Moreover, prior to the publication of the *Preliminary Notice*, as part of our analysis of whether the sale was commercially reasonable, we issued supplemental questionnaires that asked the reported buyer and the importer of record to provide information on the commercial structure of their business, and their business relationship to each other. The Department also attempted to gather information from the importer of record in regard to the identity of its customers and supporting sales documentation. The Department also asked Zhoushan Huading for this information. None of the requested information was provided by Zhoushan Huading, the reported buyer, or the importer of record.

In addition, Zhoushan Huading, in its September 12, 2003 supplemental questionnaire response, stated which party was responsible for all inland freight, brokerage and handling, and international freight expenses related to the new shipper sale under review. However, the bill of lading provided by Zhoushan Huading in its January 6, 2003, questionnaire response contradicts the terms of sale as reported by Zhoushan Huading, and indicates that these costs may have been borne by a party other than the one Zhoushan Huading indicated. As such, without reliable information establishing the terms of sale, including which party was responsible for which costs, it is not possible for the Department to determine that Zhoushan Huading's sale is a commercially reasonable transaction. Some of the information concerning the party responsible for movement expenses is business proprietary. This information is discussed more fully in a *Memorandum to the File: Crawfish Tail Meat from the People's Republic of China: Analysis of Zhoushan Huading's Reported Terms of Sale;* dated November 25, 2003.

Having reviewed the totality of circumstances surrounding this sale, we conclude that Zhoushan Huading's new shipper sale was commercially unreasonable and therefore not *bona fide* for the following reasons: 1) the price was extremely high and the quantity was unusually low vis-a-vis other imports from the PRC of the subject merchandise into the United States during the period of review; 2) the merchandise was apparently resold by the reported buyer at a loss; and, 3) Zhoushan Huading provided contradictory information and documentation regarding the terms of sale and movement expenses.

Rescission of New Shipper Review

Because we find the new shipper sale not *bona fide*, and because this was the only sale made during the new shipper review period, there is no *bona fide* sale to review. As such, we are rescinding this new shipper review. Accordingly, the PRC-wide antidumping duty margin of 223.01 percent still applies for shipments of freshwater crawfish tail meat produced and/or exported by Zhoushan Huading for the period September 1, 2001 through August 31, 2002 and beyond. The Department will issue cash deposit and assessment instructions directly to CBP.

Cash Deposits

Bonding will no longer be permitted to fulfill security requirements for shipments from Zhoushan Huading of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this notice in the **Federal Register**. Effective upon publication of these final results for this new shipper review, we will instruct CBP to continue the suspension of liquidation of entries of freshwater crawfish tail meat that is produced and/or exported by Zhoushan Huading, and entered on or after the date of publication of these final results. For entries of freshwater crawfish tail meat that are produced and/or exported by Zhoushan Huading, cash deposits will be required at the PRC-wide rate in effect on the date of entry. The PRC-wide rate currently in effect is 223.01 percent. There are no changes to the rates applicable to any other company under this order.

Assessment of Antidumping Duties

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Since we are rescinding this new shipper review, the PRC-wide rate of 223.01 percent applies to all exports of freshwater crawfish tail meat produced and/or exported by Zhoushan Huading. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of this notice of rescission of antidumping duty new shipper review.

Notification to Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply

with the regulations and the terms of an APO is a sanctionable violation.

This new shipper review and notice are in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: November 25, 2003.

James J. Jochum,

Assistant Secretary Import Administration.

[FR Doc. 03–30263 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–847]

Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On July 31, 2003, the Department of Commerce published the preliminary results of the 2001–2002 administrative review of the antidumping duty order on persulfates from the People's Republic of China. This review covers one manufacturer/exporter of the subject merchandise to the United States. The merchandise covered by this order are persulfates, including ammonium, potassium, and sodium persulfates. The period of review is July 1, 2001, through June 30, 2002.

Based on our analysis of the comments received, we have made certain changes in the margin calculations. *See* the section entitled ''Changes Since the Preliminary Results'' listed below. The final weighted-average dumping margin is listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: December 5, 2003.

FOR FURTHER INFORMATION CONTACT: Mike Strollo or Greg Kalbaugh, AD/CVD Enforcement, Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0629 and (202) 482–3693, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 31, 2003, the Department published the preliminary results of the 2001–2002 administrative review of the antidumping duty order on persulfates from the People's Republic of China (PRC). *See Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Administrative Review*, 68 FR 44921 (July 31, 2003) (*Preliminary Results*). This review covers one exporter, Shanghai Ai Jian Import & Export Corporation (Ai Jian).

We invited interested parties to comment on the preliminary results of review. The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

The products covered by this review are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, $(NH_4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$. Ammonium and potassium persulfates are currently classifiable under subheading 2833.40.60 of the Harmonized Tariff Schedule of the United States (HTSUS). Sodium persulfate is classifiable under HTSUS subheading 2833.40.20. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Separate Rates

Ai Jian has requested a separate, company-specific antidumping duty rate. In our preliminary results, we found that Ai Jian had met the criteria for the application of a separate antidumping duty rate. See Preliminary Results, 68 FR at 44921. We have not received any other information since the preliminary results which would warrant reconsideration of our separate rates determination with respect to this company. We therefore determine that Ai Jian should be assigned an individual dumping margin in this administrative review.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (Decision Memo) from Jeffrey May, Deputy Assistant Secretary, Group I, to James Jochum, Assistant Secretary for Import Administration, dated November 28, 2003, which is adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit in Room B-099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

For purposes of the final results, we have made certain changes in the margin calculation for Ai Jian. For a discussion of these changes, see the ''Margin Calculations'' section of the Decision Memo.

- We removed a figure which was inadvertently included in the denominators of both the selling, general and administrative expense, and profit ratio calculations. See Comment 1 of the Decision Memo.
- We eliminated the purity adjustment applied to one of the inputs used by Ai Jian in the production of persulfates because Ai Jian failed to provide adequate support for that adjustment. See Comment 5 of the Decision Memo.

Final Results of the Review

We determine that the following percentage weighted-average margin exists for the period July 1, 2001 through June 30, 2002:

Manufacturer/exporter	Margin
Shanghai Ai Jian Import & Export Corporation	0.00 percent

Assessment Rates

The Department will determine, and Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. For assessment purposes, we do not have the information to calculate entered value because Ai Jian is not the importer of record for the subject merchandise. Accordingly, we have calculated customer-specific duty assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each customer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated customer-specific *ad valorem* ratios based on export prices. We will direct CBP to assess the resulting assessment rates uniformly on all entries of that particular customer made during the period of review. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping

duties any entries for which the assessment rate is *de minimis*. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of this antidumping duty administrative review for all shipments of persulfates from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) for Ai Jian, the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) the cash deposit rate for all other PRC exporters will be 119.02 percent, the PRC-wide rate established in the less than fair value investigation; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i) of the Act.

Dated: November 28, 2003.

James Jochum,

Assistant Secretary for Import Administration.

Appendix Issues in Decision Memo

Comment 1: Production Process of the Proposed Surrogate Producer and Whether National Peroxide Limited is a More Appropriate Surrogate Producer
Comment 2: Experience of Other Chemical Producers As Compared to that of the Proposed Surrogate Producer
Comment 3: Whether the Proposed Surrogate's Receipt of Government Subsidies Distorts Its SG&A Ratio
Comment 4: Reported Scope of the Proposed Surrogate's Business
Comment 5: Whether to Apply a Specificity Ratio to one of Ai Jian's Factor Input Usage

[FR Doc. 03–30259 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Persulfates from the People's Republic of China: Notice of Final Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 5, 2003.

FOR FURTHER INFORMATION CONTACT: Mike Strollo or Patrick Connolly at (202) 482–0629 or (202) 482–1779, respectively, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUMMARY: On October 10, 2003, the Department published a notice of preliminary results of changed circumstances review and preliminarily found that the factors of production of Degussa-AJ (Shanghai) Initiators Co., Ltd. (Degussa-AJ) had not changed substantially since Degussa AG's investment in Shanghai Ai Jian Reagent Works (AJ Works). Therefore, the Department determined at the preliminary results that it will consider in any relevant future revocation inquiry any administrative reviews in which Shanghai Ai Jian Import and Export Corporation (Ai Jian) procured its products exported to the United States from AJ Works. On October 14, 2003, the petitioner, FMC Corporation (FMC), submitted a case brief. After considering these comments, we continue to find that Degussa-AJ's factors of production have not changed substantially since Degussa AG's investment in AJ Works. As a result, the Department will consider in any future revocation inquiry any administrative reviews in which Ai Jian procured its products exported to the United States from AJ Works.

SUPPLEMENTARY INFORMATION:

Background

On October 10, 2003, the Department published in the **Federal Register** a notice of preliminary results of changed circumstances review for persulfates from the People's Republic of China (PRC). *See Persulfates from the People's Republic of China: Notice of Preliminary Results of Changed Circumstances Review*, 68 FR 58658 (Oct. 10, 2003). We gave interested parties 14 days to comment on our preliminary results. On October 24, 2003, FMC submitted a case brief. We received no other comments from interested parties on the Department's preliminary results.

Scope of Review

The products covered by this review are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, $(NH_4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$. Potassium persulfates are currently classifiable under subheading 2833.40.10 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Sodium persulfates are classifiable under HTSUS subheading 2833.40.20. Ammonium and other persulfates are classifiable under HTSUS subheadings 2833.40.50 and 2833.40.60. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Analysis of Comments Received

All issues raised in the case briefs by parties to this changed circumstances review are addressed in the ''Issues and Decision Memorandum'' (Decision Memo) from Jeffrey May, Deputy Assistant Secretary, Group I, to James Jochum, Assistant Secretary for Import Administration, dated November 28, 2003, which is adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit in Room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results

After our analysis of the comments received, we determine that Degussa-AJ's factors of production have not changed substantially since Degussa AG's investment in AJ Works. As a result, the Department will consider in any relevant future revocation inquiry any administrative reviews in which Ai Jian procured its products exported to the United States from AJ Works.

This notice is published in accordance with sections 751(b)(1) and (d) and 777(i) of the Act, and with 19 CFR 351.221(c)(3).

Dated: November 28, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memo

Comment 1: Whether the Department Must Make a Successor-in-Interest Determination in this Changed Circumstances Review

Comment 2: Whether Ai Jian May Use Reviews In Which it Sourced its Merchandise from AJ Works to Support a Revocation Request

Comment 3: Whether Ai Jian is Subject to a Combination Antidumping Duty Rate Based on the Exporter-Producer Combination of Ai Jian and AJ Works

[FR Doc. 03–30260 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-489–813]

Notice of Initiation of Antidumping Investigation: Certain Processed Hazelnuts from Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 5, 2003.

FOR FURTHER INFORMATION CONTACT: John Drury at (202) 482–0195, Michael Ferrier at (202) 482–1394, or Abdelali Elouaradia at (202) 482–1374, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On October 21, 2003, the Department of Commerce (''Department'') received an antidumping duty petition (''Petition'') filed in proper form by Westnut LLC, Northwest Hazelnut Company, Hazelnut Growers of Oregon, Willamette Filbert Growers, Evergreen Orchards, and Evonuk Orchards (''Petitioners''). Petitioners are domestic producers of certain processed hazelnuts (''hazelnuts''). On October 28, 2003, and October 29, 2003 inclusive, Petitioners submitted information to supplement the Petition (''First Petition Amendment''). Additionally, on October 30, 2003, counsel for the Petitioners met with Department officials, at which time Department officials notified Petitioners that the Petition to date was insufficient. *See Memorandum to the File from John Drury, Case Analyst: Ex-parte meeting with Counsel for Petitioners*, dated October 31, 2003. On November 4, 2003, Petitioners submitted further information to supplement the Petition (''Second Petition Amendment''). On November 24, 2003, Petitioners submitted additional information to supplement their Petition at the request of the Department (''Third Petition Amendment''). On November 10, 2003, and November 26, 2003, the Istanbul Hazelnut and Hazelnut Products Exporters Union and the Black Sea Hazelnut and Hazelnut Products Exporters Union filed comments regarding industry support. On November 28, 2003, Petitioners filed additional comments regarding industry support. In accordance with section 732(b) of the Tariff Act of 1930, as amended (''the Act''), Petitioners allege imports of certain processed hazelnuts from Turkey are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the U.S. industry.

The Department finds that Petitioners filed their Petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act, and they have demonstrated sufficient industry support with respect to the investigation they are presently seeking. *See Determination of Industry Support for the Petition* section below.

Scope of the Investigation

The scope of this investigation covers certain processed hazelnuts, including kernels, and kernels that have been roasted, blanched, sliced, diced, chopped, or in the following other forms: paste, meal, flour, croquant, and butter. In-shell hazelnuts are excluded from the scope of the order.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings 0802.22 and 2008.19.2000. The tariff classifications are provided for convenience and Customs purposes; however, the written description of the scope of these investigations is dispositive.

As discussed in the preamble to the Department's regulations, we are setting aside a period for parties to raise issues regarding the scope of the investigation. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. This period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute

directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 642–44 (Ct. Int'l Trade 1988).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition.

Moreover, the Petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. The Petition covers certain processed hazelnuts as defined in the Scope of the Investigation section, above, and it constitutes a single class or kind of merchandise. The Department has no basis on the record to find the Petitioners' definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the Petition. *See Antidumping Duty Investigation Initiation Checklist* (''*Initiation Checklist*'').

Based on the Petition data, the share of total estimated U.S. production of the domestic like product from October 2002 to September 2003 represented by Petitioners and the supporting domestic producers equal over 25 percent of total domestic production but less than 50 percent of production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. *See Memorandum to the File from Richard O. Weible, Office Director, Group III, Office 8: Antidumping Duty Petition on Certain Processed Hazelnuts from Turkey: Extension of Deadline for Determining Industry Support*, dated November 10, 2003. Petitioners did not meet the 50 percent threshold with their Third Petition Amendment for industry support because there are other hazelnut processors in the United States who are not subject to the U.S. Department of Agriculture's federal marketing order for hazelnuts and source some or all of their supply of hazelnuts from imports. Therefore, in accordance with Section 732(c)(4)(D), we polled the industry. On November 12, 2003, the Department sent a letter to possible hazelnut processors requesting U.S. production data for the period October 2002 to September 2003. This letter is on file in the Central Records Unit in room B-099 of the main Department of Commerce building and on the Import Administration website. For a detailed summary of the Department's efforts to identify relevant companies, See Memorandum to the File regarding Procedures Used to Determine Industry Support, dated December 1, 2003. Additionally, the Department published a notice in the **Federal Register** extending the twenty-day initiation and requesting production information from hazelnut processors in the United States (*See Notice of Request for Information and Extension of time for Initiation: Antidumping Duty Petition on Certain Processed Hazelnuts from Turkey*, (68 FR 64589) November 14, 2003.) The Department has relied upon the responses to this letter and follow-up phone calls to clarify certain responses to determine industry support. For the analysis of the data, *See Initiation Checklist*. Our analysis of the data indicates that the domestic producers of processed hazelnuts who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. *See Initiation Checklist*.

Therefore, we find that the industry support requirements of section 732(c)(4)(A) of the Act have been met.

Period of Investigation

The anticipated period of investigation (''POI'') will be October 1, 2002 through September 30, 2003.

Export Price and Constructed Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation. The source or sources of data for the deductions and adjustments relating to U.S. and foreign market prices and cost of production (''COP'') and constructed value (''CV'') have been accorded treatment as business proprietary information. Petitioner's sources and methodology are discussed in greater detail in the business proprietary version of the Petition and in our Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine this information and revise the margin calculations, if appropriate.

Export Price

In calculating the U.S. price, the Petitioner relied upon actual sales during the POI of Turkish processed hazelnuts to the United States. Petitioners provided sales invoices as support for their U.S. starting price. To calculate a net price, Petitioners deducted the Turkish export tax on processed hazelnuts and movement expenses, which include ocean freight, marine insurance, and brokerage. Petitioners calculated the export tax and the movement expenses from publically available data.

Constructed Value

Petitioners attempted to locate home market and third country prices of processed hazelnuts and outlined their efforts in the Third Petition Amendment. Petitioners were unable to locate home market prices that occurred within the POI or prices of subject merchandise (*i.e.*, shelled hazelnuts). Petitioners located prices of Turkish processed hazelnuts to Germany and provided information demonstrating reasonable grounds to believe or suspect that sales of processed hazelnuts in the German third county market were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department initiate a country-wide sales-below-cost investigation. *See Memorandum to the File from Steve Williams, Import Analyst, Office of Policy: Telephone call with Pete Koenig regarding antidumping duty petition of Certain Processed Hazelnuts from Turkey*, dated December 01, 2003. Therefore, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the Petitioners based normal value for sales in Turkey on CV. The Petitioners calculated CV using the cost of manufacturing, depreciation, selling, general and administrative expenses, and interest expense figures. Consistent with section 773(e)(2) of the Act, the Petitioners included in CV an amount for profit. For profit, the Petitioners relied upon amounts reported in a publicly available document.

Pursuant to section 773(b)(3) of the Act, COP consists of cost of manufacturing, selling, general and administrative expenses, and packing. The Petitioners calculated COM based on publicly available information and their own production experience, adjusted for known differences between costs incurred to produce processed hazelnuts in the United States and Turkey using publicly available data. To calculate SG&A and interest expense, the Petitioners were unable to obtain the financial statements of a Turkish hazelnut processor and therefore relied upon publicly available information for marketing and financing costs and their experience during the POI for general and administrative costs. Based upon a comparison of the price of the foreign like product in the third-country market, Germany, to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation relating to third-country sales to Germany. We note, however, that if we determine that the home market (*i.e.*, Turkey) is viable, our initiation of a country-wide cost investigation with respect to sales to Germany will be rendered moot.

Based upon the comparison of CV to EP, the Petitioners' calculated estimated dumping margin is 31.80 percent (*See Initiation Checklist*).

Fair Value Comparisons

Based on the data provided by Petitioners, there is reason to believe imports of certain processed hazelnuts from Turkey are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV.

Petitioners contend that the industry's injured condition is evident in examining reduced production, shipments and net income, decreased employment, declining kernel prices, and lost sales and revenue. *See Petition* at pages 23–31. Petitioners assert its share of the market has declined from 2000 to 2002. *See Petition* at page 26. For a full discussion of the allegations and evidence of material injury, *See Initiation Checklist* at Attachment II.

Initiation of Antidumping Investigation

Based on our examination of the Petition covering certain processed hazelnuts, we find it meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of certain processed hazelnuts from Turkey are being, or are likely to be, sold in the United States at less than normal value. Unless this deadline is extended pursuant to section 733(b)(1)(A) of the Act, we will make our preliminary determinations no later than 140 days after the date of this initiation, or April 19, 2004.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the Petition has been provided to representatives of the government of Turkey.

International Trade Commission Notification

The ITC will preliminarily determine on December 10, 2003, whether there is reasonable indication that imports of certain processed hazelnuts from Turkey are causing, or threatening, material injury to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Date: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30261 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C-475–819]

Certain Pasta from Italy: Notice of Rescission of Countervailing Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Countervailing Duty New Shipper Review.

SUMMARY: On March 5, 2003, the Department of Commerce published in the **Federal Register** (68 FR 10446) a notice announcing the initiation of a new shipper review of the countervailing duty order on certain pasta from Italy, covering the time period January 1, 2002 through December 31, 2002. On March 24, 2003, the Department published a corrected notice of initiation in the **Federal Register** (68 FR 14198). We are now rescinding this new shipper review.

EFFECTIVE DATE: December 5, 2003.

FOR FURTHER INFORMATION CONTACT: Daniel J. Alexy or John Brinkmann, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1540 or 482–4126, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 2002, the Department of Commerce (the ''Department'') received a request from Pastificio Carmine Russo S.p.A. (''Pastificio Russo''), made pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the ''Act'') and 19 CFR §351.214(b), to conduct a new shipper review of the countervailing duty order on certain pasta from Italy, which was issued on July 24, 1996 (61 FR 38544). On February 24, 2003, the Department received submissions from Pastificio Russo containing additional information.

In accordance with section 751(a)(2)(B) of the Act and 19 CFR §351.214, on February 27, 2003, the Department initiated a countervailing duty new shipper review for certain pasta from Italy, covering calendar year 2002. *See Certain Pasta from Italy: Notice of Initiation of Countervailing Duty New Shipper Review*, 68 FR 10446 (March 5, 2003). Corrections to the initiation notice were published in the **Federal Register** on March 24, 2003 (*See* 68 FR 14198). On August 29, 2003, the Department extended the time limit for the publication of the preliminary results in the new shipper review. *See Certain Pasta From Italy: Notice of Extension of Time Limit for Countervailing Duty New Shipper Review*, 68 FR 51965 (August 29, 2003).

On August 22, 2003, the Department, after receiving a timely request from Pastificio Russo pursuant to 19 CFR §351.213(b)(2), initiated an administrative review covering calendar year 2002 for that company. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 50750 (August 22, 2003). Accordingly, parallel reviews covering the same period of review were initiated

under 19 CFR §351.214 (new shipper review) and 19 CFR §351.213 (administrative review).

Rescission of New Shipper Review

Section 351.214(j)(1) of the Department's regulations authorizes the Department to rescind a new shipper review where: (1) the producer or exporter's merchandise is also being covered by an administrative review under section 351.213, and; (2) the Department consults with the exporter or producer.

As noted, concurrent reviews of Pasificio Russo were initiated by the Department. The Department also consulted with Pastificio Russo concerning the rescission of the new shipper review. The Department typically does not conduct parallel reviews covering the same period of review, and in this case, the Department preferred proceeding under the administrative review. *See* Memorandum to File from Senior Office Director Susan Kuhbach, dated November 5, 2003, ''Ex Parte Conversation with counsel for Pastificio Carmine Russo, S.p.A.,'' which is on file in the Central Records Unit in room B-099 of the main Department building. Accordingly, we are rescinding the new shipper review and proceeding with the administrative review.

Notification

The Department will notify U.S. Customs and Border Protection (Customs) that bonding is no longer permitted to fulfill security requirements for shipments from Pastificio Russo entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice in the **Federal Register**, and that a cash deposit of 3.85 percent *ad valorem* should be collected for any entries exported by Pastificio Russo.

We are publishing this notice of rescission in accordance with 19 CFR §351.214(f)(3).

Dated: December 1, 2003.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–30262 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

NOAA Research Draft Report; Request for Public Comment

ACTION: Notice of availability and request for public comment.

SUMMARY: The Office of Oceanic and Atmospheric Research (OAR), will post the NOAA Research Draft Report for public comment on December 15, 2003. The complete draft document will be posted on the National Oceanic and Atmospheric Administration (NOAA), Science Advisory Board (SAB) Web site at *http://www.sab.noaa.gov/reports/review-draft.pdf*. The panel is seeking public comment from all interested parties. This draft is being issued for comment only and is not intended for interim use. The Review Team will review the public comments received on the draft document. Suggested changes will be incorporated, where appropriate, in the final draft report.

The 2003 House and Senate Appropriations Subcommittee Reports have language pertaining to the Office of Oceanic and Atmospheric Research. The report accompanying the House Commerce, Justice State (CJS) Appropriations Subcommittee mark states: ''In recognition of current resource limitations the Committee is forced to operate within, the Committee directs NOAA to review the continued requirements for twelve separate laboratories, six of which are located in Boulder, Colorado. The Committee directs NOAA to submit a laboratory consolidation plan to the Committee by March 15, 2004.'' The Senate report language states: ''NOAA is directed to report to the Committee on Appropriations on the costs and benefits of breaking OAR up into its constituent parts and distributing those parts as desirable to the other line offices. The report should specifically address how the newly configured research sector will directly assist line offices in developing timely solutions to problems confronting NOAA now and in the next 5 years.''

In response to the Congressional report language NOAA appointed an ''Ad Hoc Review Team'' (here called the NOAA Research Review Team), under the auspices of the Science Advisory Board (SAB) consisting of five members. The Review team will be disbanded once the review is completed and a final report issued. This panel is tasked with: (1) Conducting a review of OAR for the purpose of improving the effectiveness and efficiency of its research enterprise, (2) establishing if OAR is adequately linked to NOAA's service organizations (*i.e.*, National Weather Service (NWS), National Environmental Satellite Data, and Information Service (NESDIS), National Marine Fisheries Service (NMFS), and the National Ocean Service (NOS)), (3) assessing if the research programs are relevant to the needs of these organizations. The team's recommendations will assist NOAA in responding to the language in the 2004 House and Senate CJS appropriation reports.

The NOAA Research Review Team will present its findings to the Science Advisory Board in two (2) reports. The draft of the first report will be posted on the Science Advisory Board Web site at: *http://www.sab.noaa.gov/reports/review-draft.pdf*, on December 15, 2003, for public comment. Public comments may be submitted from December 15, 2003, to January 14, 2004.

NOAA welcomes all comments on the content of the report. We also ask that you comment on any inconsistencies within the report, and omissions of important topics or issues. For any shortcoming that you note in the draft, please propose specific remedies.

Please follow these instructions for preparing and submitting your review. Using the format guidance described below will facilitate the processing of reviewer comments and assure that your comments are appropriately considered. Please provide background information about yourself on the first page of your comments: your name(s), organization(s), area(s) of expertise, mailing address(es), telephone and fax numbers, email address(es). Overview comments on the section should follow your background information and should be numbered. Comments that are specific to particular pages, paragraphs or lines of the section should follow your overview comments and should identify the page numbers to which they apply. Please number all your pages (on the upper right hand of each page), and have your identifying information at the top of each page.

DATES: Comments on this draft document must be submitted by January 14, 2004.

ADDRESSES: The NOAA Research Review Team Report will be available on the SAB Web site at *http://www.sab.noaa.gov/reports/review-draft.pdf* on December 15, 2003.

All comments should be sent electronically to *research.review@noaa.gov*, or to NOAA Research, Science Advisory Board, c/o Ms. M. Whitcomb, Silver Spring Metro

Center, Bldg. 3, Room 11558, 1315 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Ms. M. Whitcomb, Silver Spring Metro Center, Bldg. 3, Room 11558, 1315 East-West Highway, Silver Spring, Maryland 20910 (phone 301–713–2454 x 173), during normal business hours of 8 a.m. to 5 p.m. eastern time, Monday through Friday, or visit the SAB Web site at: *http://www.sab.noaa.gov/reports/review_draft.pdf*.

SUPPLEMENTARY INFORMATION: None.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research.

[FR Doc. 03–29888 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–KD–U

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Reinstatement With Change of a Previously Approved Collection for Which Approval Has Expired; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. This form is available in alternate formats. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9 a.m. and 4:30 p.m. eastern time, Monday through Friday.

Currently, the Corporation is soliciting comments concerning the proposed revision of its National Senior Service Corps Project Progress Report (OMB Control Number 3045–0033). The previously approved Progress Report expired on August 31, 2003. However, on November 21, 2003, OMB approved a six month emergency extension and assigned a new expiration date of May 31, 2004.

This reinstatement with changes reflects the Corporation's intent to modify selected sections of the collection instrument to reflect changes in data considered ''ore reporting'' information to meet a variety of needs, including:

- Removing data elements no longer required after January 2004;
- Adding new data elements as needed to ensure information collection captures appropriate data for the Corporation's required performance measurement and other reporting.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by February 3, 2004.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, National Senior Service Corps; Attention Ms. Angela Roberts, Senior Program Officer; Room 9305, 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 6010 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 565–2743, Attention Ms. Angela Roberts, Senior Program Officer.

(4) Electronically through the Corporation's e-mail address system: *aroberts@cns.gov*.

FOR FURTHER INFORMATION CONTACT: Angela Roberts, (202) 606–5000, ext. 111.

SUPPLEMENTARY INFORMATION:

Comment Request

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Background

The Progress Report (PPR) was designed to assure that National Service Corps (NSSC) grantees address and fulfill legislated program purposes, meet agency program management and grant requirements, and assess progress toward work plan objectives agreed upon in the granting of the award.

Current Action

The Corporation seeks to reinstate the previously used PPR to: (a) Enhance data elements collected via this information collection tool; (b) migrate the paper version of the form to the Corporation's electronic grants management system, eGrants; and (c) establish reporting periods consistent with the Corporation's integrated grants management and reporting policies.

The Corporation anticipates making available to all NSSC grantees an OMB approved revised PPR by April of 2004.

The revised PPR will be used by NSSC grantees to report progress toward accomplishing work plan goals and objectives, reporting actual outcomes related to self-nominated performance measures meeting challenges encountered, describing significant activities, and requesting technical assistance. Submission requirements are proposed to be revised as follows:

- Established multi-year NSSC grantees will submit the complete report semi-annually within 30 days of the end of their annual budget cycle.
- New projects in their first year, new components of statewide projects, demonstrations, and projects experiencing problems or with substantial project revisions may, upon review and recommendations of project managers, submit the PPR quarterly.

Type of Review: Reinstatement With Change of a Previously Approved Collection for Which Approval Has Expired.

Agency: Corporation for National and Community Service.

Title: National Senior Services Corps Project Progress Report.

OMB Number: 3045–0033.

Agency Number: CNCS Form 1020.

Affected Public: Sponsors of National Senior Service Corps grants.

Total Respondents: 1,350.

Frequency: Semi-annual. It is estimated that 1,350 will respond semi-annually and 50 quarterly.

Average Time Per Response: 8.7 hours.

Estimated Total Burden Hours: 11, 000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): $2,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 1, 2003.

Tess Scannell,

Director, National Senior Service Corps.

[FR Doc. 03–30228 Filed 12–4–03; 8:45 am]

BILLING CODE 6050–$$–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6646–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed November 24, 2003, through November 28, 2003

Pursuant to 40 CFR 1506.9.

EIS No. 030542, Final EIS, HHS, MD, Integrated Research Facility (IRF) at Fort Detrick construction and operation, adjacent to existing U.S. Army Medical Research Institute of Infectious Diseases Facilities, City of Frederick, Frederick County, MD, Due: January 5, 2004, Contact: Ronald Wilson (301) 496–5037.

EIS No. 030543, Final Supplement, BLM, NV, Millennium Expansion Project, new facilities construction and existed gold mining operations expansion, plan-of-operations approval, Winnemucca, Humboldt County, NV, Due: January 5, 2004, Contact: Jeff Johnson (775) 623–1500.

EIS No. 030544, Draft EIS, AFS, AZ, Bar T Bar Anderson Springs allotment management plans, to authorize permitted livestock grazing for a 10-year period, Coconino National Forest, Mogollon Rim and Mormon Lake Ranger Districts, Coconino County, AZ, Due: January 20, 2004, Contact: Jerry Gonzales (928) 354–2216.

EIS No. 030545, Final EIS, FRC, FL, Ocean Express Pipeline Project, construction, operation and maintenance of an interstate natural gas pipeline extending from the Exclusive Economic Zone (EEZ) boundary between the United States and the Bahamas, (Docket No. CP02–090–001–1) plan of operations approval, NPDES and U.S. Army COE section 10 and possible 404 permits, Broward County, FL, Due: January 5, 2004, Contact: Thomas Russo (866) 208–3372.

Dated: December 2, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–30273 Filed 12–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6646–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 4, 2003 (68 FR 16511).

Draft EISs

ERP No. D–AFS–F65044–MI Rating EC1, Baltimore Vegetative Management Project, implementation, Ottawa National Forest, Ontonagon Ranger District, Ontonagon County, MI.

Summary: EPA expressed environmental concerns with potential impacts to riparian areas and to the complexity of forest structure from fragmentation, management of early successional species and the control of invasives. The final EIS should address impacts from dispersed recreation to soil and water resources. EPA offered several suggested modifications the preferred alternative.

ERP No. D–AFS–J65391–WY Rating EC1, Blackhall-McAnulty Analysis Area, proposal to reduce the spread of Dwarf Mistletoe and Mountain Pine Beetle in Lodgepole Pine stands, Brush Creek/Hayden Ranger District, Medicine Bow-Routt National Forests and Thunder Basin National Grassland, Carbon County, WY.

Summary: EPA expressed environmental concerns with potential impacts to aquatic systems and resources, terrestrial habitat and soils.

ERP No. D–AFS–L65434–WA Rating EC1, Crupina Integrated Weed Management Project, control and eradication of Crupina, implementation, Okanogan and Wenatchee National Forests, Chelan Ranger District, Chelan County, WA.

Summary: EPA has environmental concerns and recommends that the FEIS provide an improved discussion and definition of suitable habitat for Crupina vulgaris, disclosure of Lake Chelan's potential role as a vector, and improve the document's cartographic information.

ERP No. D–BLM–K08027–NV Rating EC2, Tracy to Silver Lake Transmission Line Project, construction, operation and maintenance of a 120kV transmission line from Tracy Power Plant to new substations in the Spanish Spring Valley and Stead Areas, right-of-way application, Washoe County, NV.

Summary: EPA expressed environmental concerns with potential impacts to water quality, especially wetlands and aquatic resources, and air quality. The final EIS should adequate assess all jurisdictional waters, discuss minimization of impacts and mitigation if needed, as well as conformity and cumulative impacts to air quality.

ERP No. D–FHW–F40416–00 Rating EC2, US 24 Transportation Improvements Project, I–469 in New Haven, Indiana to OH–15 in Defiance, OH, funding, NPDES permit and U.S. Army COE section 404 permit, Westernmost and Allen Counties, IN and Paulding and Defiance Counties, OH.

Summary: EPA has environmental concerns with the proposed project related to wetlands impacts and the need for more information on wetlands mitigation, and the impacts of runoff from roadways.

ERP No. D–IBR–K65259–CA Rating EC2, Pajaro Valley Water Management Agency (PVWMA) Revised Basin Management Plan Project, connection of PVWMA pipeline to the Santa Clara conduit of the Central Valley Project (CVP), Santa Cruz, Monterey and San Berito Counties, CA.

Summary: EPA expressed environmental concerns regarding the potential cumulative impacts to water quality and supply associated with this project and related projects in Pajaro Valley. EPA requested additional information related to water quality impacts, alternatives analysis, water conservation commitments, and environmental justice impacts.

Final EISs

ERP No. F–AFS–L65428–ID, Twin Creek Timber Sale Project, proposal to

cut and remove Lodgepole Pine sawtimber and road construction/reconstruction, Montpelier Ranger District, Caribou National Forest, U.S. Army Corps of Engineers permit, Bear Lake County, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–J65374–WY, Snake River Resource Management Plan, BLM-administrated public land and resources allocation and management, Snake River, Jackson Hole, Teton County, WY.

Summary: EPA supports BLM's decision to select the preferred alternative to transfer ownership of BLM-administered lands to other agencies. While this alternative has potential for minimal impacts to the environment, it contains uncertainties regarding the impacts to riparian areas and achieving management goals under future land-transfer agreements.

ERP No. F–BLM–K65241–CA, Headwaters Forest Reserve, Implementation Resource Management Plan, long-term management plan and planning framework, located in the northwestern Coast Ranges near Humboldt Bay in Humboldt County, CA.

Summary: EPA expressed no objection to the proposed project.

ERP No. F–COE–E39061–MS, Royal D'Iberville Hotel and Casino Development Project, construction and operation, U.S. Army COE section 10 and 404 and NPDES permits issuance, City of D'Iberville on the Back Bay, Mississippi Gulf Coast, Harrison County, MS.

Summary: EPA has no significant environmental concerns regarding construction of this casino hotel complex if the mitigation is performed as noted.

ERP No. F–COE–G35022–TX, Gulf Intracoastal Waterway in the Laguna Madre, maintenance dredging from the JFK Causeway to the Old Queen Isabella Causeway, Nueces, Kleberg, Kenedy, Willacy and Cameron County, TX.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FAA–C51022–NJ, Atlantic City International Airport, air service improvements, economic development and efficiency and safety enhancements, airport layout plan approval, Atlantic County, NJ.

Summary: EPA has no concerns with the implementation of the proposed project.

ERP No. F–NRS–G36165–OK, Cavalry Creek Watershed supplemental plan for Floodwater Retarding Structure No. 6, Washita River Basin, Washita County, OK.

Summary: No formal comment letter was sent to the preparing agency.

Dated: December 2, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–30274 Filed 12–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7594–7]

Notice of Public Meeting of the National Environmental Education Advisory Council

Notice is hereby given that the National Environmental Education Advisory Council established under section 9 of the National Environmental Education Act of 1990 (the Act), will hold a public meeting on January 22 and 23, 2004. The meeting will take place 1200 Pennsylvania Ave., NW., Washington, DC from 9 a.m. to 5 p.m. on Thursday, January 22 and Friday, January 23. The purpose of this meeting is to provide the Council with an opportunity to advise EPA's Office of Public Affairs (OPA) and the Office of Environmental Education (OEE) on its implementation of the Act. Members of the public are invited to attend and to submit written comments to EPA following the meeting.

For additional information regarding the Council's upcoming meeting, please contact Ginger Potter, Office of Environmental Education (1704A), Office of Public Affairs, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 or call (202) 564–0453.

Dated: December 3, 2003.

Ginger Potter,

Designated Federal Official, National Environmental Education Advisory Council.

[FR Doc. 03–30268 Filed 12–4–03; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7595–2]

Peer-Review Workshop on Time-Dependent Models and Technical Guidance Document Developed for Benchmark Dose Analysis of Neurobehavioral Toxicity Screening Data

AGENCY: Environmental Protection Agency.

ACTION: Notice of a peer-review workshop and public meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces an expert peer-review workshop to review two time-dependent dose-response models and draft guidance for the application of these models to the assessment of data generated under EPA neurotoxicity screening test guidelines (63 FR 26926, May 14, 1998). Oak Ridge Institute for Science and Education (ORISE), an EPA contractor, will organize, convene, and conduct the peer-review workshop.

The workshop will focus on application of the new statistical and dose-response methods represented by these models to neurotoxicity data, but applications of these methods to other toxicological data will also be discussed. The Splus® model programs and draft guidance document to be reviewed were developed for the EPA's National Center for Environmental Assessment (NCEA) and National Health and Environmental Effects Laboratory (NHEERL) by the University of South Florida. They are both available for download from the workshop's registration Web site, *http://www.orau.gov/modelreview*.

Though the primary purpose of the workshop is to receive comments and suggestions from the peer-review panel members, members of the public are invited to attend the workshop as observers and will be allowed to present brief verbal and/or written comments at the end of the workshop. NCEA and NHEERL will consider comments received at the workshop in preparing the software and a revised guidance document for later release to the public.

DATES: The peer-review workshop will be held on Monday December 15, 2003 from 8:30 a.m. to 5 p.m.

ADDRESSES: The peer-review workshop will be held in Classroom C–112 of the U.S. Environmental Protection Agency, 109 T.W. Alexander Drive, Research Triangle Park, North Carolina 27709. Logistics and registration for the workshop are being arranged by ORISE, P.O. Box 117, Oak Ridge, TN 37831–0117. To attend the workshop, register by December 10, 2003, by going to the Web site at *http://www.orau.gov/modelreview*. Space is limited, and reservations will be accepted on a first-come, first-serve basis.

FOR FURTHER INFORMATION CONTACT: The EPA's contractor, Leslie Shaphard of ORISE, should be contacted at telephone: (865) 241–5784 or e-mail: *ShapardL@orau.gov* for details pertaining to the workshop, registration,

and logistics. For technical information contact: Jeff Gift, U.S. EPA, NCEA–RTP, B243–01, Research Triangle Park, NC 27711; telephone: 919–541–4828; facsimile: 919–541–0245; or e-mail: *gift.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Environmental Protection Agency has supported the use of the benchmark dose (BMD) approach over the NOAEL/LOAEL approach for deriving reference doses for use in the risk assessment process. The software that is currently available at the EPA BMDS Web site (*http://www.epa.gov/ncea/bmds.htm*) does not allow for the modeling of data that are longitudinal in nature (*e.g.*, sequential measurements of effects). With this in mind, the EPA has supported the development of this time-dependent modeling software and guidance for a particular application, the derivation of benchmark dose (BMD) and its lower confidence limit (BMDL) for data generated from the battery of neurotoxicity screening tests under guidance developed by EPA NHEERL.

Copies of the draft technical guidance document and the software will be available to the public at the registration Web site. Interested parties are invited to assist the EPA in further developing and refining this document at this peer-review workshop.

Dated: December 1, 2003.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 03–30269 Filed 12–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0291; FRL–7331–1]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations for Products Containing Tributyltin Methacrylate, and to Amend Certain Pesticide Registrations Containing Bis(tributyltin) Oxide to Terminate a Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations and to amend certain pesticide registrations to terminate a use. Atofina Chemicals, Inc. and Crompton Corporation have requested that the registrations for all their tributyltin products registered for use in formulating antifouling paints or which are themselves antifouling paints be canceled, or if the products are registered for use in formulating other pesticides in addition to antifouling paints, that those registrations be amended to terminate the antifoulant use. Both registrants have requested that the voluntary cancellations and use terminations become effective as of November 30, 2003. Both companies have requested that they be permitted to sell affected products without change to the labels until that date and no later; no separate existing stocks provisions are necessary since the Agency intends to allow them to sell the affected products only until the effective date as requested. Both companies have waived the 180–day comment period typically allowed after a request for voluntary cancellation, and both companies have stated that their requests are irrevocable.

DATES: Unless the Agency receives substantive comments within the 30–day comment period that would merit further review of the requests, the Agency intends to issue orders granting these requests to cancel certain products, and to amend to terminate certain uses. Comments, identified by docket ID number OPP–2003–0291, must be received on or before January 5, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jill Bloom, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8019; e-mail address: *bloom.jill@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0291. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

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

Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

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

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0291. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0291. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0291.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0291. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

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

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

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

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

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of requests from Atofina to cancel its EPA Registration Numbers shown below. Atofina submitted a letter dated September 10, 2003 to the Agency requesting the voluntary cancellation of their registrations for these products containing tributyltin methacrylate. The letter was received by the Agency on September 12, 2003. The affected registrations are listed in Table 1 of this unit:

TABLE 1.—REQUESTS FOR CANCELLATION

Registration Number	Product Name	Chemical Name
5204–63	Biomet 300 Antifouling Agent	Tributyltin methacrylate
5204–65	Biomet 302 Antifouling Agent	Tributyltin methacrylate
5204–67	Biomet 304 Antifouling Agent	Tributyltin methacrylate
5204–80	Biomet 303/60 Antifouling Agent	Tributyltin methacrylate
5204–81	Biomet 304/60 Antifouling Agent	Tributyltin methacrylate
5204–83	Polyflo 4024	Tributyltin methacrylate
5204–87	Biomet 305	Tributyltin methacrylate
5204–88	Biomet 309	Tributyltin methacrylate
5204–90	Biomet 300/60 Antifouling Agent	Tributyltin methacrylate

This notice also announces receipt by the Agency of requests from Atofina and Crompton to amend their EPA Registration Numbers 5204–1 and 8898–17, respectively, to terminate their use for formulation of antifouling paints. Atofina and Crompton submitted letters dated September 10, 2003 and September 29, 2003 (as subsequently clarified and corrected by Crompton's letter dated October 29, 2003), respectively, to the Agency requesting the amendment of registrations to terminate this use for these products containing bis(tributyltin) oxide. The letter from Atofina was received by the Agency on September 12, 2003; the letters from Crompton were received by the Agency on September 30, 2003 and October 29, 2003, respectively. The affected registrations are listed in Table 2 of this unit:

TABLE 2.—REQUESTS FOR AMENDMENT TO TERMINATE USES

Registration Number	Product Name	Chemical Name
5204–1	Biomet TBTO	Bis(tributyltin) oxide
8898–17	Eurotin TBTO	Bis(tributyltin) oxide

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or use termination of any minor agricultural use before granting the request, unless (1) the registrants request a waiver of the comment period, or (2) the Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment. The registrants have requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed requests. EPA anticipates granting the cancellation requests and requests for termination of uses shortly after the end of the 30–day comment period for this notice unless the Agency receives substantive comments within the comment period that would merit further review of the request.

Unless substantive comments are submitted which merit further review, the Agency intends to issue orders canceling the subject registrations and granting the amendments affecting the use terminations associated with the requests. Users of these pesticides or anyone else desiring the retention of a registration or particular use should contact the appropriate registrant and the person listed under **FOR FURTHER INFORMATION CONTACT** before the lapse of this 30–day period.

Table 3 of this unit includes the name and address of record for the registrants of the products in Table 1 and 2 of this unit:

TABLE 3.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENT TO TERMINATE USES

EPA Company Number	Company Name and Address
5204	Atofina Chemicals, Inc., 2000 Market Street, Philadelphia, PA 19103–3222
8898	Crompton Corporation, 1 American Way, Greenwich, CT 06831

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more pesticide uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting requested cancellations generally permit a registrant to sell or distribute existing stocks for one year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a Data Call-In. In all cases, product-specific disposition dates will be given in the cancellation orders.

In this case, Atofina requested in its letter dated September 10, 2003 that the Agency allow it to sell existing stocks of its affected products for which Atofina requested voluntary cancellation until November 30, 2003, which is the same date that Atofina requested the cancellations to be effective. In their letters dated September 10, 2003 and September 29, 2003 (as subsequently clarified and corrected by Crompton's letter dated October 29, 2003) respectively, Atofina and Crompton also requested that the Agency allow them to sell stocks of their affected products for which they have requested amendment to terminate uses, bearing labels allowing the use which is the subject of the use termination request, until that same date, November 30, 2003. The Agency anticipates granting these requests shortly after the end of the 30–day comment period for this notice unless the Agency receives substantive comments within the comment period that would merit further review of the request. The cancellation and use termination orders which effect the requests of these two registrants for their TBT antifoulant and antifouling paint registrations will effectively serve as the existing stocks orders for the affected registrations.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. In this instance, and consistent with their own requests, Atofina and Crompton will not be permitted existing stocks provisions for any sale, distribution, or use of affected products after the effective date of the cancellations and use terminations. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a Special Review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical. The Agency does not anticipate any such exception to these general rules in this case.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 21, 2003.

Betty Shackleford,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–30165 Filed 12–4–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0248; FRL–7318–6]

Notice of Availability of the Preliminary Risk Assessment for Creosote Reregistration Eligibility Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of documents that were developed as part of EPA's six-phase public participation reregistration process for creosote. This chemical, a ''heavy duty wood preservative,'' was first registered in the United States in 1948 as a coal tar creosote active ingredient. Presently, 16 products are registered for use as industrial wood preservatives for above and below ground wood protection treatments, as well as treating wood in marine environments. Creosote wood preservatives are used primarily in the pressure treatment of railroad ties/crossties (about 70% of all creosote use) and utility poles/cross-arms (about 15–20% of all creosote use). Assorted creosote-treated lumber products (e.g., timbers, poles, posts and ground-line support structures) account for the remaining uses of this wood preservative. This notice starts the 60–day public comment period for the preliminary risk assessment for creosote. EPA will review all comments received and address them accordingly. The Agency will then announce and conduct a public technical briefing on the revised risk assessment to provide an opportunity for the public to learn more about the data, information, and methods used to develop the revised risk assessment. The revised assessment will then be made available to the public, and the public will be invited to submit risk management ideas and/or proposals. By allowing access and opportunity for comments on the preliminary risk assessment, the Agency is seeking to strengthen stakeholder involvement and help ensure its decisions under the Food Quality Protection Act are transparent, and based on the best available information.

DATES: Comments, identified by docket ID number OPP–2003–0248, must be received on or before February 3, 2004.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative

that you identify docket ID number OPP–2003–0248 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *By mail*: Bonaventure Akinlosotu, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Office location for commercial courier delivery, telephone number and e-mail address: Rm. 308, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 605–0653; e-mail: *akinlosotu.bonaventure@epa.gov*.

SUPPLEMENTARY INFORMATION: This announcement consists of two parts. The first part contains general information. The second part provides information on what actions the Agency intends to take.

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use creosote. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0248. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at*http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

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C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at*http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0248. 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.

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

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0248.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0248. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

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

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

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

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA is making available preliminary risk assessments that have been developed as part of EPA's process for making reregistration eligibility decisions for creosote. The Agency is providing the opportunity, through this notice, for interested parties to provide written comments and input to the Agency on the preliminary risk assessments for the chemical specified in this notice. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific chemical. Comments should be limited to issues raised within the preliminary risk assessments and associated documents. EPA will provide other opportunities for public comment on other science issues associated with creosote. Failure to comment on any issues as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments should be submitted by February 3, 2004.

List of Subjects

Environmental protection, Chemicals, Creosote, Pesticides and pests.

Dated: November 25, 2003.

Jack E. Housenger,

Acting Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 03–30270 Filed 12–4–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0276; FRL–7334–6]

Pyridalyl; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket (ID) number OPP–2003–0276, must be received on or before January 5, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Susan Stanton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5218; e-mail address: *stanton.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

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4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 20, 2003.

Susan Lewis,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the Valent U.S.A. Corporation and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Valent U.S.A. Corporation

PP 2F6459, and PP 2E6592

EPA has received pesticide petitions (PP 2F6459, and PP 2E6592) from Valent U.S.A. Corporation, 1600 Riviera Ave., Suite 200, Walnut Creek, CA 94596–8025, and IR-4, 681 U.S. Highway #1 South, North Brunswick, NJ, 08902–3390, proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of the insecticide chemical pyridalyl, pyridine,2-[3-[2,6-dichloro-4-[(3,3-dichloro-2-propenyl)oxy]phenoxy]propoxy]-5-(trifluoromethyl), in or on the raw agricultural commodities: Cottonseed at 0.4 parts per million (ppm); vegetable, fruiting, group 8, at 1.1 ppm; vegetable, leafy, except Brassica, group 4, at 20.0 ppm; Brassica, head and stem, subgroup 5A, at 5.0 ppm; Brassica, leafy greens, subgroup 5B, at 30.0 ppm; turnip greens at 30 ppm; meat at 0.04 ppm; meat by-products at 0.05 ppm; animal fat at 1.0 ppm; and whole milk at 0.1 ppm and to establish tolerances for residues of the insecticide chemical pyridalyl, pyridine,2-[3-[2,6-dichloro-4-[(3,3-dichloro-2-propenyl)oxy]phenoxy]propoxy]-5-(trifluoromethyl) plus the metabolite S-1812-DP, 3,5-dichloro-4-[3-(5-trifluoromethyl-2-pyridyloxy)]propoxy phenol, in or on the raw agricultural commodity cotton gin by-products at 23.0 ppm. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of pyridalyl in plants is well understood, having been investigated in cabbage, tomato, and cotton. The major residue in all crops is pyridalyl. A minor metabolic pathway in plants involves cleavage of the dichloropropenyl group to the phenol, S-1812-DP, which can be conjugated. Other minor metabolic pathways in cotton are oxidation of the dichloropropenyl group to the acid, S-1812-PhCH2COOH, and hydrolysis to give the pyridone, HTFP, which can be further hydroxylated to 3-hydroxy-5-trifluoromethylpyridone (HPDO).

2. *Analytical method*. Based on the metabolism of pyridalyl in plant and animals and the toxicology of the parent and metabolite, quantification of the parent pyridalyl and the metabolite S-1812-DP are sufficient to determine toxic residues. Practical analytical

methods for detecting and measuring levels of pyridalyl and its metabolite S-1812-DP have been developed and validated in all appropriate agricultural commodities and respective processing fractions. These analytical methods are suitable for monitoring of food with residues at the levels proposed for the tolerances. Methods have also, been developed and validated for determining pyridalyl and S-1812-DP in animal matrices. The limit of quantitation (LOQ) of pyridalyl in the crop methods are 0.02 ppm in cottonseed, 0.1 ppm in cotton gin trash, and 0.02 ppm in vegetables. The LOQs of pyridalyl in the animal methods are 0.01 ppm in milk, 0.02 ppm in tissues, liver and kidney, and 0.10 ppm in fat.

3. *Magnitude of residues*. Magnitude of residues were conducted in fruiting vegetables tomato and peppers (bell and non-bell), leafy vegetables (head and leaf lettuce, celery, and spinach), head and stem brassica vegetables (broccoli and cabbage), mustard greens, and cotton. Trials were conducted in all of the major use area for each of the crops as specified in the OPPTS Harmonized Guidelines OPPTS 860.1500 with applications at the maximum use rate for each crop. As a result of the field trials, the following tolerances for the residues of pyridalyl are proposed for each of the crop groups, crops or matrices: Cottonseed at 0.4 ppm; turnip greens at 30 ppm; vegetables, leafy, except Brassica, group 4 at 20.0 ppm; brassica, head and stem, subgroup 5A at 5.0 ppm; Brassica, leafy greens, subgroup 5B at 30 ppm; and vegetables, fruiting, group 8 at 1.1 ppm. Tolerances for the residues of pyridalyl plus the metabolite S-1812-DP are proposed for cotton gin by-products at 23.0 ppm. Processing studies were conducted with tomato and cottonseed. No tolerances are proposed for cottonseed and tomato processing commodities since no concentration factor was observed. Tolerances for residues of pyridalyl are also proposed for milk at 0.1 ppm; meat at 0.04 ppm; animal fat at 1.0 ppm; and meat by-products at 0.05 ppm.

B. Toxicological Profile

A full battery of toxicology testing including studies of acute, subchronic, chronic, oncogenicity, developmental, reproductive and genotoxicity effects is available for pyridalyl. The acute toxicity of pyridalyl is low by all routes. Subchronic and chronic studies exhibit no observed adverse effect level (NOAEL) values from a low of 3.4 milligrams/kilogram/day (mg/kg/day) (male rat combined toxicity/oncogenicity study) to 1,000 mg/kg/day (28–day dermal toxicity study). Pyridalyl is not oncogenic and the weight-of-evidence indicates it is not genotoxic. There are no developmental concerns or reproductive effects.

The lowest acute NOAEL of 50 mg/kg/day is derived from both the maternal and reproductive toxicity endpoint of the rabbit developmental toxicity study.

The lowest chronic NOAEL of 40 ppm (2.8 mg/kg/day in males) is taken from the premating growth period in the 2–generation reproduction study.

1. *Acute toxicity*. The acute toxicity of pyridalyl technical is low by all routes. Pyridalyl was not toxic when administered in limit tests orally, dermally and via inhalation to rats. It is not a skin irritant and is only a mild eye irritant. Pyridalyl was positive in skin sensitization tests. Pyridalyl and its formulated products will be placed into Toxicity Category III.

2. *Genotoxicty*. The genotoxic potential of pyridalyl was studied *in vitro* in bacteria (ames test), in mammalian cells hypoxanthine-guanine phosphoribosyl transferase (HGPRT) and mouse lymphoma L5178Y TK+/−), in the chromosome aberration assay, and *in vivo* in the unscheduled DNA synthesis (UDS) test and the mouse micronucleus test. The test systems assayed did not show any evidence of pyridalyl genotoxicity except the *in vitro* mammalian cytogenetics (chromosome aberration) assay. The weight of the evidence indicates that pyridalyl does not raise significant genotoxicity concerns.

3. *Reproductive and developmental toxicity*. Developmental effects of pyridalyl were studied in rats and rabbits and multigenerational effects on reproduction were studied in rats.

i. *Rat developmental.* In a developmental toxicity study conducted with rats, the maternal NOAEL was 10 mg/kg/day based on the non-acute effects of reduced body weight gain and food consumption. There were no developmental effects, and the developmental NOAEL is 250 mg/kg/day, the highest dose tested (HDT).

ii. *Rabbit developmental.* In a rabbit developmental toxicity study, the acute effects of maternal toxicity and decreased fetal weight was observed at 150 mg/kg/day. The maternal and developmental NOAEL is 50 mg/kg/day.

iii. *Reproduction.* In a rat reproduction study, there were no adverse effects of pyridalyl on reproductive parameters in the absence of parental toxicity. The reproductive, parental and offspring toxicity NOAEL is 40 ppm.

4. *Subchronic toxicity.* Subchronic toxicity studies have been conducted with pyridalyl in the rat, mouse, and dog.

i. *Rats.* Pyridalyl technical was tested in rats in a 3–month feeding study. Effects included decreased body weight gain, altered blood biochemistry, increased relative liver weight and histopathological changes in the liver, ovary, adrenal and lung. The NOAEL is 100 ppm (5.56 mg/kg/day in males and 6.45 mg/kg/day in females).

ii. *Mice.* A 13–week feeding study in mice was conducted. Effects included decreased body weight gain, hematological and blood biochemical effects,increased liver weight, decreased kidney and ovary weights and histopathological changes in liver, kidney, ovary and adrenal. The NOAEL is 70 ppm in males (8.169 mg/kg/day) and 700 ppm in females (86.78 mg/kg/day).

iii. *Dogs.* A 13–week oral (capsule) toxicity study was conducted in dogs. Effects included decreased body weight gain, clinical signs indicative of respiratory distress, hematological and blood biochemistry effects, increased liver, lung and kidney weights and histopathological alterations of the lung, kidney, adrenal and liver. The NOAEL was 10 mg/kg/day.

iv. *Dermal rat.* A 28–day dermal toxicity study in rats with pyridalyl did not produce any signs of dermal or systemic toxicity at 1,000 mg/kg/day, the highest dose tested (HDT).

5. *Chronic toxicity.* Pyridalyl has been tested in chronic studies with dogs, rats and mice.

i. *Rats.* In a 104–week combined chronic/oncogenicity study in rats, effects included decreased body weight gain, increased frequency of rearing (high dose females only), hematological alterations and histopathological alterations of the spleen. No oncogenicity was found. The NOAEL for this study is 100 ppm (3.4 mg/kg/day in males and 4.1 mg/kg/day in females).

ii. *Mice.* Pyridalyl was administered in the diet to mice for 78–weeks. Effects included decreased body weight gain and food consumption/efficiency, and increased liver and kidney weights. The NOAEL of the study was 50 ppm (5.04 mg/kg/day in males and 4.78 mg/kg/day in females)

iii. *Dogs.* Pyridalyl was administered for 12–months by capsule to dogs. There were alterations in blood biochemistry (alkaline phosphatase and alanine aminotransaminase) and increased liver weights. The NOAEL of the study was 20 mg/kg/day.

iv. *Carcinogenicity.* Pyridalyl did not produce carcinogenicity in chronic studies with rats or mice. Valent anticipates that the oncogenicity

classification of pyridalyl will be ''E'' (no evidence of carcinogenicity for humans).

6. *Animal metabolism.* Rats metabolize and rapidly eliminate ^{14}C S-1812. Most of the administered dose was eliminated within 48 hours mainly in the feces. There were no apparent sex-related differences in either the rate of elimination of ^{14}C S-1812 or in the metabolite distribution. There was no apparent enzymatic induction as the metabolic pattern was unchanged by multiple (14–day) administrations of ^{14}C S-1812 at 5 mg/kg/day.

7. *Metabolite toxicology.* Two metabolites of pyridalyl, 2-hydroxy-5-trifluoromethylpyridine (HTFP) and HPDO that occur in extremely low levels in plants and animals, were also tested for genetic toxicity. Each metabolite was tested in an *in vitro* bacterial (Ames test) and mammalian HGPRT assay mutagenesis assay as well as in an *in vitro* chromosome aberration test. Both metabolites were positive in the bacterial assay, but were negative in the mammalian mutagenesis assay. One metabolite, HPDO, was positive in the chromosome aberration test. The biological significance of this finding is uncertain given that only low levels of these compounds are detectible in plants or animals and that pyridalyl does not appear to be carcinogenic at high and chronic doses.

8. *Endocrine disruption.* Data from the rat reproduction and subchronic studies indicated that pyridalyl may effect lipid metabolism and, consequently, hormone levels. These *in vivo* results suggested that S-1812 may have a modulating activity on steroid biosynthesis at doses generally exceeding MTD.

To further understand these finding, two additional, non-guideline, mechanistic studies were conducted. A detailed analysis of the effect of S-1812 on serum steroid hormone levels was performed in rats exposed for 4 weeks to dose levels equivalent to those used in the rat reproduction study. And an *in vitro* study was conducted in rat primary Leydig cell and ovary cell cultures to investigate the effects of S-1812 on the production of hormones and on the activity of enzymes that catalyze sex steroid hormone biosynthesis. These studies support the conclusion that S-1812 is not an endocrine disruptor in *in vivo* mammalian systems. Although, very weak inhibition of a single steroid biosynthesis pathway was observed in the *in vitro* study, effects possibly related to this conversion in mammalian systems were observed only at dose levels that greatly exceeded the maximum tolerated dose.

C. Aggregate Exposure

1. *Dietary exposure.* Acute and chronic dietary analyses were conducted to estimate exposure to potential pyridalyl residues in or on the following crops and crop groups: Cottonseed, turnip greens, vegetables, leafy, except Brassica, group 4, Brassica, group 5 and vegetables, fruiting, group 8. using the Cumulative and Aggregate Risk Evaluation System (CARES) Version 1.3. Exposure estimates to water were made based upon modeling First Index Screening Tool Reservoir (FIRST model).

i. *Food*—a. *Acute.* The acute dietary exposure estimate of pyridalyl residues in food at the 99.9th percentile was calculated to be 43% of the acute Reference Dose (aRfD) with a margin of exposure of 235. The population subgroup with the highest exposure was non-nursing infants. The aRfD was defined as the NOAEL from a developmental toxicity study in rabbits and includes an uncertainty factor of 100 (NOAEL = 50 mg/kg body weight (bwt)/day, aRfD = 0.5 mg/kg/day).

b. *Chronic.* The chronic dietary exposure estimate of pyridalyl residues in food at the 100th percentile was calculated to be 1.4% of the chronic Reference Dose (cRfD) with a margin of exposure of 732. The population subgroup with the highest exposure was children 1–2 years old. The cRfD was defined as the NOAEL from the 2–generation reproduction study in rats including an uncertainty factor of 100 (NOAEL = 2.8 mg/kg bwt/day, cRfD = 0.028 mg/kg/day).

These values are based on proposed tolerance level residues adjusted for percentages of the crop treated. No adjustments were made for common washing, cooking or preparation practices and as such are very conservative values.

ii. *Drinking water.* Since pyridalyl is applied outdoors to growing agricultural crops, the potential exists for the parent or its metabolites to reach groundwater or surface water that may be used for drinking water. Screening Concentration in Groundwater (SCIGROW) simulation predicted zero S-1812 concentration in ground water indicating that S-1812 will not leach. This result is expected due the very high Koc value of pyridalyl. For the surface water FIRST (version 1.0) simulation produced peak day concentration (acute) of 0.15 parts per billion (ppb). The peak FIRST concentration was used for both the acute and chronic exposure assessment. Based on these modeled drinking water concentrations, the worst-case acute/chronic dietary exposure from drinking water is estimated to be negligible (0.02% of the aRfD, and 0.003% of the cRfD for children).

2. *Non-dietary exposure.* Pyridalyl is proposed only for agricultural uses and no homeowner or turf uses. Thus, no non-dietary risk assessment is necessary.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that the Agency must consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' Available information in this context include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanism of toxicity and conducting cumulative risk assessments. For most pesticides, although, the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way for most registered pesticides.

E. Safety Determination

1. *U.S. population.* Using the conservative assumption described above, based on the completeness and reliability of the toxicity data, it is concluded that aggregate exposure to the proposed uses of pyridalyl will utilize at most 43% of the acute RfD and 2% of the chronic RfD for the U.S. population and is likely to be much less, as more realistic data and models are developed. The Agency has no cause for concern if total acute residue contribution is less than 100% of the aRfD, because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risk to human health. Therefore, there is a reasonable certainty that no harm will occur to the U.S. population from aggregate exposure to residues of pyridalyl under the proposed use patterns.

2. *Infants and children.* The toxicological data base for evaluating prenatal and postnatal toxicity for pyridalyl is complete with respect to current data requirements. There are no special prenatal and postnatal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies or the 2–generation reproductive toxicity study in rats. Using the conservative

assumption described above, based on the completeness and reliability of the toxicity data, it is concluded that, aggregate exposure to the proposed uses of pyridalyl will utilize at most 43% of the aRfD for non-nursing infants (the most highly exposed subgroup) and 2% of the cRfD for children 1–2 (the most highly exposed subgroup). The drinking water contribution to dietary exposure is insignificant. Therefore, there is a reasonable certainty that no harm will occur to infants and children from aggregate exposure to residues of pyridalyl.

F. International Tolerances

There are currently no international tolerances for pyridalyl.

[FR Doc. 03–30164 Filed 12–4–03; 8:45 am]

BILLING CODE 6560–50–S

EXPORT-IMPORT BANK

[Public Notice 58]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Export Import Bank of the United States.

ACTION: Notice and request for comments.

SUMMARY: The Export-Import Bank, as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before February 3, 2004 to be assured of consideration.

ADDRESSES: Direct all comments and requests for additional information to Mr. Wayne Gardella, Director Operations, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3787.

SUPPLEMENTARY INFORMATION:

Titles and Form Numbers

Application for Quotation-Export Credit Insurance, Commercial Bank Insureds, EIB 92–34;

Beneficiary Certificate and Agreement, EIB 92–37;

Application for a Financial Institution Buyer Credit Policy, EIB 92–41;

Application for Export Credit Insurance Financing or Operating Lease Coverage, EIB 92–45;

Short-Term Multi-Buyer Export Credit Insurance Policy Application, EIB 92–50;

Exporter's Application for Short-Term Single-Buyer Policy, EIB 92–64;

Broker Registration Form, EIB 92–79.

OMB Number: 3048–0009.

Type of Review: Revision and extension of expiration date.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements. The forms encompass a variety of export credit insurance policies.

Affected Public: They affect all entities involved in the export of U.S. goods and services including exporters, banks, insurance brokers and non-profit or state and local governments acting as facilitators.

Estimated Annual Respondents: 1,762.

Estimated Time per Respondent: 1 hour.

Estimated Annual Burden: 1,762.

Frequency of Reporting or Use: Applications submitted one time, renewals annually.

Dated: November 22, 2003.

Solomon Bush,

Agency Clearance Officer.

BILLING CODE 6690–01–M

OMB#3048-0009
Expiry Date 10/31/03

EXPORT-IMPORT BANK OF THE UNITED STATES
APPLICATION FOR QUOTATION-EXPORT CREDIT INSURANCE
COMMERCIAL BANK INSUREDS
LETTER OF CREDIT (ELC), BANK DEDUCTIBLE (EBD) or
FINANCIAL INSTITUTION SUPPLIER CREDIT (EBS, EBM) POLICIES
THIS DOCUMENT WILL BE A MATERIAL BASIS OF THE INSURANCE IF QUOTATION IS MADE AND ACCEPTED.

1. Applicant Bank:_____ Contact:_____

Address, include 9 digit Zip Code :_____

E-mail_____ Fax_____ Phone_____

Tax ID #: _____ DUNS #: _____ Congressional District:_____

2. If you wish us to consider adding subsidiaries, branches or affiliates as Additional Named Insureds under your policy, provide full legal name and address below and answer questions 5. A. (2) or B. (2) for each Additional Named Insured.

Name Address

_____ _____

_____ _____

3. Name of Brokerage (if any, if none insert "*none*") : _____

Name of Contact: _____ Broker #: _____

E-Mail_____ Fax_____ Phone_____

4. Please provide the following information unless you have submitted this information within the past 6 months for Policy No:____

A. (1)Rating:_____ Agency:_____ Date:_____ , **or**

(2) a. Annual report, including audited financial statements, on your bank for the past two fiscal years.
b. The most recent available 10K and 10Q reports on your bank.
c. Recent (within six months) credit agency report on your bank (otherwise, please attach a check for $35.00).

B. If you are a foreign bank registered to do business in the U.S., in which state(s) are you licensed to conduct business? How are your operations in this country best described? Does your bank operate as a branch or subsidiary? To what extent are credit decisions made by your bank autonomous of headquarters?

C. Has your bank or have the individual(s) who will be administering or placing business under this policy ever dealt with Ex-Im Bank before? ☐ Yes ☐ No If yes, describe the programs the bank or the individual(s) are familiar with, and the time period during which these contacts took place._____

D. Is there any other information that will be of assistance in evaluating your request for a bank policy? ☐ Attached

5. A. **For Letter of Credit Policies** (add pages if necessary):

(1) a. How are the international banking activities in your bank organized functionally?_____
(2) a. Who are the key individuals involved? _____
b. Have the individuals involved attended an Ex-Im Bank orientation seminar or an Ex-Im Bank training session? ?
☐Yes ☐ No

c. Please provide their resumes. (See resume form attached)
You must provide notification within 10 days if the individual(s) responsible for administering the policy change.

(3) a. How long have you been confirming international letters of credit ? _____

b. From what Countries _____

(4) Does your bank have any special expertise in particular types of transactions, regions of the world or any other areas?

_____

(5) Maximum value of insured letters of credit expected to be outstanding during the policy period $_____

B. **For Financial Institution Supplier Credit** or **Bank Deductible Policies** (add pages if necessary):

(1) Describe how you develop customers for domestic or export receivable financing or factoring.

_____

(2) a. Please identify the individual(s) and administrative area which will be responsible for administering your policy.

_____

b. Have the individuals involved attended an Ex-Im Bank orientation seminar or an Ex-Im Bank training session? □ Yes □ No

c. What experience do the individual(s) identified in 5.B.(2)a. have with Ex-Im Bank insurance _____or private sector export credit insurance?_____

d. Please provide their resumes. (See resume form attached)
You must provide notification within 10 days if the individual(s) responsible for administering the policy change.

(3) How many years, and to what dollar amount, have you financed or factored receivables?

	# of years	most recent calendar year amount
Domestic Receivables:	_____	$_____
Foreign Receivables:	_____	$_____

(4) Describe the credit procedures used in deciding to finance an exporter's receivables.

Exporter Analysis:

_____

Buyer Analysis:

_____

(5) a. Maximum value of financed receivables expected to be outstanding during the policy period: $_____

b. For **Financial Institution Suppler Credit Policies** Do you desire (check one) a Documentary Policy □
a Non-Documentary Policy □
or both □

c. After what number of days would you stop financing the exporter's receivables from an overdue buyer? _____

d. How often are financed export receivables monitored? _____

e. Please provide a specimen copy of your lending agreement with exporters for receivable financing or factoring. □ Attached

6. The Applicant (it) **CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank** (the Bank) that:

A. 1) it is a financial institution doing business in the United States, or a jurisdiction thereunder, in accordance with applicable Federal or State banking laws and regulations **OR**

2) it has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make this certification.

B. Neither it, nor its Principals, have within the past 3 years been:

1) debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in, a Transaction;
2) formally proposed for debarment, with a final determination still pending;
3) indicted, convicted or had a civil judgment rendered against us for any of the offenses listed in the Regulations;
4) delinquent on any amounts due and owing to the U.S. Government or its agencies or instrumentalities as of the date of execution of this certification; or
5) the undersigned has received a written statement of exception from Ex-Im Bank attached to this certification, pérmitting participation in this Transaction despite an inability to make certifications 1) through 4) in this paragraph.

C. It has not and will not knowingly enter into any agreements in connection with the goods and/or services covered by this policy with any individual or entity that has been debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in a Transaction. All capitalized terms not defined herein shall have the meanings set forth in the **Government Wide Non-Procurement Suspension and Debarment Regulations - Common Rule** (Regulations).

D. It will complete and submit **Form-LLL (**the Anti-Lobbying Declaration/Disclosure forms available at http://www.exim.gov/pub/pdf/95-10apd.pdf), Disclosure Form to Report Lobbying if, to the best of our knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:

(1) an officer or employee of any U.S. Government agency, or
(2) a Member of Congress or a Member's employee, or
(3) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers.*

E. It has not, and will not, engage in any activity in connection with this transaction that is a violation of 1) the **Foreign Corrupt Practices Act of 1977**, 15 U.S.C. 78dd-1, et seq. (which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business), 2) the **Arms Export Control Act**, 22 U.S.C. 2751 et seq., 3) the **International Emergency Economic Powers Act**, 50 U.S.C. 1701 et seq., or 4) the **Export Administration Act of 1979**, 50 U.S.C. 2401 et seq.; nor has it been found by a court of the United States to be in violation of any of these statutes within the preceding 12 months, and to the best of its knowledge, the performance by the parties to this transaction of their respective obligations does not violate any other applicable law.

F. The representations made and the facts stated in this application and its attachments **are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts**. It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001, et. seq.)

_____	_____	_____/___/_____
Signature	Print Name and Title	Month/Day/Year\

Send, or ask your insurance broker or city/state participant to review and send, this application to x-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office. The Ex-Im Bank website is http://www.exim.gov

Please complete: The applicant was informed about Ex-Im by: □ An Ex-Im Regional Office: □ An Ex-Im City/State Partner: □ A U.S. Export Assistance Center: □ A Broker: □ A Bank:

□ A Local Development Authority: □ Other (specify):

Notices

The applicant is hereby notified that information requested by this application is done so under authority of the **Export-Import Bank Act of 1945**, as amended (12 USC 635 et. seq.); provision of this information is mandatory and failure to provide the requested information may result in Ex-Im Bank being unable to determine eligibility for support. The information provided will be reviewed to determine the participants' ability to perform and pay under the transaction referenced in this application. Ex-Im Bank may not require the information and applicants are not required to provide information requested in this application unless a currently valid OMB control number is displayed on this form (see upper right of each

page).

Public Burden Statement: Reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send comments regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

The information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) the **Privacy Act of 1974** (5 USC 552a), and the **Right to Financial Privacy Act of 1978** (12 USC 3401), except as otherwise required by law. Note that the Right to Financial Privacy Act of 1978 provides that Ex-Im Bank may transfer financial records included in an application for an insurance policy, or concerning a previously approved insurance policy, to another Government authority as necessary to process, service or foreclose on an insurance policy, or collect on a defaulted insurance policy.

END

Attachment to Bank Policy Application
To be filled out for each individual named.
RESUME FORM

Name: _____

Title or
Position: _____

Number of years with your organization: _____

Full description of job functions including administering the policy:

_____
_____
_____
_____

Administrative
experience: _____

_____
_____

Export-related experience including any previous experience with Ex-Im Bank: _____
_____
_____
_____

Educational
background: _____
_____
_____

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OMB#3048-0009
Expiry Date
10/31/03

Ex-Im Bank Logo

EXPORT-IMPORT BANK OF THE UNITED STATES

BENEFICIARY CERTIFICATE AND AGREEMENT
For Use With
Bank Letter of Credit Export Credit Insurance Policy or
Financial Institution Buyer Credit Export Credit Insurance Policy or
Medium Term Export Credit Insurance Policy

NOTE: This form is to be used only if the beneficiary of the letter of credit, the recipient of a funding under a direct buyer credit loan or the recipient of payment under a reimbursement loan or a payment under a supplier credit is not also the U.S. Exporter. In that situation the exporter must complete those parts of the Exporter Certificate EIB94-07 required in its instructions and the beneficiary must complete this entire certificate.

Name and Address of Policyholder: _____ _____

Name and Address of Beneficiary: _____ _____

Policy No._____

(to be completed by the policyholder, also see No.4.e) Beneficiary's Dun & Bradstreet Number _____

Taxpayer ID No.:_____ Congressional District:_____

Indicate (not required) if owned by a ☐ woman, or an ☐ ethnic minority, describe____

Upon representation that the Export-Import Bank of the United States ("Ex-Im Bank") has issued to the policyholder identified above an export credit insurance policy, and in consideration of either (check one):

☐ a) the payment, acceptance or negotiation of an irrevocable letter of credit in our favor; or,

☐ b) the financing of an export,

We, the Beneficiary, hereby certify to the policyholder and to Ex-Im Bank as follows:

1. The policyholder has either (check one):

☐ a) informed us of an irrevocable letter of credit with Identification No._____ and we have presented, or shall present, documents which are in compliance with the terms and conditions of such irrevocable letter of credit; or,

☐ b) to our belief, established an obligation of the foreign buyer named below to make repayment of funds on a specified term in support of an export, for which we have received payment.

2. The above referenced irrevocable letter of credit **or** the buyer's obligation to pay the policyholder is in support of an export transaction described as follows:

a) Name and address of buyer_____

b) Description and quantity of product(s)/service(s)_____

c) The product(s) are: ☐ New, ☐ Used. If used, attach Used Equipment Questionnaire form EBD-M-25.

d) Place of Shipment_____ e) Date of Shipment_____

f) Contract Price to Buyer:

(i)	Products/Service	$_____
ii)	Less discounts or similar allowances	$_____
iii)	Plus total insurance, freight or other delivery charges included in the transaction	$_____
	Subtotal:	$_____
iv)	Less cash payment	$_____

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(minimum 15% required for MT)
(v) Total final net delivered financed portion $_____

3. To the best of our knowledge and belief, the products described above were **shipped from the United States**, in accordance with paragraph 2 above.

4. With respect to products
a) which could be used for **military** purposes,
b) which could be components of a product or equipment which could be used for military purposes,
c) which could be used to manufacture products or equipment which could be used for military purposes,
d) listed on the United States **Munitions List** (part 121 of Title 22 of the Code of Federal Regulations), or
e) purchased by or for use by security, military or defense organizations, ☐ we ____ have or ☐ the policyholder ____
Initial Initial
has received the written approval of the Ex-Im Bank for such sale prior to shipment of the products **and attached it** to this certificate. Submit a Defense Product Questionnaire EIB92-61 in order to obtain such approval.

5. The products do not consist of technology, fuel, equipment, materials or goods and services to be used in the construction, alteration, operation or maintenance of **nuclear** power, enrichment, reprocessing, research or heavy water production facilities.

6. To the best of our knowledge and belief the products are **for use only in countries** in accordance with Ex-Im Bank' s Country Limitation Schedule in effect on the date of shipment. See Ex-Im Bank's Internet Website <www.exim.gov > Country and Fee Information.

7. Neither we, nor our Principals, have within the past 3 years been:
1) debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in, a Transaction;
2) formally proposed for debarment, with a final determination still pending;
3) indicted, convicted or had a civil judgment rendered against us for any of the offenses listed in the Regulations;
4) delinquent on any amounts due and owing to the U.S. Government or its agencies or instrumentalities as of the date of execution of this certification; or
5) the undersigned has received a written statement of exception from Ex-Im Bank attached to this certification, permitting participation in this Transaction despite an inability to make certifications 1) through 4) in this paragraph.

8. We have not and will not knowingly enter into any agreements in connection with the goods and/or services covered by this policy with any individual or entity that has been debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in a Transaction. All capitalized terms not defined herein shall have the meanings set forth in the **Government Wide Non-Procurement Suspension and Debarment Regulations - Common Rule** (Regulations).

9. We will complete and submit **Form-LLL** (the Anti-Lobbying Declaration/Disclosure forms available at http://www.exim.gov/pub/pdf/95-0apd.pdf), Disclosure Form to Report Lobbying if, to the best of our knowledge and belief, **any funds have been paid or will be paid** to any erson in connection with this application for influencing or attempting to influence:
(1) an officer or employee of any U.S. Government agency, or
(2) a Member of Congress or a Member's employee, or
(3) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers.*

10. We have not, and will not, engage in any activity in connection with this transaction that is a violation of 1) the **Foreign Corrupt Practices Act of 1977**, 15 U.S.C. 78dd-1, et seq. (which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business), 2) the **Arms Export Control Act**, 22 U.S.C. 2751 et seq., 3) the **International Emergency Economic Powers Act**, 50 U.S.C. 1701 et seq., or 4) the **Export Administration Act of 1979**, 50 U.S.C. 2401 et seq.; nor has it been found by a court of the United States to be in violation of any of these statutes within the preceding 12 months, and to the best of its knowledge, the performance by the parties to this transaction of their respective obligations does not violate any other applicable law.

11. The representations made and the facts stated by us in these certifications and its attachments **are true, to the best of our knowledge and belief, and we have not misrepresented or omitted any material facts**. We further understand that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001).

By:_____ Signature:_____
Print Name (Authorized Representative of the Beneficiary)

Title:_____ Date:_____

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10/31/03

If the beneficiary can not make any or all of the required certifications as they are presented here, Ex-Im Bank must be contacted to request written permission to delete or alter the certification, without which the insurance policy may not be valid.

Notices

The applicant is hereby notified that information requested by this application is done so under authority of the **Export-Import Bank Act of 1945**, as amended (12 USC 635 et. seq.); provision of this information is mandatory and failure to provide the requested information may result in Ex-Im Bank being unable to determine eligibility for support. The information provided will be reviewed to determine the participants' ability to perform and pay under the transaction referenced in this application. Ex-Im Bank may not require the information and applicants are not required to provide information requested in this application unless a currently valid OMB control number is displayed on this form (see upper right of each page).

Public Burden Statement: Reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send comments regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

The information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) the **Privacy Act of 1974** (5 USC 552a), and the **Right to Financial Privacy Act of 1978** (12 USC 3401), except as otherwise required by law. Note that the Right to Financial Privacy Act of 1978 provides that Ex-Im Bank may transfer financial records included in an application for an insurance policy, or concerning a previously approved insurance policy, to another Government authority as necessary to process, service or foreclose on an insurance policy, or collect on a defaulted insurance policy.

OMB # 3048-0009
Expiry Date 10/31/03

Ex-Im Bank Logo

EXPORT-IMPORT BANK OF THE UNITED STATES
APPLICATION for a FINANCIAL INSTITUTION BUYER CREDIT POLICY

(Please Print or Type) APP. NO. _____ (Ex-Im Bank Use Only)

INSURANCE BROKER: If none, insert "*none*." Broker #: _____

Name of Brokerage: _____ Phone #: _____

Contact Person: _____ Fax #: _____ E-Mail: _____

1. APPLICANT: (Ex-Im use only: Insured #: _____)

Applicant Name: _____ Phone#: _____

Contact person: _____ Fax #: _____

Position Title: _____ E-Mail: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Please attach the following information unless you submitted this information within the past 6 months for Policy No. _____.

a. Taxpayer ID #: _____ Duns #: _____ Congressional District: _____ **AND**

b. Market Rating: _____ Rating Agency: _____ Date: _____, **OR**

c. (1) ☐ Your most recent published annual report, or audited financial statements.

(2) ☐ Your most recent available 10k and 10Q reports.

(3) ☐ A credit agency report dated within 6 months. If unavailable, attach check for $35.00 to cover Ex-Im Bank's cost in ordering report.

(4) ☐ How long have you been lending internationally?

(5) ☐ To what countries do you actively lend?

(6) ☐ How is your foreign loan portfolio broken down between government _____% and private _____% sector buyers?

(7) ☐ How often do you visit your overseas buyers?

(8) ☐ Attach the manes, titles, and the international lending backgrounds of the individuals responsible for administering Ex-Im policies.

2. TRANSACTION:

a. This insurance application is for, check one, a credit extended by you based on:
your relationship with the Buyer or Guarantor , a ☐ Buyer Credit, **or**, your relationship with the exporter, a ☐ Supplier Credit.

b. This application is for ☐Comprehensive (Commercial and Political Cover) or ☐Political Only Cover.

c. This application is for a ☐Single Financing or a ☐Revolving Line.

d. Credit limit requested $_____

e. Payment terms requested _____.

f. Ex-Im Bank requires a written debt obligation, i.e., promissory note or draft. If none, check here ☐and provide a full description of documentation which constitutes the buyer's debt obligation. _____.

g. Indicate whether ☐ negotiating or ☐ financing mandate received.

3. BUYER: The "buyer" is the entity which agrees to repay the credit (loan). Refer to Ex-Im Bank's Short Term Credit Standards (EIB99-09) for Buyers to determine the likelihood of approval:

a. This buyer is☐ Sovereign, ☐ Non-Sovereign Public Sector, or ☐ Private Sector. (Ex-Im use only: File #: _____)

Buyer Name: _____ Duns #: _____

Contact person: _____ Phone #: _____ Fax #: _____

Position Title: _____ E-Mail: _____

Street Address: _____ City: _____

State/Province: _____ Postal Code: _____ Country: _____

The following information on the buyer is necessary unless the credit is based on a guarantor, if so check here ☐ and complete for the guarantor

b. For **all applications** provide in an attachment:

(1) ☐A summary of credit facilities (insured and uninsured) extended by the ☐ applicant or the ☐ exporter (for Supplier Credits) to this buyer/guarantor specifying the high credit, whether secured or unsecured, and tenor(s) with details on past dues (if applicable), or ☐ None.

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(2) For ☐ **non-sovereign public** or ☐ **private** buyers/guarantors on which comprehensive cover is requested, provide the following:
(a) Market Rating:_____ Rating Agency:_____ Date:_____, **OR**
(b) ☐ A bank reference not older than 6 months from date of application **and**
(i) ☐ 2 Ex-Im Bank Trade Reference forms (EIB99-14) dated within 6 months of the application **and**
(ii) ☐ For a credit limit up to $1 million, the last 2 fiscal year end audited or signed unaudited financial statements with notes.
☐ For a credit limit over $1 million, provide 3 fiscal year end audited statements with notes and the most recent interim statements with notes if the last fiscal year end is more than 9 months prior to application.
(3) ☐ The applicant's credit memorandum on the buyer/guarantor.
(4) Have you visited the buyer/guarantor? ☐ No ☐ Yes, if yes give date: _____ and attach a copy of your call report.

4. GUARANTOR: The "guarantor" is the entity which agrees to repay the credit if the borrower does not. Complete the information below and provide the information in 3.b. if the credit is based on the guarantor. (Ex-Im use only: File #:_____)

This guarantor is ☐ Sovereign, ☐ Non-Sovereign Public Sector, or ☐ Private Sector.

Guarantor Name:_____ Duns#:_____
Contact person:_____ Phone #:_____ Fax #:_____
Position Title:_____ E-Mail:_____
Street Address:_____ City:_____
State/Province:_____ Postal Code:_____ Country:_____

5. For **SUPPLIER CREDITS** only:
NOTE: You are **not** required to fill out this section for **Buyer Credits** but, if any information is known, please complete in a, b and c.

a. EXPORTER:
The "exporter" is the entity which contracts with the buyer for the sale of the U.S. items and services. (Ex-Im use only: File #:_____)

Exporter Name:_____ Phone #:_____
Contact person:_____ Fax #:_____
Position Title:_____ E-Mail:_____
Street Address:_____ City:_____
State:_____ Zip Code:_____
Taxpayer ID #:_____ Duns #:_____ Congressional District:_____
Fiscal year ended (mo. & yr.):_____ Gross sales revenue in last fiscal year: $_____ # of employees:_____
Standard Industrial Code of business:_____ Indicate (Not Required) if owned by a ☐ Woman or ☐ Ethnic Minority, describe:_____

If "Documentary" cover is desired, check here ☐and attach the following unless the exporter submitted it within the past 6 months for Policy No._____. Refer to Ex-Im Bank's Short Term Credit Standards (EIB99-09) Exporter Standards for an Enhanced Assignment to determine the likelihood of approval of documentary cover if the exporter, using the US Small Business Administration guidelines, is a small business.
(1) ☐ A bank reference on the exporter dated within 6 months of the application **and**
(2) ☐ 2 trade references on the exporter dated within 6 months of the application **and**
(3) The last 2 fiscal year financial statements of the exporter as follows:

Claim Payment Limit (Credit Limit x %of cover)	Minimum Requirement
☐ $500,000 or less	signed by an authorized officer of the exporter
☐$500,001 - $999,999	reviewed by a CPA with notes attached
☐$1,000,000 or more	audited by a CPA with opinion and notes attached

NOTE: The net worth, including subordinated shareholder debt, of the exporter must be at least 20% of the Claim Payment Limit.

b. SUPPLIER: The "supplier" is the U.S. entity which produces the items and/or performs the services to be exported.
Check if the supplier is also the ☐ exporter or complete the following: (Ex-Im use only: File #:_____)

Supplier Name:_____ Phone #:_____
Contact person:_____ Fax #:_____
Position Title:_____ E-Mail:_____
Street Address:_____ City:_____
State:_____ Zip Code:_____
Taxpayer ID #:_____ Duns #:_____ Congressional District:_____
Fiscal year ended (mo. & yr.):_____ Gross sales revenue in last fiscal year: $_____ # of employees:_____
Standard Industrial Code of business:_____ Indicate (Not Required) if owned by a Woman or Ethnic Minority, describe:_____

c. PRODUCTS: All applicants should note that there are specific United States content requirements for all transactions and that exporters are required to complete an Exporter's Certificate form EIB-94-07 for "Documentary" cover.
(1) Products: ☐New ☐Used (If used, complete and attach Used Equipment Questionnaire, EIB-92-63)
(2) Description of products*:_____

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(3) Are products listed on the United States Munitions List (part 121 of Title 22 of the Code of Federal Regulations)? ☐ Yes ☐ No
(4) Is each product produced or manufactured in the United States? ☐ Yes ☐ No
(5) Is at least one half of the value, exclusive of price mark-up, exclusively of US origin? ☐ Yes ☐ No
(6) Will any value be added to the products after export from the United States? ☐ Yes ☐ No
If yes please attach an explanation; the transaction may not be eligible for coverage.

* The Borrower, Guarantor, Buyer and End User must be foreign entities in countries for which Ex-Im is able to provide support, see Ex-Im's Country Limitation Schedule (CLS) at www.exim,.gov . There may not be trade measures against them under Section 201 of the Trade Act of 1974, see http://dockets.usitc.gov/eol/public/ click on 201. There may not be trade sanctions in force against them. For a list of products and countries with Anti-Dumping or Countervailing Duty sanctions see http://205.197.120.60/oinv/sunset.nsf/AllDocID/96DAF5A6C0C5290985256A0A004DEE7D.

6. PARTICIPANTS: Describe any direct or indirect ownership or family relationship between any of the participants in this transaction. If none, insert *"none"*._____.

☐ the applicant **and** for supplier credits: ☐ the exporter, or
for buyer credits: ☐ the buyer and ☐ the guarantor (if any).

7. The Applicant (it) **CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank** (the Bank) that:

A. 1) it is a financial institution doing business in the United States, or a jurisdiction thereunder, in accordance with applicable Federal or State banking laws and regulations **OR**
2) it has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make this certification.

B. Neither it, nor its Principals, have within the past 3 years been:
1) debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in, a Transaction;
2) formally proposed for debarment, with a final determination still pending;
3) indicted, convicted or had a civil judgment rendered against us for any of the offenses listed in the Regulations;
4) delinquent on any amounts due and owing to the U.S. Government or its agencies or instrumentalities as of the date of execution of this certification; or
5) the undersigned has received a written statement of exception from Ex-Im Bank attached to this certification, permitting participation in this Transaction despite an inability to make certifications 1) through 4) in this paragraph.

C. It has not and will not knowingly enter into any agreements in connection with the goods and/or services covered by this policy with any individual or entity that has been debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in a Transaction. All capitalized terms not defined herein shall have the meanings set forth in the **Government Wide Non-Procurement Suspension and Debarment Regulations - Common Rule** (Regulations).

D. It will complete and submit **Form-LLL (**the Anti-Lobbying Declaration/Disclosure forms available at http://www.exim.gov/pub/pdf/95-10apd.pdf), Disclosure Form to Report Lobbying if, to the best of its knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:
(1) an officer or employee of any U.S. Government agency, or
(2) a Member of Congress or a Member's employee, or
(3) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers.*

E. It has not, and will not, engage in any activity in connection with this transaction that is a violation of 1) the **Foreign Corrupt Practices Act of 1977**, 15 U.S.C. 78dd-1, et seq. (which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business), 2) the **Arms Export Control Act**, 22 U.S.C. 2751 et seq., 3) the **International Emergency Economic Powers Act**, 50 U.S.C. 1701 et seq., or 4) the **Export Administration Act of 1979**, 50 U.S.C. 2401 et seq.; nor has it been found by a court of the United States to be in violation of any of these statutes within the preceding 12 months, and to the best of its knowledge, the performance by the parties to this transaction of their respective obligations does not violate any other applicable law.

F. The representations made and the facts stated in this application and its attachments **are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts**. It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001, et. seq.)

_____	_____	___/___/___
Signature	Print Name and Title	Date

Note: Please respond to all items and sign application. Applications not completely filled out or not submitted with required financial and

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credit information will be withdrawn.

Send, or ask your insurance broker or city/state participant to review and send, this application to: Ex-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office. The Ex-Im Bank website is <http://www.exim.gov>

Please complete: The applicant was informed about Ex-Im by:

☐ An Ex-Im City/State Partner:_____

☐ Broker:_____

☐ A Local Development Authority:_____

☐ An Ex-Im Regional Office:_____

☐ A U.S. Export Assistance Center:_____

☐ A Bank:_____

☐ Other (specify):_____

Notices

The applicant is hereby notified that information requested by this application is done so under authority of the **Export-Import Bank Act of 1945**, as amended (12 USC 635 et. seq.); provision of this information is mandatory and failure to provide the requested information may result in Ex-Im Bank being unable to determine eligibility for support. The information provided will be reviewed to determine the participants' ability to perform and pay under the transaction referenced in this application. Ex-Im Bank may not require the information and applicants are not required to provide information requested in this application unless a currently valid OMB control number is displayed on this form (see upper right of each page).

Public Burden Statement: Reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send comments regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

The information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) the **Privacy Act of 1974** (5 USC 552a), and the **Right to Financial Privacy Act of 1978** (12 USC 3401), except as otherwise required by law. Note that the Right to Financial Privacy Act of 1978 provides that Ex-Im Bank may transfer financial records included in an application for an insurance policy, or concerning a previously approved insurance policy, to another Government authority as necessary to process, service or foreclose on an insurance policy, or collect on a defaulted insurance policy.

END

Ex-Im Bank Logo

EXPORT-IMPORT BANK OF THE UNITED STATES
Financing or Operating Lease Coverage
Explanation of Application Form for Export Credit Insurance

THIS EXPLANATION IS GIVEN ONLY FOR THE PURPOSE OF ASSISTING YOU IN REVIEWING THE APPLICATION FORM. THE COMPLETE TERMS AND CONDITIONS OF COVERAGE ARE SET FORTH IN THE POLICY ITSELF. PLEASE NOTE THAT ALL UNDERLINED WORDS IN THIS EXPLANATION AND THE APPLICATION FORM ARE DEFINED IN THE POLICY.

INTRODUCTION - Two Types of Coverage: Operating and Financing Leases

The Export-Import Bank of the United States (Ex-Im Bank) has created two credit insurance policies for the leasing industry, one entitled Operating Lease Policy, and the other Financing Lease Policy. Each provides a unique system of coverage which is described below. It is important to know that the terms operating lease and financing lease are used herein as descriptive titles for the purposes of the policies only. Definitions of an operating lease, true lease, financing or full payout lease vary depending upon whether one is speaking in the context of accounting, taxes, commercial law, or international trade. These definitions do not affect your choice between the two Ex-Im Bank policies. The choice between the Operating Lease Policy or Financing Lease Policy depends upon the characteristic of the transaction. The Finance Lease Policy must be used if the transaction is essentially a conditional sale and the intent of the lessor is to transfer title at the end of the lease period. Usually there is no or little residual value. The Operating Lease Policy must be used if the transaction is not essentially a sale, but involves the rental concept (i.e, the lessor does not intend to transfer title to the lessee at the end of the lease period). Usually there is a significant residual value. All transactions which have residual value greater than or equal to 25% of the full value of the leased products must use the Operating Lease Policy.

The separation between the two types of coverage is due in part to the necessities of compliance with certain international agreements pertinent to medium-term sales. For those purposes, the financing lease is viewed as a medium-term sale and therefore an advance payment from the lessee to the lessor is required. An operating lease, however, which embodies the expectation of repossession of a leased product, which product may or may not have retained its expected market value, can be viewed by Ex-Im Bank as a rental and thereby can be underwritten by Ex-Im Bank without the imposition of an advance payment requirement.

Coverage is made available for leased products of United States origin as defined by the current underwriting guidelines. Used products may be covered. Refer to Ex-Im Bank's Fact Sheet on Used Equipment Guidelines EIB92-63. Lessors may be located in the United States, the country where the lessee is located, or a third country. Coverage is available for products which have been previously exported from the United States, however, products which have been exported as a sale or financing lease must be returned to the United States for at least one year to be eligible for coverage. Products which have been exported under an operating lease must also be returned to the United States but there is no minimum repatriation period required.

STRUCTURE OF EX-IM BANK'S FINANCING LEASE POLICY

Similar to the structure of a medium-term sale transaction, there is a requirement of a 15% advance payment from the lessee to the lessor (applicant/insured) on or before the delivery of the leased products. The advance payment may be financed. You can only insure the remaining 85% of the lease transaction.

Should the lessee default, coverage is provided for the insured percentage of each lease payment as it falls due until the end of the lease term. Coverage is usually provided at 100%. At the time of claim payment, the insured is obligated to transfer to Ex-Im Bank all remaining obligations of the lease, as well as title to the leased products. The coverage of lease payments as they become due remains effective regardless of failed repossession efforts for any reason or Ex-Im Bank's own

subsequent repossession of a leased product which has lost its market value.

STRUCTURE OF EX-IM BANK'S OPERATING LEASE POLICY

Coverage for Stream of Payments During Repossession Efforts - This policy divides coverage into two distinct parts, the first being for the stream of payments which fall due during a limited repossession efforts period after default of the lessee. Although the length of the repossession efforts period will be underwritten on a case-by-case basis, it will generally extend to cover those periodic and approved non-periodic payments which fall due during a maximum period of five months after the default. The intention of this first coverage is to maintain the insured's stream of payments while he takes action to repossess the leased products. Coverage for the stream of payments is usually provided at 100% for sovereign lessees and 90% for all others.

Coverage for Governmental Prevention of Repossession - If the insured has elected to purchase this coverage and is unable to effect repossession during the repossession efforts period, he may then claim under Risk 5 coverage, but only if repossession is prevented by the type of government action specifically described under Risk 5 of the Operating Lease Policy. Generally, those risks are referred to as expropriation or confiscation. Coverage will be limited to the actions of the governments of those countries which the insurer agrees to specify in the declarations. A failure of the insured to effect repossession for reasons other than those specified in Risk 5 is not covered. Note that the valuation of coverage under Risk 5 is the fair market value of the leased products at the time of claim submission. The coverage percentage under Risk 5 is 100%.

POLICY ISSUANCE

Both the Operating Lease Policy and Financing Lease Policy are of the single transaction type, meaning that a separate policy is issued for each separate lease you insure with Ex-Im Bank. Upon the review and approval of your application, Ex-Im Bank will issue a commitment notice for 90 days, reflecting the coverage parameters, including the credit limits and premium due, for your lease transaction. The policy is issued once you pay the applicable premium which is due prior to the expiration of the commitment notice.

The Operating Lease Policy offers "limits" type coverage:

> Under Risks 1, 2, 3, 4 on the stream of payments, you may purchase an amount of insurance up to the credit limit which Ex-Im Bank has approved, or less, if you deem it appropriate. Ex-Im Bank's maximum claim payment for these risks would be the insured percentage of the loss up to the lesser of the actual amount of the limited number of periodic and non-periodic payments specified in the policy declarations or the coverage credit limit you have purchased.
>
> In a similar manner, for Risk 5, you may purchase an amount of insurance up to the credit limit which Ex-Im Bank approves, or less if you desire, to cover the value of the leased products should their repossession after a default be prevented by one of the forms of governmental intervention set forth in the policy. Under Risk 5, the claim payment would be the insured percentage of the fair market value at the time of claim, but limited by the credit limit of coverage you have purchased.
>
> Note that prior to the time of policy issuance you must make the final decision on your credit limits, taking into consideration whatever factors you choose, including the possibilities that a default and prevention of repossession may occur very early during the life of the lease.

Under the Financing Lease Policy, Ex-Im Bank's maximum claim payment for Risks 1, 2, 3, 4 would be the insured

percentage of the amount of the insured's loss on approved non-periodic payments and on the principal and covered interest of each actual periodic payment as set forth on the schedule in the policy declarations.

FURTHER POINTS OF CLARIFICATION

- Ex-Im Bank coverage under both the Operating and Financing Lease Policies is available for both the rental portion of the lease, which is referred to as periodic payments, and also other non-rental type payments, referred to as approved non-periodic payments. Periodic payments must be due from the lessee to the insured under the lease at equal time periods, but the amounts of such payments may be unequal.

- The concept of a non-periodic payment is intended to include those payments which are obligations of the lessee under the lease, but for which payment is due upon the occurrence of certain specified contingencies other than the passage of equal periods of time. Such obligations might include service or maintenance payments payable by the lessee to the insured lessor. If such non-periodic payments are payable to a third party, however, they can be insured only if the lease contains an obligation of the lessee to reimburse the insured if such payments are not made to the third party by the lessee when due and are instead made by the insured. Your application for coverage of such non-periodic payments will be underwritten by Ex-Im Bank, and a credit limit will be entered for each approved non-periodic payment.

- Both policies require that the lease documentation set forth certain obligations. Before Ex-Im Bank can realistically underwrite a transaction, it is usually necessary to review at least a draft of the lease documentation prepared for the transaction you wish to insure. That draft should be as complete as possible when submitted.

POLICY RISK TYPES

Risks 1, 2, 3 - political risks of non-payment
(currency inconvertibility, cancellation of export or import licenses, war, insurrection, requisition or expropriation)

Risk 4 - commercial risk of non-payment
(protracted default, insolvency)

Risk 5 - governmental prevention of repossession of leased products (expropriation, confiscation - applicable to Operating Lease Policy only)

Information about Ex-Im programs, the materials and forms mentioned in these Instructions and the Application, names of Credit Reporting and Rating Agencies may be obtained:
- from Ex-Im's Website <http://www.exim.gov> ,
- by calling an Ex-Im Regional Office: Midwest: Chicago (312) 353-8081, Northeast: New York (212) 809-2650, Southeast: Miami (305) 526-7436, Southwest: Houston (281) 721-0465, MidAtlantic: Washington,DC (202) 565-3902, West: Los Angeles (562) 980-4580, Orange County (949) 660-1688ext150, San Francisco (415) 705-2285,
- by calling the Ex-Im Business Development Division 1-800-565-EXIM (3946), or
- at 811 Vermont Avenue, NW, Washington, D.C. 20571.

A **non-binding insurance premium quote** can be determined using the Website's Exposure Fee Calculator.

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EXPORT-IMPORT BANK OF THE UNITED STATES
APPLICATION FOR EXPORT CREDIT INSURANCE
FINANCING OR OPERATING LEASE COVERAGE

Date:_____
App. No.:_____
(Ex-Im Bank Use Only)

(Please Print or Type)

1. Applicant Name and Address, use 9 digit zip code	2. Broker Name and Number
Attn.: Telephone No.: Fax No.: E-Mail:	(If none, state "None") Brokerage: Broker No.: Attn.: Tel No.: Fax No.: E-Mail:

3. Lessee Name and full Address
(If mailing address is a P.0. Box, also provide street address)

File No.:_____
(Ex-Im Bank Use Only)

4. Guarantor Name and Address (If none, state "None")

File No.:_____
(Ex-Im Bank Use Only)

(Please complete Parts I, II, III, IV and V for prompt processing of your request.)

PART I -- INFORMATION ABOUT THE APPLICANT

5. Please attach the following information

- Your most recent published annual report or financial statements (balance sheet and income statement) signed by company officers. If on file, please indicate. ☐
- Recent (within 12 months) credit agency report on applicant. If unavailable, please attach check for $35.00 to cover the Export-Import Bank of the United States' (Ex-Im Bank's) cost in ordering a report. If you have submitted this report or $35.00 to Ex-Im Bank during the past 12 months, please indicate and the requirement will be waived. ☐

6. Nature of business (e.g., manufacturer, independent leasing company, leasing subsidiary of a bank, etc.):

7. Years engaged in: a) Leasing within your country_____ b) Leasing outside your country _____

8. a) Total leases and sales during the current and past two years:_____ _____ _____

Within your country	$_____	$_____	$_____
Outside your country	$_____	$_____	$_____

b) Total Employees:_____ c) Standard Industrial Classification (SIC) Code (if known):_____

d) Tax ID #:_____ e) DUNS #: _____ f) Congressional District:_____

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7) Indicate (Not Required) if owned by a ☐ woman, or an ☐ ethnic minority, describe_____

9. What are your principal foreign markets?

10. Principal products leased (including identification of major suppliers if other than applicant):

PART II - INFORMATION ABOUT THE TRANSACTION

11. Check one: ___ Firm Lease ___ Negotiating Lease ___ Responding to Invitation to Bid

12. Total value, term and schedules of payments under the lease:

(Attach a copy of the final lease if available, or a draft copy setting forth at least those provisions required by the policy.)

13. Leased products ___New ___ Used (If used, attach Used Equipment Questionnaire.)

a. Specify quantity, serial no., model no., year of manufacture, fair market value per unit and how derived, and a description of what the product does.

b. Is there an active market for this particular product model number in the U.S. today, or is this product somewhat obsolete in the U.S. but still in demand overseas?

c. Manufacturer or vendor if other than applicant:_____

d. Is each leased product produced or manufactured in the United States to the extent that at least 85% of the value, exclusive of price mark-up, has been added by labor or material exclusively of U.S. origin? ___Yes ___No

e. Original purchase value $_____

f. Estimated value of leased products at the end of lease term $_____

g. Who will own the leased products at end of lease term?_____

_____

h. Is title of ownership on each of the leased products unencumbered? ___Yes ___No If no, please attach an explanation.

i. Does the lease give you the right to repossess the leased products in the event of default? ___Yes ___ No Identify the reference in the lease regarding repossession.

j. Are products listed on the United States Munitions List? (part 121 of Title 22 of the Code of Federal Regulations) ☐ Yes ☐ No

See the U.S. Dept. of Commerce Website at <http://www.ita.doc.gov/import_admin/records/status> for a list of products and countries with Anti-Dumping or Countervailing Duty sanctions or call Ex-Im's Country Risk Analysis Division at (202) 565-3730.

14. Is the lessee going to be the user of the leased products or are the leased products expected to be released or sold to another entity? ____ Yes ____ No, if no, identify the entity and its location: _____.

15. Have you ever had to repossess products sold to or leased into the lessee's country? ___Yes ___ No

a. If yes, were you successful in your repossession? ___Yes ___ No

b. If you have repossessed products in the lessee's country, where did you resell or release them?

16. What procedures or measures (i.e., conforming with local documentation requirements and standard government

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regulations) have you undertaken to assure:

a. that you maintain good title to the leased products in the country of the lessee in this transaction?

b. that you will be able to repossess and re-export the leased products?

17. Does the lease establish an unconditional obligation of the lessee to make non-cancelable:

a. periodic payments? ___Yes ___ No

b. non-periodic payments? ___Yes ___ No

18. Shipment of leased products will begin on or before_____(Date).

19. Other insurance:

a. Ex-Im Bank requires that you be loss payee for transit insurance for the actual cash value of the leased products at the time of shipment. Has transit insurance been obtained or is it being obtained? ___Yes ___No

(i) For what actual cash value? _____

(ii) With which carrier? _____

(iii) Effective dates: from _____ to _____

b. Ex-Im Bank requires that casualty insurance on the actual cash value of the leased products be maintained at all times. Has casualty insurance naming you as loss payee been obtained or is it being obtained? ___Yes ___No

(i) At what time periods will you require a certification of casualty insurance from the lessee?

PART III - POLICY SELECTION INFORMATION (Refer to "Explanation of Application" form)

☐ Financing Lease Policy (Answer only questions 20 and 21)

☐ Operating Lease Policy (Answer only questions 22, 23 and 24)

FOR FINANCING LEASE POLICY

20. a. Contract price of the leased products $_____

Advance payment (minimum 15%) $_____

Credit Limit for Principal amount of periodic payments $_____

b. Repayment terms for periodic payments
___Monthly ___Quarterly ___Semi-Annually in_____ installments beginning_____
(number)

c. Attach as "Exhibit A" a schedule of periodic payments breaking out the principal amounts and interest for each periodic payment.

d. Do you wish to insure any non-periodic payments? ___Yes ___No

If yes, please specify the credit limit requested and provide a description (including reference to the lease provision) of what each payment is for.

21. Against the actions of the government of which countries do you wish insurance under Risks 2 and 3?

FOR OPERATING LEASE POLICY

22. Repossession

At what point after default do you contemplate beginning repossession on this transaction and how much time do you estimate will be required for a successful repossession?

23. What is the length of the repossession efforts period you wish to insure?

24. a. Requested credit limit for periodic payments coming due during the requested repossession efforts period

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$_____

b. Attach as "Exhibit A" the schedule of periodic payments

25. Do you wish to insure any non-periodic payments? ___Yes ___No
If yes, please specify the credit limit requested and provide a description (including reference to the lease provision) of what each payment is for.

26. Do you desire coverage for the risk of prevention of repossession ("Risk 5") of the leased products? ___Yes ___No
Credit Limit of fair market value you wish to insure under Risk 5: $_____
(Risk 5 premium rates will be applied to this amount only.)

27. Against the actions of the government of which countries do you wish insurance under Risks 2, 3, and 5?

PART IV - INFORMATION ABOUT THE LESSEE

28. Please attach the following information:

- Credit reports on the lessee, and guarantor (if any) not older than one year from date of application.

Please provide one report from one of the sources listed in Column A and one from Column B.

Column A	Column B
__ U.S. Commercial Bank	__ Domestic Credit Agency
__ Foreign Commercial Bank	__ Foreign Credit Agency

- Minimum two years signed financial statements (preferably audited and in English) on the lessee, and guarantor (if any). Three years financial statements may be required by Ex-Im Bank on certain requests. Your internal credit analysis can be submitted with this application.

29. a. Summary of credit experience during the last three years with this lessee including uninsured experience. (Please include any additional information you may consider appropriate.)

	_____	_____	_____
Total Leases and Sales each year	$_____	$_____	$_____
Highest Amount Owing during the Period	$_____	$_____	$_____
Payment (Lease) Terms	_____	_____	_____

b. Describe lessee's payment history (check one):
__ No prior experience __ Prompt/Discount __ 1-30 days slow
__ 30 - 60 days slow __ More than 60 days slow

c. Amount now owing $_____ as of_____(Date).

d. Amount now past due (indicate maturity dates and explanation):

30. Describe any direct or indirect ownership interest or family relationship which exists between the applicant and the lessee or guarantor. If none, state "None." _____.

31. U.S. trade references (names/addresses/phone numbers/contacts). Submit copies of current reports if available.

32. Lessee's principal commercial banks (names and addresses):

Please answer all questions and sign the application. Applications not completely filled out or not submitted with at least the following information may be withdrawn:

- Copy of lessee's application (or substitute) to lessor for the lease transaction.
- At least a draft copy of the lease agreement prepared for the transaction you wish to insure.
- Financial statements on the applicant, lessee, and the guarantor (if any).
- Credit reports on the applicant, lessee, and the guarantor (if any).
- "Exhibit A" (schedule of periodic payments you wish to insure).

PART V - The Applicant (it) **CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank** (the Bank) that:
A. it is (**check one**):

1) ☐a corporation organized and **existing under the laws of the United States**, or a jurisdiction thereunder, or

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2) ☐ an individual or partnership **resident in** the United States; **or**

3) ☐ a foreign corporation, partnership or individual **registered to do business in** the United States, **OR**

4) ☐ it has received a **written** of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make statement certifications 1, 2 or 3.

B. The applicant certifies that, to the best of its knowledge and belief, the products and services to be exported in the transaction described in this application are principally for use as indicated below. If, however, the applicant has knowledge or reason to believe that the products will be re-exported from the original lessee's country, please complete item (2):

1) ☐ By the lessee in the country specified above.

2) ☐ If not, name country **where** products will be principally used: _____ and **by whom:** _____.

C. Neither it, nor its Principals, have within the past 3 years been:

1) debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in, a Transaction;
2) formally proposed for debarment, with a final determination still pending;
3) indicted, convicted or had a civil judgment rendered against us for any of the offenses listed in the Regulations;
4) delinquent on any amounts due and owing to the U.S. Government or its agencies or instrumentalities as of the date of execution of this certification; or
5) the undersigned has received a written statement of exception from Ex-Im Bank attached to this certification, permitting participation in this Transaction despite an inability to make certifications 1) through 4) in this paragraph.

D. It has not and will not knowingly enter into any agreements in connection with the goods and/or services covered by this policy with any individual or entity that has been debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in a Transaction. All capitalized terms not defined herein shall have the meanings set forth in the **Government Wide Non-Procurement Suspension and Debarment Regulations - Common Rule** (Regulations).

E. It will complete and submit **Form-LLL** (the Anti-Lobbying Declaration/Disclosure forms available at http://www.exim.gov/pub/pdf/95-10apd.pdf), Disclosure Form to Report Lobbying if, to the best of our knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:

(1) an officer or employee of any U.S. Government agency, or
(2) a Member of Congress or a Member's employee, or
(3) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers.*

F. It has not, and will not, engage in any activity in connection with this transaction that is a violation of 1) the **Foreign Corrupt Practices Act of 1977**, 15 U.S.C. 78dd-1, et seq. (which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business), 2) the **Arms Export Control Act**, 22 U.S.C. 2751 et seq., 3) the **International Emergency Economic Powers Act**, 50 U.S.C. 1701 et seq., or 4) the **Export Administration Act of 1979**, 50 U.S.C. 2401 et seq.; nor has it been found by a court of the United States to be in violation of any of these statutes within the preceding 12 months, and to the best of its knowledge, the performance by the parties to this transaction of their respective obligations does not violate any other applicable law.

G. The representations made and the facts stated in this application and its attachments **are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts**. It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001, et. seq.)

_____	_____	____/____/____
Signature	Print Name and Title	Month/Day/Year

Send, or ask your insurance broker or city/state participant to review and send, this application to Ex-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office. The Ex-Im Bank website is <http://www.exim.gov> See "Instructions" Page 3 for whom to contact with questions.

Please complete: The applicant was informed about Ex-Im by:

☐ An Ex-Im Regional Office: _____

☐ An Ex-Im City/State Partner: _____

☐ A U.S. Export Assistance Center: _____

☐ A Broker: _____

☐ A Bank: _____

☐ A Local Development Authority: _____

☐ Other (specify): _____

Notices

The applicant is hereby notified that information requested by this application is done so under authority of the **Export-Import Bank Act of 1945**, as amended (12 USC 635 et. seq.); provision of this information is mandatory and failure to provide the requested information may result in Ex-Im

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Bank being unable to determine eligibility for support. The information provided will be reviewed to determine the participants' ability to perform and pay under the transaction referenced in this application. Ex-Im Bank may not require the information and applicants are not required to provide information requested in this application unless a currently valid OMB control number is displayed on this form (see upper right of each page).

Public Burden Statement: Reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send comments regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

The information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) the **Privacy Act of 1974** (5 USC 552a), and the **Right to Financial Privacy Act of 1978** (12 USC 3401), except as otherwise required by law. Note that the Right to Financial Privacy Act of 1978 provides that Ex-Im Bank may transfer financial records included in an application for an insurance policy, or concerning a previously approved insurance policy, to another Government authority as necessary to process, service or foreclose on an insurance policy, or collect on a defaulted insurance policy.

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Ex-Im Bank Logo

EXPORT IMPORT BANK OF THE UNITED STATES
SHORT-TERM MULTI-BUYER EXPORT CREDIT INSURANCE POLICY APPLICATION

Applicant: _____ **dba:** _____
Address: _____
Phone: _____ Fax: _____ E-Mail: _____ Website: _____
Contact: _____ Title: _____ E-Mail: _____ Phone: _____

Indicate (Not Required) if owned by a 9 Woman or 9 Ethnic Minority, describe: _____
Bank credit line (if any) with: _____ Broker: _____

1. Have you ever applied for a U.S. Small Business Administration or Ex-Im Bank program? ☐Yes or ☐ No
   If so, please name the agency, program, outcome and status: _____

If you wish to insure sales made by your affiliates, please see Question 17 (Additional Named Insureds) prior to continuing.

2. Primary reason for application: ☐ risk mitigation ☐ financing ☐ extend more competitive terms

3. Policy Aggregate Limit Requested: $_____ (maximum export credit receivables outstanding at any one time)

4. Product and/or services to be exported & NAICS (if known): _____

5. Do you sell Capital Goods to foreign manufacturers or producers? (if yes, please explain) _____

6. Are the products* to be covered under the policy:
   - Manufactured or reconditioned in the U.S.? ☐Yes ☐No
   - Minimum 50% U.S. content, less markup? ☐Yes ☐No **OR**
   - Environmentally Beneficial? ☐Yes ☐No
   - Used to support Nuclear Energy? ☐No ☐Yes
   - Sold to Military entities or Security Forces? ☐No ☐Yes
   - Shipped from the U.S.? ☐Yes ☐No
     more than 50% value of refurbishing in the U.S.? ☐Yes ☐No
   - Supporting Renewable Energy? ☐Yes ☐No
   - On the U.S. Munitions List? ☐No ☐Yes
     (part 121 of title 22 of the Code of Federal Regulations)

* The Borrower, Guarantor, Buyer and End User must be foreign entities in countries for which Ex-Im is able to provide support, see Ex-Im's Country Limitation Schedule (CLS) at www.exim,.gov . There may not be trade measures or sanctions against them under Section 201 of the Trade Act of 1974, see http://dockets.usitc.gov/eol/public/ . For a list of products and countries with Anti-Dumping or Countervailing Duty sanctions see http://205.197.120.60/oinv/sunset.nsf/AllDocID/96DAF5A6C0C5290985256A0A004DEE7D.

7. # of years exporting: _____ # of years exporting on terms other than cash in advance (CIA) or confirmed L/C (CILC):_____

	Year: _____	Year: _____	Year: _____
8. Total export sales for the prior 3 years:	$ _____	$ _____	$ _____
Total export *credit* sales (exclude CIA, CILC) for the prior 3 years:	$ _____	$ _____	$ _____

9. Buyer Types: ____% Manufacturers ____% Wholesalers ____%Traders ____% Retailers ____%Service Providers
   ____% End-users ____%Service Providers ____%Financial Institutions ____%Government Agencies

10. Export Credit Portfolio - attach additional pages if necessary.

	PREVIOUS YEAR			PROJECTIONS FOR NEXT YEAR		
Country	**# Buyers**	**Sales**	**Terms**	**# Buyers**	**Sales**	**Terms**
EXAMPLE: Mexico	10	$2,500,000	50% CILC 50% 60 day OA	12	$3,000,000	100% 60 day OA

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11. Please list your 5 largest export buyers:

Buyer Name	Address	Country	Last 12 Months Sales & Terms	High Credit	Projected Terms	Credit Limit Needed
			$	$		$
			$	$		$
			$	$		$
			$	$		$
			$	$		$

12. Name(s) of export credit decision maker(s): Title(s): Years of Credit Experience Years of Foreign Credit Exp.

_____ _____ _____ _____

_____ _____ _____ _____

13. At what point do you stop shipping to a past due account? _____ days past due

14. Total export receivables outstanding: $_____ at ___/___/___ (date should be within 60 days of the application)

$_____	$_____	$_____	$_____	$_____
Current	1-60 days past due	61-90 days past due	91-180 days past due	181+ days past due

For each buyer over 60 days past due, attach an explanation including: name of buyer, country, amount past due, due date, reason for past due and collection efforts made.

15. Export credit losses per year or rescheduled debts during each of last three years - attach additional pages if necessary.

YEAR	AMOUNT (US$)	EXPLANATION OF LOSS OR RESCHEDULING (SPECIFY REASON, COUNTRY, AND BUYER)
	$	
	$	
	$	

16. **Please submit the following as Attachments:**
- Credit Report on your company dated within 6 months of the application or attach a check for $35 payable to Ex-Im Bank.
- Your financial statements for the two most recent completed fiscal years (with notes if available).
- Resume(s) on each credit decision maker identified in question 12.
- Descriptive product brochures (if available).

17. **Special Coverages Required:** If "none" check ☐ N/A

☐ **Add Additional Named Insureds (ANI's).** Credit decisions of each affiliate listed must be centralized with the Applicant and each affiliate must invoice export credit sales in their own name (or tradestyle); if either is not applicable, please attach an explanation. Questions 3-15 should include export sales of prospective ANI's.

Are the products of each affiliate the same as the applicant's products listed in question 4 of this application? ☐Yes ☐No

Affiliate Company/Trade style	Street Address/City / State / Country	NAICS/SIC Code	Relationship to Applicant

☐ **Services (Please attach a copy of your sample services contract)** Services must be: performed by U.S. based personnel or those temporarily domiciled overseas, and billed (invoiced) separately from any product sales.

☐ **Enhanced Assignment** of small business insurance policy proceeds. This is exporter performance risk protection that may be offered to lenders willing to finance Ex-Im Bank insured receivables. **Applicant Please Attach:**
- Written bank reference describing your relationship to date and size of existing credit line.
- 2 written trade references from principal commercial suppliers.
- For applications with policy limits over $500,000, financial statements must be audited or CPA reviewed with notes.

☐ **Other** (please specify):_____

_____

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The Applicant (it) CERTIFIES and ACKNOWLEDGES to the Export-Import Bank of the United States (the Bank) that:

a) it is either organized, or registered to do **business, in the United States**.

b) it and each additional named insured applicant **has not entered into any contract of insurance** or indemnity in respect of any case of loss covered by the Export Credit Insurance Policy or Loss chargeable to a deductible under such Policy, and the applicant will not enter into any such contract of insurance or indemnity without the Bank's consent in writing.

c) neither it nor any of its principals is currently, nor has been within the preceding three years:
   - debarred, suspended or declared ineligible from participating in any Covered Transaction or
   - formally proposed for debarment, with a final determination still pending;
   - voluntarily excluded from participation in a Covered Transaction; or
   - indicted, convicted or had a civil judgment rendered against it

   for any of the offenses listed in the Regulations governing Debarment and Suspension as defined in the Government Wide Nonprocurement Debarment and Suspension Regulations; Common Rule 53 Fed. Reg. 19204 (1988). It further certifies that it has not nor will it knowingly enter into any agreement in connection with this Policy with any individual or entity that has been subject to any of the above.

d) it is not delinquent on any amount due and owing to the U.S. Government, its agencies, or instrumentalities as of the date of this application.

e) it shall complete and submit standard form-LLL, "Disclosure Form to Report Lobbying" to the Bank (31 USC 1352), if any funds have been paid or will be paid to any person for influencing or attempting to influence i) an officer or employee of any agency, ii) a Member of Congress or a Member's employee, or iii) an officer or employee of Congress in connection with this Policy. This does not apply to insurance broker commissions paid by the Bank.

f) it has not, and will not, engage in any activity in connection with this Policy that is a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC Sec. 78dd-1, et seq.) which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business. To the best of its knowledge, the performance by the parties of their respective obligations covered or to be covered under this Policy does not and will not violate any applicable law.

g) transfer of financial records included in this application to private parties or another U.S. Government authority will not be authorized except as permitted under the **Right of Financial Privacy Act of 1978** (12 USC 3401).

h) the information is being requested under the authority of the **Export-Import Bank Act of 1945** (12 USC 635 et. seq.); disclosure of this information is mandatory **and failure to provide the requested information may** result in the Bank being unable to determine eligibility for the Policy. The information collected will be analyzed to determine the ability of the participants to perform and pay under the Policy. The Bank may not require the information, and applicants are not required to respond, unless a currently valid OMB control number is displayed on this form. The information collected will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), except as required to be disclosed pursuant to applicable law. The **public burden** reporting for this collection of information is estimated to average 1 hour per response, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. Send **comments** regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

i) the representations made and the facts stated in the application for said Policy are true, to the best of it's knowledge and belief, and it has not misrepresented or omitted any material facts relevant to said representations. It agrees that this application shall form a part of the Policy, if issued, and the truth of the representations and facts, and performance of every undertaking in this application shall be a condition precedent to any coverage under such Policy. It further understands that this certification is subject to the penalties for fraud against The U.S. Government (18 USC 1001).

(Signature)	(Print Name and Title)	(Date)

SMALL BUSINESS POLICIES APPLICANT CERTIFICATION

"We are an entity which **together with our affiliates** had **average annual export credit sales** during our preceding two fiscal years not exceeding **$5,000,000**, excluding sales made on terms of confirmed irrevocable letters of credit (CILC) or cash in advance (CIA)."

(Signature)

Send, or ask your insurance broker or city/state participant to review and send this application to the Ex-Im Bank Regional Office nearest you. Please refer to Ex-Im Bank's website at http://www.exim.gov for Regional Office addresses.

Ex-Im Bank reserves the right to request additional information upon review of the application. Please refer to Ex-Im Bank's Short Term Credit Standards (EIB 99-09) to determine the likelihood of approval of a policy.

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Ex-Im Bank Logo

EXPORT-IMPORT BANK OF THE UNITED STATES
EXPORTER'S APPLICATION FOR SHORT-TERM SINGLE-BUYER POLICY App No.:_____
(Please Print or Type) (Ex-Im Bank Use Only)

1. Applicant	2. Broker (If none, state "None")
Name: Address: Attn.: Tel No.: Fax No.: E-Mail:	Brokerage: Broker Number: Attn.: Tel No.: Fax No.: E-Mail:

3. Qualification for Coverage. Will the applicant: a) Have title to the products at the time they are shipped? ☐ Yes ☐ No
b) Be directly invoicing the Buyer? ☐ Yes ☐ No
(If you answered no to either you may not be eligible for coverage. Consult your broker, City/State Program participant or Ex-Im)

4. Buyer Name and (full) Address (no Post Office Box nos.) File No.:_____
(Issuing Bank for Letter of Credit transactions) (Ex-Im Bank Use Only)

5. Guarantor Name and Address (If none, state "None") File No.:_____
(Ex-Im Bank Use Only)

PART I - INFORMATION ABOUT THE APPLICANT Refer to Ex-Im Bank's Short Term Credit Standards (EIB99-09)Exporter for New Policyholder to determine the likelihood of approval.

6. If you have submitted this information within the past twelve months provide the policy no._____; otherwise attach the following:
a) Your SIC Code (if known)_____ b) Total Employees_____c) Total Sales_____
d) Tax ID #: _____ e) DUNS #: _____ f) Congressional District:_____
g) Indicate (Not Required) if owned by a ☐ Woman, or an ☐Ethnic Minority, describe_____
h) ☐ Credit agency report dated within 6 months of the application. If unavailable, please attach check for $35.00 to assist in covering Ex-Im Bank's cost in ordering a report.

	Year ____	____
i) Total export sales	$_____	$_____
j) Total export sales (excluding cash in advance and confirmed irrevocable letter of credit transactions) during your last 2 fiscal years:	$_____	$_____

k) Years exporting on credit terms:_____
l) ☐ Attach the collection procedures your company follows in the event your foreign customers become past due.

7. What is your primary reason for applying for this policy? ☐Risk mitigation ☐To obtain financing ☐Other attach explanation.

8. Have you applied for, or received the benefit of, a U.S. Small Business Administration or Ex-Im Bank program such as a Working Capital Loan Guarantee or Insurance Policy approval? (Enhanced Assignments are not available to exporters benefitting from an Ex-Im Bank or US Small Business Administration Working Capital Loan Guarantee) ☐ No ☐Yes (describe agency, program outcome and status):_____.

9. If requesting an "Enhanced Assignment" check here and attach the following (refer to Ex-Im Bank's Short Term Credit Standards EIB99-09 Exporters for Enhanced Assignments to determine the likelihood of approval):
☐ A bank reference dated within 6 months of the application.
☐ 2 trade references dated within 6 months of the application.
☐ Financial statements as follows:

Limit of Liability	Minimum Requirement
$500,000 or less	signed by an authorized officer for the applicant
$500,001 - $999,999	reviewed by a CPA with notes attached
$1,000,000 or more	audited by a CPA with opinion and notes attached.

PART II - INFORMATION ABOUT THE TRANSACTION

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10. Check one: ☐Firm Order ☐Negotiating Sale ☐Responding to Invitation to Bid
11. a) Products ☐ New ☐Used (If used, attach Used Equipment Questionnaire)
    b) Name and Description of Products*:_____.
    c) Is each product produced or manufactured in the United States? ☐Yes ☐No If no explain:_____.
    d) Has at least one-half of the value, exclusive of price mark-up, been added by labor or material exclusively of United States origin? ☐Yes ☐No If no, explain: _____.
    e) Will any value be added to the product after export from the U.S.? ☐No ☐Yes If yes, explain: _____
    f) Are products listed on the United States Munitions List? (Part 121, Title 22, Code of Federal Regulations) ☐Yes ☐No
    g) Has this transaction been considered by any other export credit insurer? ☐ No ☐Yes If yes, attach an explanation.

* Note: The Borrower, Guarantor, Buyer and End User must be foreign entities in countries for which Ex-Im is able to provide support, see Ex-Im's Country Limitation Schedule (CLS) at www.exim,.gov . There may not be trade measures against them under Section 201 of the Trade Act of 1974, see http://dockets.usitc.gov/eol/public/ click on 201. There may not be trade sanctions in force against them. For a list of products and countries with Anti-Dumping or Countervailing Duty sanctions see http://205.197.120.60/oinv/sunset.nsf/AllDocID/96DAF5A6C0C5290985256A0A004DEE7D.

12. **SUPPLIER.** The "supplier" is the U.S. entity which produces the items and/or performs the services to be exported.
Check if the supplier is also the exporter or complete the following: (Ex-Im use only: File #:_____)

Supplier Name:_____ Phone #:_____
Contact person:_____ Fax #:_____
Position Title:_____ E-Mail:_____
Street Address:_____ City:_____
State:_____ Zip Code:_____
Taxpayer ID #:_____ Duns #:_____ Congressional District:_____
Fiscal year ended (mo. & yr.):_____ Gross sales revenue in last fiscal year: $_____ # of employees:____
Standard Industrial Code of business:_____ Indicate (Not Required) if owned by a ☐ Woman or ☐ Ethnic Minority, describe:___

13. a) **Payment terms** requested_____
    b) Debt instrument (if any)_____
    c) Expected frequency of shipments: ☐Single shipment ☐Multiple shipments under one sales contract.
    d) If single shipment, the expected date of shipment_____, or
       if multiple shipments, the period required to make shipments from_____ to _____
    e) Total shipment volume to be insured $_____
    f) If multiple shipments, the expected highest amount outstanding during shipment period $_____
    g) Other security/guarantees available. If none, state "None". _____.
14. Coverage type required: ☐Commercial/Political ☐Political Only
15. Pre-shipment Coverage (complete only if coverage is requested) **NOTE:** Additional premium will be charged for this cover.
    a) Has contract of sale been executed? ☐Yes ☐No Date or estimated date:_____
    b) Estimated period between date of contract and final shipment date of products:_____
    c) Attach schedule of any progress payments made or to be made by buyer during pre-shipment period or ☐None.
    d) What risk is of primary concern to you during the pre-shipment period? _____

PART III - INFORMATION ABOUT THE BUYER Refer to Ex-Im Bank's Short Term Credit Standards (EIB99-09) Buyers: for Financial Institutions, letter of credit transactions, for Financial Institutions non-letter of credit transactions, and for Non-Financial Institution Buyers to determine the likelihood of approval. Attach the following information:

16. a) Market Rating: _____ Rating Agency: _____ Date: _____ **OR**
    b) ☐ A credit report on the buyer, and guarantor (if any) not older than 6 months from date of application **and**
    ☐ 2 (1 if the credit limit is $100,000 or less) Trade Reference forms (EIB99-14) dated within 6 mos of the application **and**
    ☐ If the credit limit is $300,001 or more, audited or unaudited signed financial statements with notes on the buyer, and guarantor (if any) for the last: 2 fiscal years if the credit limit is $300,001 to $1million, or
    3 **audited** fiscal years if the credit limit is $1,000,001 or more.
    (Credit and financial information should be on the issuing bank if terms are letter of credit)
17. When did you last visit the buyer?_____
18. a) Summary of credit experience (insured and uninsured) with this buyer during current year and past 2 years:

____ ____ ____

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Total Sales Each Year $_____ $_____ $_____
Highest Amount Outstanding During Period $_____ $_____ $_____
Payment Terms _____ _____ _____

b) Describe buyer's payment history (check one)
☐ No prior experience ☐Prompt/Discount ☐1-30days slow ☐31-60days slow ☐More than 60 days slow

c) Amount now owing $_____ as of_____ (Date).

d) Amount now past due (indicate maturity dates and explanation)._____

e) If past dues are due to foreign exchange problems, does applicant have evidence of local currency deposits on all payments due? ☐Yes ☐No Not applicable.

19. Describe any direct or indirect ownership interest or family relationship which exists between the applicant and the buyer or guarantor. If none, state "None."_____.

21. **PART IV The Applicant** (it) **CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank** (the Bank) that:

a) it is (**check one**): (1) ☐ a corporation organized and **existing under the laws of the United States**, or a jurisdiction thereunder, or
(2) ☐ an individual or partnership **resident in** the United States; **or**
(3) ☐ a foreign corporation, partnership or individual **registered to do business in** the United States, **OR**
(4) ☐ it has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications 1, 2 or 3.

b) to the best of its knowledge and belief, the products and services to be exported in the transaction described in this application are principally **for use as indicated below**. When a sale is made to entities such as distributors primarily for resale, the principal user is considered to be the original purchaser (the distributor), and item (1) should be checked. If, however, it has knowledge or reason to believe that the products will be re-exported from the original buyer's country, please complete item (2): (1) ☐ By the buyer in the country specified above. (2) ☐ If not, name the country (ies) **where** products will be principally used: _____ **by whom**: _____.

c) Neither it, nor its Principals, have within the past 3 years been:
1) debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in, a Transaction;
2) formally proposed for debarment, with a final determination still pending;
3) indicted, convicted or had a civil judgment rendered against us for any of the offenses listed in the Regulations;
4) delinquent on any amounts due and owing to the U.S. Government or its agencies or instrumentalities as of the date of execution of this certification; or
5) the undersigned has received a written statement of exception from Ex-Im Bank attached to this certification, permitting participation in this Transaction despite an inability to make certifications 1) through 4) in this paragraph.

d) It has not and will not knowingly enter into any agreements in connection with the goods and/or services covered by this policy with any individual or entity that has been debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in a Transaction. All capitalized terms not defined herein shall have the meanings set forth in the **Government Wide Non-Procurement Suspension and Debarment Regulations - Common Rule** (Regulations).

e) It will complete and submit **Form-LLL** (the Anti-Lobbying Declaration/Disclosure forms available at http://www.exim.gov/pub/pdf/95-10apd.pdf), Disclosure Form to Report Lobbying if, to the best of our knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:
(1) an officer or employee of any U.S. Government agency, or
(2) a Member of Congress or a Member's employee, or
(3) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers*

f) It has not, and will not, engage in any activity in connection with this transaction that is a violation of 1) the **Foreign Corrupt Practices Act of 1977**, 15 U.S.C. 78dd-1, et seq. (which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business), 2) the **Arms Export Control Act**, 22 U.S.C. 2751 et seq., 3) the **International Emergency Economic Powers Act**, 50 U.S.C. 1701 et seq., or 4) the **Export Administration Act of 1979**, 50 U.S.C. 2401 et seq.; nor has it been found by a court of the United States to be in violation of any of these statutes within the preceding 12 months, and to the best of its knowledge, the performance by the parties to this transaction of their respective obligations does not violate any other applicable law.

g) The representations made and the facts stated in this application and its attachments **are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts**. It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001, et. seq.)

_____ _____ _____
(Signature) (Print Name and Title) Date

Send, or ask your insurance broker or city/state participant to review and send, this application to Ex-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office.

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The Ex-Im Bank website is <http://www.exim.gov>

Please complete: The applicant was informed about Ex-Im by:

☐ An Ex-Im Regional Office: _____

☐ An Ex-Im City/State Partner: _____

☐ A U.S. Export Assistance Center: _____

☐ A Broker: _____

☐ A Bank: _____

☐ A Local Development Authority: _____

☐ Other (specify): _____

Notices

The applicant is hereby notified that information requested by this application is done so under authority of the **Export-Import Bank Act of 1945**, as amended (12 USC 635 et. seq.); provision of this information is mandatory and failure to provide the requested information may result in Ex-Im Bank being unable to determine eligibility for support. The information provided will be reviewed to determine the participants' ability to perform and pay under the transaction referenced in this application. Ex-Im Bank may not require the information and applicants are not required to provide information requested in this application unless a currently valid OMB control number is displayed on this form (see upper right of each page).

Public Burden Statement: Reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send comments regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

The information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) the **Privacy Act of 1974** (5 USC 552a), and the **Right to Financial Privacy Act of 1978** (12 USC 3401), except as otherwise required by law. Note that the Right to Financial Privacy Act of 1978 provides that Ex-Im Bank may transfer financial records included in an application for an insurance policy, or concerning a previously approved insurance policy, to another Government authority as necessary to process, service or foreclose on an insurance policy, or collect on a defaulted insurance policy.

OMB #3048-0009 Expiry Date 5/31/02

EXPORT-IMPORT BANK OF THE UNITED STATES (EX-IM BANK)
BROKER REGISTRATION FORM

Insurance brokers and agents are eligible for commission payments under Ex-Im Bank export credit insurance policies if the broker or agent is registered with Ex-Im Bank and is appointed as broker-of-record by the policyholder either by designation on an insurance policy application or by separate letter.

Name of Brokerage_____
Contact:_____Title:_____
Address:_____ PO BOX:_____
City: _____State: _____Zip:_____
Phone: (_____)_____ Fax: (_____)_____ E-Mail:_____

Tax ID #:_____ DUNS #:_____ No. of Employees:_____
Indicate (Not Required) if owned by a woman or an ethnic minority, describe _____
Other lines of brokered Insurance:_____.
Do you have other offices you wish to register (to be eligible for commissions)? □ No □Yes

If "Yes", please list firm's name, address, telephone number, fax number and contact person on a separate sheet.
A list of registered insurance brokers is available on the Ex-Im Bank Internet Website and unbrokered applicants are referred to the list. Please indicate here if you **DO NOT** wish your name released.

1. A Registration Fee of **$75.00** is required
2. You are required to review, understand and **sign** the attached "Standards of Service".
3. Attach a copy of a current, valid insurance brokerage **license** indicating issuance and/or expiry date(s).
4. Forward the attached "Authorization for Automated Deposits" form.

The Broker (it) **CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank** (the Bank) that:

1. a) neither it nor its principals has been within the past 3 years:
   1) debarred, suspended or declared ineligible from participating in or voluntarily excluded from participation in a Covered Transaction or
   2) formally proposed for debarment, with a final determination still pending;
   3) indicted, convicted or had a civil judgement rendered against them for any of the offenses listed in the **Government Wide Nonprocurement Debarment and Suspension Regulations; Common Rule** which defines Covered Transaction.
   4) It certifies that it is **not delinquent** on any amounts due and owing to the U.S. Government, its agencies or instrumentalities as of the date of this application. **OR**
   b) It has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications 1 through 4.
   It further certifies that it has not and will not knowingly enter into any agreements in connection with the transaction with any individual or entity that has been subject to 1, 2 or 3 above.

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2. it will complete and submit **Form-LLL**, Disclosure Form to Report Lobbying if, to the best of its knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:

a) an officer or employee of any U.S. Government agency, or

b) a Member of Congress or a Member's employee, or

c) an officer or employee of Congress.

3. corrupt payments made in connection with Bank supported transactions may be a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC 78dd-1, et. seq.) which provides for civil and iminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business.

4. a) the information being requested is done so under authority of the **Export-Import Bank Act of 1945** (12 USC 635 et.seq.);

b) providing the information is mandatory. **Failure to do so** may result in the Bank being unable to determine eligibility for the Insurance Program. The information provided will be reviewed to determine if the broker meets the Bank's legislative requirements under the program

c) the Bank may not require the information and applicants are not required to respond unless a currently valid OMB control number is displayed on this form (see upper right of each page);

d) the information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), except as required to be disclosed under applicable laws;

e) the Bank shall have a right to transfer to another U.S. Government authority any financial records included in this certification or other correspondence as necessary to process, service, foreclose or collect on an insured debt. No other transfer of records to private parties or another U.S. Government authority will be authorized except as permitted under the **Right of Financial Privacy Act of 1978** (12 USC 3401).

f) the **public burden** reporting for this collection of information is estimated to average ½ hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send **comments** regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503.

5. the representations made and the facts stated by it in these certifications and its attachments **are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts**. It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001).

Signature: _____ Print Name: _____

Title: _____ Date: _____

Send this application to Attn: Business Development , Ex-Im Bank,
811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office.
The Ex-Im Bank website is http://www.exim.gov

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INSURANCE BROKERS
STANDARDS OF SERVICE

1. To act in a professional, reasonable, prudent and forthright manner in all dealings with your client and Ex-Im Bank.
2. To make certain that your clients understand that you are neither an Official Representative.
3. To stay knowledgeable about not only Ex-Im Bank export credit insurance but alternatives, including other Ex-Im Bank programs, other U.S. government programs, and private sector products as well, in order to provide the best options to your clients.
4. To educate your clients about Ex-Im Bank's Insurance Program and policies, its' benefits and proper usage.
5. To serve as your clients' primary contact for any questions concerning the policies and the servicing of a policy.
6. To review all applications and issuances of policies, actions under policies, renewals of policies and credit limits, and claims, for timeliness, completeness, accuracy and reasonableness.
7. To review correspondence from Ex-Im Bank with your clients, including quotes and credit limits, to assist them in understanding the coverage and their responsibilities.
8. To assist your clients to comply with the Agreements of the Insured including shipment reports, premium payment and reports of overdue accounts, and to advise Ex-Im Bank of any potential claims.
9. To report policy cancellations and submit a premium reconciliation to Ex-Im Bank.

I have read the above standards, agree that they are reasonable, and will comply with these standards.

I understand and agree that substantial failure by me to comply with these standards could result in withdrawal from the list of registered insurance brokers published by Ex-Im Bank and cancellation of eligibility for commission payments under Ex-Im Bank export credit insurance policies.

_____	_____	_____
Name of Brokerage	Signature of Broker	Date

_____
Print Name

OMB #3048-0009 Expiry Date 5/31/02

EXPORT-IMPORT BANK OF THE UNITED STATES
AUTHORIZATION FOR AUTOMATED DEPOSITS
(ACH CREDITS)

I hereby authorize the Export-Import Bank of the United States hereinafter called Ex-Im Bank, to initiate credit entries to my [ ] **CHECKING** [ ] **SAVINGS account** ***(check one)*** indicated below and the depository named below, hereinafter called DEPOSITORY, to credit the same to such account.

DEPOSITORY NAME _____

BRANCH _____

CITY _____ STATE_____ ZIP_____

TRANSIT/ABA NUMBER: ☐☐☐☐-☐☐☐☐ - ☐

ACCOUNT NUMBER: _____

This authority is to remain in full force and effect until Ex-Im Bank has received written notification from me of its termination in such time and in such manner as to afford Ex-Im Bank a reasonable opportunity to act on it.

BROKER NAME _____
(please print)

BROKER NO._____

SIGNATURE_____ DATE _____

PLEASE ATTACH A VOIDED CHECK FOR THE ACCOUNT NAMED ABOVE

FOR EX-IM BANK USE ONLY

DATE RECEIVED

PROCESSED BY

Return to: Export-Import Bank of the United States
Director - Broker Relations
811 Vermont Avenue, N.W.
Washington, DC 20571

OMB #3048-0009 Expiry Date 5/31/02

EXPORT-IMPORT BANK OF THE UNITED STATES (EX-IM BANK) BROKER COMMISSION SCHEDULE FOR EXPORT CREDIT INSURANCE POLICIES

Effective: October 1, 1994

BROKER ELIGIBILITY

Insurance brokers and agents are eligible for commission payments under Ex-Im Bank export credit insurance policies if the broker or agent is **registered** with Ex-Im Bank and is **appointed** as broker-of-record by the policyholder. The policyholder reserves the right to appoint, delete or change the broker of record at any time. Brokers of record are entitled to any commissions due on premiums paid prior to a change in the broker of record.

COMMISSION RATES

Commission rates paid by Ex-Im Bank are based on the type of policyholder to which the policy is issued, as shown in the chart below:

Type of Policyholder Commission Rate
(percentage of premium)
Financial Institutions 8%
Exporters
Small Business **30%***
Multi-Buyer Policyholders **12%**
Single-Buyer Policyholders **10%**
Administrators
Umbrella Policy **30%***
Trade Association Policy **10%**
Lessors
(whether a financial institution or an exporter)
Operating Lease Policy **20%**
Financing Lease Policy **10%**

*At Ex-Im Bank's discretion, this percentage will increase to 40% for those brokers who meet certain criteria regarding support of small business.

COMMISSION PAYMENTS

- The full amount of all premiums are due at the appropriate lockbox on or before the date specified in the policy. Insurance brokers should not remit premiums "net" of commission.
- Commission payments will be made monthly.
- No commission payments will be made on advance premium.

BROKER CHANGES ON EXISTING POLICIES

Ex-Im Bank policyholders may appoint or change their insurance broker at any time. Insurance brokers appointed after a policy is issued will be recognized on the first day of the next month after the receipt of the policyholder's written notice appointing an insurance broker of record. Acknowledgment by Ex-Im Bank of a policyholder's appointed insurance broker is made by means of a policy endorsement. Insurance brokers acknowledged by Ex-Im Bank are eligible for commissions with respect to transactions occurring after the effective date of the endorsement.

WHO TO CONTACT: For additional information, please contact a Regional Office or:
EXPORT-IMPORT BANK OF THE U.S., INSURANCE DIVISION
811 VERMONT AVENUE, N.W., WASHINGTON, D.C. 20571
TEL NO (202) 565-3630 or 1-800-565-EXIM FAX NO. (202) 565-3675 INTERNET http://www.exim.gov
Regional Offices: MID ATLANTIC (212) 809-2650 MIDWEST (312) 353-8081
NORTHEAST (212) 809-2650 SOUTHEAST (305) 526-7436
SOUTHWEST (281) 721-0465 WEST: Long Beach (562) 980-4580

[FR Doc. 03–30199 Filed 12–4–03; 8:45 am]

BILLING CODE 6690–01–C

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 11:40 a.m. on Tuesday, December 2, 2003, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory, resolution, and corporate activities.

In calling the meeting, the Board determined, on motion of Vice Chairman John M. Reich, seconded by Director James E. Gilleran (Director, Office of Thrift Supervision), concurred by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: December 2, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E3–00460 Filed 12–3–01; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of proposed revisions to the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002). The Board is publishing the proposed revisions on behalf of the agencies. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC should modify the proposed revisions prior to giving its final approval. The Board will then submit the revisions to OMB for review and approval.

DATES: Comments must be submitted on or before February 3, 2004.

ADDRESSES: Interested parties are invited to submit written comments to the agency listed below. All comments, which should refer to the OMB control number, will be shared among the agencies.

Written comments, which should refer to the ''Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, 7100–dquo; should be addressed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. Due to temporary disruptions in the Board's mail service, commenters are encouraged to submit comments by electronic mail to *regs.comments@federalreserve.gov*, or fax them to the Office of the Secretary at (202) 452–3819 or (202) 452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room outside those hours. Both the mailroom and the security control room are accessible from the Eccles building courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room M–P–500 between 9 a.m. and 5 p.m. on weekdays pursuant to sections 261.12 and 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: A draft copy of the proposed FFIEC 002 reporting form may be obtained at the FFIEC's web site (www.ffiec.gov). A copy of the proposed revisions to the collection of information may also be requested from Cindy Ayouch, Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

Proposal to revise the following currently approved collection of information:

Report Title: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

Form Number: FFIEC 002.

OMB Number: 7100–0032.

Frequency of Response: Quarterly.

Affected Public: U.S. branches and agencies of foreign banks.

Estimated Number of Respondents: 295.

Estimated Total Annual Responses: 1,180.

Estimated Time per Response: 22.75 burden hours.

Estimated Total Annual Burden: 26,845 burden hours.

General Description of Report: This information collection is mandatory: 12 U.S.C. 3105(b)(2), 1817(a)(1) and (3), and 3102(b). Except for select sensitive items, this information collection is not given confidential treatment (5 U.S.C. 552(b)(8)). Small businesses (that is, small U.S. branches and agencies of foreign banks) are affected.

Abstract: On a quarterly basis, all U.S. branches and agencies of foreign banks (U.S. branches) are required to file detailed schedules of assets and liabilities in the form of a condition report and a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The Federal Reserve System collects and processes this report on behalf of all three agencies.

Current Actions: The agencies propose to implement a small number of revisions to the existing reporting requirements of the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002). The proposed revisions would help to achieve consistency with the Reports of Condition and Income (Call Report) (forms FFIEC 031 and 041) filed by insured commercial banks and FDIC–supervised savings banks.

The proposed revisions to the FFIEC 002 that would take effect as of the March 31, 2004, reporting date include:

Schedule L—Derivatives and Off–Balance–Sheet Items

Modifying Line Item 12, ''Gross fair values of derivative contracts,'' by removing the following requirement: ''The following items should be completed by those branches or agencies with total assets of $100 million or more.'' The exemption from reporting the fair values of derivative contracts for branches and agencies with less than dollar;100 million in assets originated when derivatives were considered off–balance sheet items and predates FASB Statement No. 133, Accounting for Derivative Instruments and Hedging Activities (FAS 133), which took effect in 2001. FAS 133 require all derivatives to be measured at fair value and reported on the balance sheet as assets or liabilities. Because branches and agencies with less than dollar;100 million in assets that have derivatives now have to regularly determine their fair value for reporting purposes, they have the information necessary to disclose the fair value of their derivatives in Schedule L. Accordingly, the agencies are proposing to eliminate this disclosure exemption. The fair value data on derivatives will complement the data that branches and agencies with less than $100 million in assets currently report on the notional amount of their derivative contracts.

Schedule M—Due from/Due to Related Institutions in the U.S. and in Foreign Countries (CONFIDENTIAL)

1. Modifying Line Item 12, ''Gross fair values of derivative contracts,'' by removing the following requirement: ''The following items should be completed by those branches or agencies with total assets of $100 million or more.'' The rationale for the proposed change is similar to the justification above for the comparable change to Schedule L.

2. Adding Memoranda items 1.a, ''Gross positive fair value,'' and 1.b, ''Gross negative fair value'' to Memorandum item 1, ''Notional amount of all credit derivatives on which the reporting branch or agency is the guarantor.'' The new items would provide a better measure of credit and market risk for credit derivatives entered into with related depository institutions, particularly for branches and agencies with large positions in such credit derivatives.

3. Adding Memoranda items 2.a, ''Gross positive fair value,'' and 2.b, ''Gross negative fair value'' to Memorandum item 2, ''Notional amount of all credit derivatives on which the reporting branch or agency is the beneficiary.'' The rationale for the proposed change is the same as the justification above for adding items to Memorandum item 1.

Request for Comment: Comments submitted in response to this Notice will be shared among the agencies and will be summarized or included in the Board's request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information collection requests. Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimate of the burden of the information collection, 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 information collection 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.

Board of Governors of the Federal Reserve System, December 1, 2003.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 03–30212 Filed 12–4–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before February 3, 2004.

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph Lackey, Office of

Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Cindy Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following reports:

1. Report title: Weekly Report of Assets and Liabilities for Large Banks and Weekly Report of Selected Assets

Agency form numbers: FR 2416 and FR 2644

OMB control number: 7100–0075

Frequency: Weekly

Reporters: U.S.–chartered commercial banks

Annual reporting hours: FR 2416: 18,850 hours; FR 2644: 73,216 hours

Estimated average hours per response: FR 2416: 7.25 hours; FR 2644: 1.28 hours

Number of respondents: FR 2416: 50; FR 2644: 1,100

General description of reports: These information collections are voluntary (12 U.S.C. §§ 225(a) and 248(a)(2)). Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. § 552(b)(4)).

Abstract: The FR 2416, FR 2644, and the Weekly Report of Assets and Liabilities for Large U.S. Branches and Agencies of Foreign Banks (FR 2069; OMB No. 7100–0030) are referred to collectively as the bank credit reports. The FR 2416 is a detailed balance sheet that covers domestic offices of large U.S.–chartered commercial banks. The FR 2644 collects less–detailed information on investments, loans, total assets, and several memoranda items, covering domestic offices of small U.S.–chartered commercial banks. The bank credit reports are collected as of each Wednesday.

These three voluntary reports are mainstays of the Federal Reserve's reporting system from which data for analysis of current banking developments are derived. The FR 2416 is used on a stand–alone basis as the ''large domestic bank series.'' The FR 2644 collects sample data, which are used to estimate universe levels using data from the quarterly commercial bank Consolidated Reports of Condition and Income (FFIEC 031 and 041; OMB No. 7100–0036) (Call Report). Data from the bank credit reports, together with data from other sources, are used for constructing weekly estimates of bank credit, of sources and uses of bank funds, and of a balance sheet for the banking system as a whole.

The Federal Reserve publishes the data in aggregate form in the weekly H.8 statistical release, Assets and Liabilities of Commercial Banks in the United States, which is followed closely by other government agencies, the banking industry, the financial press, and other users. This release provides a balance sheet for the banking industry as a whole and data disaggregated by its large domestic, small domestic, and foreign–related components.

Current actions: The Federal Reserve proposes to make the following modifications to the FR 2416: 1) split other assets into two items, 2) split other liabilities into two items, and 3) combine three memoranda items breaking out U.S. Treasury securities. The Federal Reserve proposes to make the following modifications to the FR 2644: 1) split other loans secured by real estate into two items, 2) add an item for net due from own foreign offices, and 3) add an item for net due to own foreign offices. The respondent burden estimates are currently under review. The proposed revisions would be implemented as of June 2004.

2. Report title: Weekly Report of Assets and Liabilities for Large U.S. Branches and Agencies of Foreign Banks

Agency form number: FR 2069

OMB control number: 7100–0030

Frequency: Weekly

Reporters: U.S. branches and agencies of foreign banks

Annual reporting hours: 19,692 hours

Estimated average hours per response: 5.41 hours

Number of respondents: 70

General description of report: This information collection is voluntary (12 U.S.C. §§ 248(a)(2) and 3105(a)(2)). Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. § 552(b)(4)).

Abstract: The FR 2069 is a detailed balance sheet that covers large U.S. branches and agencies of foreign banks. This report, along with the FR 2416 and FR 2644, is collected as of each Wednesday.

These three voluntary reports are mainstays of the Federal Reserve's reporting system from which data for analysis of current banking developments are derived. The FR2069 collects sample data, which are used to estimate universe levels using data from the quarterly Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002; OMB No. 7100–0032) (Call Report). Data from the bank credit reports, together with data from other sources, are used for constructing weekly estimates of bank credit, of sources and uses of bank funds, and of a balance sheet for the banking system as a whole.

The Federal Reserve publishes the data in aggregate form in the weekly H.8 statistical release, Assets and Liabilities of Commercial Banks in the United States, which is followed closely by other government agencies, the banking industry, the financial press, and other users. This release provides a balance sheet for the banking industry as a whole and data disaggregated by its large domestic, small domestic, and foreign–related components.

Current actions: The Federal Reserve proposes to make the following modifications to the FR 2069: 1) combine items for federal funds purchased with banks and other borrowed money owed to banks and 2) combine items for federal funds purchased with others and other borrowed money owed to others. The respondent burden estimates are currently under review. The proposed revisions would be implemented as of June 2004.

3. Report title: Annual Report of Bank Holding Companies

Agency form number: FR Y–6

OMB control number: 7100–0124

Frequency: Annual

Reporters: top–tier domestic Bank Holding Companies (BHCs)

Annual reporting hours: 21,913 hours

Estimated average hours per response: 4.25 hours

Number of respondents: 5,156

General description of report: This information collection is mandatory Section 5(c)(1)(A) of the BHC Act (12 U.S.C. § 1844(c)(1)(A)); Section 8(a) of the International Banking Act (12 U.S.C. § 3106(a)); Sections 11(a)(1), 25 and 25A of the Federal Reserve Act (12 U.S.C. §§ 248(a)(1), 602, and 611a); Section 211.13(c) of Regulation K (12 CFR 211.13(c)); and Section 225.5(b) of Regulation Y (12 CFR 225.5(b)). Individual respondent data are not considered as confidential. However, a company may request confidential treatment pursuant to sections (b)(4) and

(b)(6) of the Freedom of Information Act (5 U.S.C. §§ 522(b)(4) and (b)(6)).

Abstract: The FR Y–6 is an annual report filed by all BHCs containing financial data, an organization chart, and information about shareholders. The Federal Reserve uses the data to monitor holding company operations and determine holding company compliance with the provisions of the BHC Act and Regulation Y (12 CFR 225).

Current actions: The Federal Reserve proposes to revise the FR Y–\6 by requiring that only top–tier BHCs file the FR Y–6 report, eliminating Report Item 1(a) that requires a BHC to submit a copy of its Securities and Exchange Commission form 10–K, adding three minor items to the cover page, and clarifying several areas in the instructions. The proposed FR Y–6 revisions would be effective with fiscal years beginning after December 31, 2003.

4. Report titles: Report of Changes in Organizational Structure and Report of Changes in FBO Organizational Structure

Agency form numbers: FR Y–10 and FR Y–10F

OMB control number: 7100–0297

Frequency: Event generated

Reporters: FR Y–10: Top–tier domestic BHCs; financial holding companies (FHCs), and unaffiliated state member banks; FR Y–10F: foreign banking organizations (FBOs) and FHCs

Annual reporting hours: FR Y–10: 9,792 hours; FR Y–10F: 1,635 hours

Estimated average hours per response: FR Y–10: 1 hour; FR Y–10F: 1 hour

Number of respondents: FR Y–10: 2,448; FR Y–10F: 327

General description of reports: These information collections are mandatory Sections 4(k) and 5(c)(1)(A) of the BHC Act (12 U.S.C. §§ 1843(k), 1844(c)(1)(A)); Section 8(a) of the International Banking Act (12 U.S.C. § 3106(a)); Sections 11(a)(1), 25(7) and 25A of the Federal Reserve Act (12 U.S.C. §§ 248(a)(1), 602, and 611a); Section 211.13(c) of Regulation K (12 CFR 211.13(c)); and Sections 225.5(b) and 225.87 of Regulation Y (12 CFR 225.5(b) and 225.87). Individual respondent data are not considered as confidential. However, a company may request confidential treatment pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. §§ 522(b)(4) and (b)(6)).

Abstract: The FR Y–10 is an event–generated report filed by top–tier domestic BHCs, including FHCs, and state member banks unaffiliated with a BHC or FHC, to capture changes in their regulated investments and activities. The Federal Reserve uses the data to monitor structure information on subsidiaries and regulated investments of these entities engaged in both banking and nonbanking activities.

The FR Y–10F is an event–generated report filed by FBOs, including FHCs, to capture changes in their regulated investments and activities. The Federal Reserve uses the data to ensure compliance with U.S. banking laws and regulations and to determine the risk profile of the FBO structure.

Current actions: The Federal Reserve proposes to revise the FR Y–10 and FR Y–10F forms and instructions in an effort to reduce respondent burden. The proposed revisions to the reporting forms consist primarily of reorganizing line items into separate schedules for banking and nonbanking investments. In addition, the Federal Reserve proposes to replace the Federal Reserve System activity codes with the North American Industrial Classification System codes and to reorganize and clarify the instructions. The Federal Reserve is considering the usefulness of a conversion table for converting the Federal Reserve Activity Codes to NAICS codes. The proposed revisions to the FR Y–10 and FR Y–10F would be implemented as of May 31, 2004.

Board of Governors of the Federal Reserve System, December 1, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–30213 Filed 12–4–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 29, 2003.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Ponkapoag Bancorp. MHC, and Massapoag Bancorp, Inc., both of Canton, Massachusetts; to become bank holding companies by acquiring 100 percent of the voting shares of The Canton Institution for Saving, The Bank of Canton, Canton, Massachusetts.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Southern Community Financial Corporation, Winston-Salem, North Carolina; to acquire The Community Bank, Pilot Mountain, North Carolina. Comments on this application must be received by December 19, 2003.

Board of Governors of the Federal Reserve System, December 1, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–30215 Filed 12–4–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely

related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 19, 2003.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Exchange Company, Gibbon, Nebraska; to acquire 100 percent of the voting shares of Ace Sales, Inc., Deshler, Nebraska, and thereby engage in lending activities, pursuant to Section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 1, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.03–30214 Filed 12–4–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–10]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Jail STD Prevalence Monitoring System, OMB No. 0920–0499—Revision—National Center for HIV, STD's and Tuberculosis (NCHSTP), Centers for Disease Control and Prevention (CDC).

CDC is requesting from Office of Management and Budget (OMB) a 3-year approval for the standardized record layout for the Jail STD Prevalence Monitoring System. The Jail STD Prevalence Monitoring System consists of test data compiled for persons entering corrections facilities. The standard data elements were created in response to the need to systematically assess morbidity in persons entering corrections facilities, who are at high risk for STDs or sexually transmitted diseases and who often do not seek medical care in mainstream medical settings. Use of these standard data elements will improve surveillance of STDs by allowing for systematic assessment of a high risk population, taking advantage of already computerized data.

States that compile data from corrections facilities are encouraged to participate in the system. In most places, STD test results for persons in corrections facilities are computerized by the laboratory or by the health department. The burden of compiling data in the standardized format involves running a computer program to convert the data to the specified format. This involves an initial investment of time by a programmer but afterwards involves only running the program once a quarter (average of 3 hours per quarter). Therefore, the respondent burden is approximately 12 hours per year.

If a respondent does not have computerized test results for persons in corrections facilities, and must enter the data, the burden of data-entry is approximately 1.5 minute per record. On an average a respondent will enter approximately 1250 records per quarter, which will result in a total burden of 1875 minutes or 31 hours per quarter.

During the next 3 years, CDC expects approximately 20 project areas per year to participate. Approximately 15 will have already computerized data for a burden of 180 hours (15x12hrs) per year and five respondents will have to enter data into a computerized database which will result in a burden of 620 additional hours (5x124 hrs) per year. The total estimated annualized burden is 880 hours per year.

Respondents	No. of respondents (STD project areas)	No. of responses/respondent (datasets/yr approx 5000 total records)	Average burden/response (in hours)	Total burden (in hours)
State/local health departments with computerized data	15	4	3	180
State/local health departments without computerized data	5	4	31	620
Total				880

Dated: November 25, 2003.

Laura Yerdon Martin,

Acting Director, Executive Secretariat, Centers for Disease Control and Prevention.

[FR Doc. 03–30257 Filed 12–4–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

National Center on Birth Defects and Developmental Disabilities

Name: Scientific Workshop on Impact of Maternal Thyroid Disease on the Developing Fetus: Implications for Diagnosis, Treatment, and Screening.

Times and Dates: 8 a.m.–7:30 p.m., January 12, 2004. 8 a.m.–4 p.m., January 13, 2004.

Place: Renaissance Atlanta Hotel Downtown, 590 West Peachtree Street, NW., Atlanta, Georgia 30308–3586, Telephone (404) 881–6000.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of the workshop is to summarize the body of scientific evidence, describe the gaps in knowledge, provide direction for future research, and offer guidance for appropriate public health action if warranted.

Matters To Be Discussed: The agenda will include an overview of the prevalence of thyroid dysfunction in reproductive-age women and factors associated with abnormal function, outcomes related to thyroid dysfunction during pregnancy, detection and treatment of thyroid dysfunction, and considerations for public health practice.

Agenda items may be subject to change as priority dictates.

FOR FURTHER INFORMATION CONTACT: Micah H. Milton, Health Scientist, National Center on Birth Defects and Developmental Disabilities, CDC, 1600 Clifton Road, NE., m/s E–87, Atlanta, Georgia 30333. Telephone 404/498–3082.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 1, 2003.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–30216 Filed 12–4–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–53; CMS–10102]

Agency Information Collection Activities: Proposed Collection; Comment Request

Agency: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Imposition of Cost Sharing Charges Under Medicaid and Supporting Regulations contained in 42 CFR 447.53; *Form No.:* CMS–R–53 (OMB# 0938–0429); *Use:* The information collection requirements contained in 42 CFR 447.53 require the States to include in their Medicaid State Plan their cost sharing provisions for the medically and categorically needy. The State Plan is the method in which States inform staff of State policies, standards, procedures and instructions; *Frequency:* Occasionally; *Affected Public:* State, local or tribal government; *Number of Respondents:* 54; *Total Annual Responses:* 20; *Total Annual Hours:* 2,700.

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* National Implementation of Hospital CAHPS (HCAHPS); *Form No.:* CMS–10102 (OMB# 0938–NEW); *Use:* The HCAHPS survey instrument, developed under the CAHPS umbrella, is a reliable and valid instrument that any organization can use (at no cost) to obtain patient data about hospital experiences. This tool will be adopted by the Quality Initiative: A Public Resource on Hospital Performance. Though the main purposes of this survey are consumer choice and hospital accountability, we intend and expect that the collection and reporting of these data will stimulate quality improvements. A standardized hospital survey from the patient's perspective will generate both universal measures and comparative data for consumers who need to select a hospital, and a new incentive for hospitals to further improve quality of care and accountability. This standardized instrument will allow consumers to make ''apples to apples'' comparisons among hospitals, allow hospitals and hospital chains to self compare, and provide state oversight officials with useful data; *Frequency:* Annually; *Affected Public:* Individuals or households; *Number of Respondents:* 2,212,000; *Total Annual Responses:* 2,212,000; *Total Annual Hours:* 368,367.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 26, 2003.

Julie Brown,

Acting, Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–30200 Filed 12–4–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute (NHLBI): Opportunity for Cooperative Research and Development Agreements (CRADAs) To Develop Novel Mechanical and Biological Treatments in Interventional Cardiovascular Medicine Using X-Ray Fluoroscopy and/or Real-Time Magnetic Resonance Imaging

ACTION: Notice.

SUMMARY: The National Heart, Lung, and Blood Institute (NHLBI) of the National Institutes of Health (NIH) announces the opportunity for Cooperative Research and Development Agreements (CRADAs) to develop novel mechanical and biological treatments in interventional cardiovascular medicine using x-ray fluoroscopy and real-time magnetic resonance imaging. The NHLBI seeks potential Collaborators wishing to provide expertise in (1) novel biological treatments for cardiovascular disease, including agents to facilitate mobilization of bone-marrow-derived stem and progenitor cells, (2) novel agents for therapeutic angiogenesis for myocardial or peripheral artery applications, (3) novel immune-modulating agents to treat to prevent manifestations of atherosclerosis, coronary artery occlusion, or myocardial ischemia/infarction, (4) novel mechanisms of drug, gene, or cell delivery to the myocardium or skeletal muscle to treat manifestations of coronary or peripheral artery atherosclerosis, and (5) intravascular devices for real-time magnetic resonance imaging-guided treatments including but not limited to angioplasty balloons, recanalization systems, percutaneous cardiac valves, stents, endografts, and bypass grafts.

The NHLBI seeks capability statements from parties interested in entering into a potential CRADA to manufacture, prototype, and test the above-specified agents or devices leading to early clinical testing and development. The availability of private sector support may increase the feasibility of particular aspects of the final design, but the primary criterion for selecting potential collaborators is the scientific merit of proposals for developing a plan to identify novel putative therapeutic agents and devices.

The NHLBI can provide extensive preclinical and clinical support in the development of Collaborator deliverables, including animal experiments, advanced x-ray fluoroscopic and magnetic resonance imaging laboratories, and investigations conducted in the Warren G. Magnuson Clinical Center at the Bethesda campus of the National Institutes of Health.

The control of clinical trials shall reside entirely with the Institute and the scientific participants of the trial. In the event that any adverse effects are encountered which, for legal or ethical reasons, may require communication with the U.S. Food and Drug Administration, the relevant collaborating institutions will be notified. Neither the conduct of the trial nor the results should be represented as an NHLBI endorsement of the agent, drug, or device under study.

DATES: Only written CRADA capability statements received by the NHLBI within 21 days of publication of this notice will be considered during the initial design phase. Confidential information must be clearly labeled. Potential collaborators may be invited to meet with the Selection Committee at the Collaborators' expense to provide additional information. The Institute may issue an additional notice of CRADA opportunity during the design phase if circumstances change or if the design alters substantially.

For Additonal Information and Questions: Capability statements should be submitted to Ms. Peg Koelble, Office of Technology Transfer and Development, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Suite 6018, Bethesda, MD 20892–7992; Tel: 301–594–4095; Fax: 301–594–3080; email: *koelblep@nhlbi.nih.gov.*

Capability Statements: A Selection Committee will use the information provided in the ''Collaborator Capability Statements'' received in response to this announcement to help in its deliberations. It is the intention of the NHLBI that all qualified Collaborators have the opportunity to provide information to the Selection Committee through their capability statements. The Capability Statement should not exceed 10 pages and should address the following selection criteria:

1. The statement should provide specific details of the method to be used in the development of novel candidate biological treatments, delivery systems, or real-time MRI-guided mechanical treatments for cardiovascular disease.

2. The statement should include a detailed plan demonstrating the ability to provide sufficient capacity in drug, gene, or stem cell development and manufacturing or in mechanical device prototyping, testing, development, and manufacturing.

3. The statement may include outline measures of interest to the Collaborator. The specifics of the proposed outcome measures and the proposed support should include but not be limited to: expertise in the proposed field, specific personnel allocation to the proposed collaboration, specific internal or external funding commitment to support the advancement of scientific research, services, facilities, equipment, or other resources that would contribute to the conduct of the commerical development.

4. The statement must address willingness promptly to publish research results and ability to be bound by PHS intellectual property policies (*see* CRADA: *http://ott.od.nih.gov/newpages/crada.pdf*).

Dated: November 26, 2003.

Carl Roth,

Associate Director for Scientific Program Operation, National Heart, Lung, and Blood Institute.

[FR Doc. 03–30206 Filed 12–4–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive

Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Methods of Preparing Lymphocytes That Express Interleukin-2 and Their Use in the Treatment of Cancer

Ke Liu and Steven Rosenberg (NCI).

PCT Application No. PCT/US02/33243 filed 15 Oct 2002 (DHHS Reference No. E–297–2002/0–PCT–01).

Licensing Contact: Jeffrey Walenta; 301/435–4633; *walentaj@mail.nih.gov.*

Adoptive immunotherapy strategies are highly dependent upon a sustained immune response to a tumor specific antigen. An effective adoptive strategy should ideally recruit and integrate into the existing components of a cancer patient's inherent immune system. However, most cancer patient's immune systems are unable to sustain the expansion of introduced tumor specific T-cells and hence cannot sustain a tumor specific response. Interleukin 2 (IL–2) is a natural cytokine that will promote the growth and expansion of introduced tumor specific T cells. Unfortunately, supplementing a patient's immune system with the systemic introduction of IL–2 has severe toxicity effects at a dose sufficient to promote T-cell growth, limiting the effectiveness of many adoptive strategies.

This invention relates to methods of preparing autologous T-lymphocytes and tumor-infiltrating lymphocytes that express IL–2. This method comprises the following steps: obtaining peripheral blood mononuclear cells (PBMC) or tumor infiltrating lymphocytes (TIL) from a patient immunized with an antigen of cancer; stimulating the PBMC's or TIL with the antigen of the cancer *in vitro*; transducing the PBMC's or TIL with a retroviral vector encoding IL–2; and reintroducing these autologous T-lymphocytes back into the patient. This method overcomes the potential toxicity issues from systemic IL–2 delivery and creates self-sufficient T-cells for an effective adoptive immunotherapy response.

Catalytic Domains of β(1,4)-galactosyltransferase I Having Altered Donor and Acceptor Specificities, Domains That Promote In Vitro Protein Folding, and Methods for Their Use

Pradman Qasba (NCI), Boopathy Ramakrishnan (NCI), Elizabeth Boeggeman (NCI).

U.S. Provisional Application No. 60/439,298 filed 10 Jan 2003 (DHHS Reference No. E–230–2002/0–US–01); U.S. Provisional Application No. 60/450,250 filed 23 Feb 2003 (DHHS Reference No. E–230–2002/1–US–01).

Licensing Contact: Peter Soukas; 301/435–4646; *soukasp@mail.nih.gov.*

β(1,4)-galactosyltransferase I catalyzes the transfer of galactose from the donor, UDP-galactose, to an acceptor, N-acetylglucosamine, to form a galactose-β(1,4)-N-acetylglucosamine bond. This reaction allows galactose to be linked to an N-acetylglucosamine that may itself be linked to a variety of other molecules. The reaction can be used to make many types of molecules having great biological significance. For example, galactose-β(1,4)-N-acetylglucosamine linkages are very important for cellular recognition and binding events as well as cellular interactions with pathogens, such as viruses. Therefore, methods to synthesize these types of bonds have many applications in research and medicine to develop pharmaceutical agents and improved vaccines that can be used to treat disease.

The present invention is based on the surprising discovery that the enzymatic activity of β(1,4)-galactosyltransferase can be altered such that the enzyme can make chemical bonds that are very difficult to make by other methods. These alterations involve mutating the enzyme such that the mutated enzyme can transfer many different types of sugars from sugar nucleotide donors to many different types of acceptors. Therefore, the mutated β(1,4)-galactosyltransferases of the invention can be used to synthesize a variety of products that, until now, have been very difficult and expensive to produce.

The invention also provides amino acid segments that promote the proper folding of a galactosyltransferase catalytic domain. The amino acid segments may be used to properly fold the galactosyltransferase catalytic domains of the invention and thereby increase their activity. The amino acid segments may also be used to increase the activity of galactosyltransferases that are produced recombinantly. Accordingly, use of the amino acid segments according to the invention allows for production of β(1,4)-galactosyltransferases having increased enzymatic activity relative to β(1,4)-galactosyltransferases produced in the absence of the amino acid segments.

Some of the many uses for this invention are the following: synthesis of polysaccharide antigens for conjugate vaccines, glycosylation of monoclonal antibodies, and as research tools.

Targeting of the Hepatitis A Cellular Receptor To Treat Renal Cancer

Gerardo Kaplan (FDA).

U.S. Provisional Patent Application No. 60/442,286 filed 24 Jan 24 2003 (DHHS Reference No. E–227–2002/0-US–01).

Licensing Contact: Brenda Hefti; (301) 435–4632; *heftib@mail.nih.gov.*

Tumor markers—receptors on the cell surface that are expressed preferentially in tumor cells—are extremely useful in the diagnosis and treatment of cancers. The inventors have discovered that hHAVcr-1 is such a tumor marker because it is overexpressed in renal cell carcinomas, and its degree of overexpression is correlated to the stage of the tumor. In addition, overexpression of this receptor appears to affect differentiation.

The inventors have also demonstrated that they can target this receptor specifically in vitro, using monoclonal antibodies tagged with toxins and hepatitis A virus vectors. This discovery might be useful as a tumor marker or for gene-based therapeutics. Antibodies against the receptor encoded by hHAVcr-1 might be useful in an antibody-based therapeutic for the treatment of renal cancer.

Novel 2–Alkoxy Estradiols and Derivatives Thereof

Ravi Varma (NCI).

U.S. Patent Application No. 09/041,212 filed on 12 Mar 1998, which issued as U.S. Patent 6,136,992 on 24 October 2000 (DHHS Reference No. E–188–1998/1–US–01); U.S. Provisional Application No. 60/040,540 filed 13 Mar 1997 (DHHS Reference No. E–188–1998/0–US–01).

Licensing Contact: George Pipia; 301/435–5560; *pipiag@mail.nih.gov.*

The present invention is directed to novel 2-alkoxy estradiols and derivatives of 2-alkoxy estradiols having anticancer activity as claimed in the U.S. Patent 6,136,992. The invention is also directed to methods of preparing these novel compounds. These compounds have improved activity against a wide variety of tumor cell lines, including lung, colon, central nervous system, melanoma, ovarian, renal, prostate and breast cancers, compared with 2-methoxy estradiols. It is expected that these compounds will be very useful in the treatment of a wide variety of cancers. In addition, the present compounds have a low affinity for the estrogen receptor and are, therefore, expected to have fewer side effects than estradiols.

Dated: November 25, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–30207 Filed 12–4–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Disease; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, November 25, 2003, 9 a.m. to November 25, 2003, 11 a.m. National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD, 20892 which was published in the Federal Register on October 31, 2003, 68 FR 62902.

The meeting will be held on December 18, 2003 from 3 p.m. until 5 p.m. The meeting is closed to the public.

Dated: November 28, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30202 Filed 12–4–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

Name of Committee: National Institute of Diabetes and Digestive Kidney Diseases Special Emphasis Panel, Chronic Kidney Disease.

Date: December 12, 2003.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892, (301) 594–7799, *ls38z@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hermatology Research, National Institutes of Health, HHS)

Dated: November 28, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30203 Filed 12–4–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 10, 2003.

Time: 10:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 28, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30204 Filed 12–4–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Board on Medical Rehabilitation Research.

The meeting will be open to the public with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Board on Medical Rehabilitation Research.

Date: December 8–9, 2003.

Time: December 8, 2003, 8:30 a.m. to 5 p.m.

Agenda: NICHD Director's Report presentation, Regional Research Networks, and an update on the Rehabilitation Medicine Scientist Training Program.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Time: December 9, 2003, 8:30 a.m. to 12 p.m.

Agenda: Other business dealing with the NABMRR Board.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Ralph M. Nitkin, PhD, Director, BSCD, National Center for Medical Rehabilitation Research, National Institute of Child Health and Human Development, NIH, 6100 Building, Room 2A03, Bethesda, MD 20892, (301) 402–4206.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home page: *http://www.nichd.nih.gov/about/ncmrr.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 28, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30205 Filed 12–4–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, December 18, 2003, 1 p.m. to December 18, 2003, 3 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on November 26, 2003, 68 FR 66471–66472.

The meeting will be held on December 19, 2003, from 5 p.m. to 7 p.m. The location remains the same. The meeting is closed to the public.

Dated: November 28, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30201 Filed 12–4–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) published in the **Federal Register** on April 11, 1988 (53 FR 11970), and revised in the **Federal Register** on June 9, 1994 (59 FR 29908) and on September 30, 1997 (62 FR 51118). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from HHS' National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2, Room 815, Rockville, Maryland 20857; 301–443–6014 (voice), 301–443–3031 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification, a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines, the following laboratories meet the minimum standards set forth in the Mandatory Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400,

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–6870, (Formerly: Jewish Hospital of Cincinnati, Inc.)

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Diagnostic Services Inc., dba DSI, 12700 Westlinks Dr., Fort Myers, FL 33913, 239–561–8200/800–735–5416

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2661/800–898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories,* 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702/800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609

Express Analytical Labs, 3405 7th Ave., Suite 106, Marion, IA 52302, 319–377–0500

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.)

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 7207 N. Gessner Rd., Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Dr., Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 10788 Roselle St., San Diego, CA 92121, 800–882–7272, (Formerly: Poisonlab, Inc.)

Laboratory Corporation of America Holdings, 1120 Stateline Rd. West, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MAXXAM Analytics Inc.,* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.)

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Dr., Minneapolis, MN 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515

Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 S., Salt Lake City, UT 84124, 801–293–2300/800–322–3361, (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.)

One Source Toxicology Laboratory, Inc., 1705 Center St., Deer Park, TX 77536, 713–920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891, x8991

PharmChem Laboratories, Inc. 4600 N. Beach, Haltom City, TX 76137, 817–605–5300, (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–824–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750, (Formerly: Associated Pathologists Laboratories, Inc.)

Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories)

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories)

Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130

Sciteck Clinical Laboratories, Inc., 317 Rutledge Rd., Fletcher, NC 28732, 828–650–0409

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507/800–279–0027

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (Formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052

Sure-Test Laboratories, Inc., 2900 Broad Ave., Memphis, TN 38112, 901–474–6026

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–30217 Filed 12–4–03; 8:45 am]

BILLING CODE 4160–20–P

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on June 9, 1994 (59 FR 29908) and on September 30, 1997 (62 FR 51118). After receiving DOT certification, the laboratory will be included in the monthly list of HHS certified laboratories and participate in the NLCP certification maintenance program.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

TIME AND DATE: 10 a.m. (EST), December 15, 2003.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the November 17, 2003, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.

FOR FURTHER INFORMATION CONTACT: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: December 3, 2003.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 03–30406 Filed 12–3–03; 3:19 pm]

BILLING CODE 6760–01–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: Request for Loan Information Verification.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0012.

Abstract: The Individuals and Households Program (IHP) uses mobile homes, travel trailers, and other forms of prefabricated housing to provide temporary housing assistance to victims of federally declared disasters. Victims who express interest in purchasing a mobile home at an adjusted sales price must complete FEMA Form 90–68. The form is used by FEMA to obtain information from lenders. The information is required to determine a fair and equitable sales price of a mobile home to disaster victims.

Affected Public: Individuals or households, and Business or other for-profit, Not-for-profit institutions.

Number of Respondents: 125 Applicants and 250 lenders.

Estimated Time per Respondent: 5 minutes for Applicants and 5 minutes for lenders.

Estimated Total Annual Burden Hours: 42 hours.

Frequency of Response: On Occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to e-mail address *ahunt@omb.eop.gov* or facsimile number (202) 395–7285 within 30 days of the date of this notice.

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, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *InformationCollections@fema.gov*.

Dated: November 28, 2003.

Muriel B. Anderson,

Acting Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–30290 Filed 12–4–03; 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: Residential Basement Floodproofing Certificate.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1660–0033.

Abstract: FEMA Form 81–78 is only used in communities that have been granted an exception by FEMA to allow the construction of flood proof residential basements in Special Flood Hazard Areas (SFHAs). Homeowners must have a registered professional engineer or architect complete FEMA Form 81–78 for development or inspection of structural design basements and certify that the basement design and methods of construction are in accordance with floodplain management ordinances. In any case homeowners are responsible for the fees involved with these services. Homeowners also provide FEMA Form 81–78 to their insurance agent to receive discounted flood insurance under the National Flood Insurance Program (NFIP).

Affected Public: Individuals or households.

Number of Respondents: 50.

Estimated Time Per Respondent: 3.25 hrs.

Estimated Total Annual Burden: 163 hrs.

Frequency of Response: On Occasions.

Comments: Interested persons are invited to submit written comments on the proposed information collection to e-mail address *ahunt@omb.eop.gov* or facsimile number (202) 395–7285 within 30 days of the date of this notice.

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, Emergency Preparedness and Response Directorate, Department of Homeland Security 500 C Street, SW., Room 316, Washington, DC 20472. Facsimile number (202) 646–3347, or email address *InformationCollections@fema.gov*.

Dated: November 28, 2003.

Muriel B. Anderson,

Acting Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–30291 Filed 12–4–03; 8:45 am]

BILLING CODE 9110–12–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: Flood Mitigation Assistance (eGrants) and Grant Supplemental Information.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0072.

Abstract: Information sought with this submission will comprise Phase I of the electronic, web-based application for Flood Mitigation Assistance (FMA) program grants through FEMA's eGrants system. The eGrants system is being developed to meet the intent of the eGovernment initiative, authorized by Public Law 106–107 passed on November 20, 1999. This initiative requires that all government agencies both streamline grant application process and provide for the means to electronically create, review, and submit a grant application via the Internet.

The FMA eGrants application will not replace the FMA grants program paper-based collection currently under OMB control number 1660–0025. It is provided as an alternative method for grantees and subgrantees to use.

The FMA eGrants application includes the information necessary for FEMA to assess the financial needs of the applicants as well as the projected benefits to be obtained from the use of the grant funds. FEMA will also use the information to determine eligibility and whether the proposed use of such funds meets the requirements and intent of the NFIRA. FEMA will use the information to evaluate applications and make award decisions, monitor ongoing performance and manage the flow of Federal funds, and to appropriately closeout the grant award when all work is completed.

Affected Public: State, local and Tribal governments.

Number of Respondents: 280—56 States and Territories × 4 subgrants per State = 224 + 56 States to review, coordinate and forward FMA grant applications to FEMA for approval.

Estimated Time per Respondent: 14.6 hrs.

Estimated Total Annual Burden Hours: 4,088.

Frequency of Response: On occasion.

Comments: Interested persons are invited to submit written comments within 30 days of this notice on the proposed information collection to the FEMA Desk Officer at the Office of Management and Budget at e-mail address *David_Rostker@omb.oep.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 facsimile number (202) 646–3347 or e-mail address *InformationCollections@fema.gov.*

Dated: November 13, 2003.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–30292 Filed 12–4–03; 8:45 am]

BILLING CODE 9110–13–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1501–DR]

Puerto Rico; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA–1501–DR), dated November 21, 2003, and related determinations.

EFFECTIVE DATE: November 21, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 21, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

> I have determined that the damage in certain areas of the Commonwealth of Puerto Rico, resulting from severe storms, flooding, mudslides, and landslides on November 10, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the Commonwealth of Puerto Rico.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Individual Assistance in the designated areas, Hazard Mitigation throughout the Commonwealth, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.
>
> Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Justo Hernandez, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Puerto Rico to have been affected adversely by this declared major disaster:

> The municipalities of Guánica, Guayama, Juana Diaz, Maunabo, Patillas, Río Grande, Salinas, Santa Isabel, and Yauco for Individual Assistance.

All municipalities within the Commonwealth of Puerto Rico are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–30297 Filed 12–4–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1501–DR]

Puerto Rico; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–1501–DR), dated November 21, 2003, and related determinations.

EFFECTIVE DATE: November 24, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 21, 2003:

The municipalities of Arroyo, Canóvanas, Fajardo, Loiza, Naguabo, Toa Baja, and Yabucoa for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–30298 Filed 12–4–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1499–DR]

Washington; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Washington (FEMA–1499–DR), dated November 7, 2003, and related determinations.

EFFECTIVE DATE: November 20, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Washington is hereby amended to include the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 7, 2003:

Clallam, Grays Harbor, Jefferson, Mason, Skagit, Snohomish, and Whatcom Counties for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–30293 Filed 12–4–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1500–DR]

West Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–1500–DR), dated November 21, 2003, and related determinations.

EFFECTIVE DATE: November 21, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 21, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of West Virginia, resulting from severe storms, flooding, and landslides on November 11, 2003, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Other Needs Assistance under Section 408 of the Stafford Act will be

limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Michael Bolch, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of West Virginia to have been affected adversely by this declared major disaster:

Cabell, Kanawha, Lincoln, Nicholas, Putnam, and Wayne Counties for Individual Assistance.

All counties within the State of West Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–30294 Filed 12–4–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1500–DR]

West Virginia; Amendment No.1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1500-DR), dated November 21, 2003, and related determinations.

EFFECTIVE DATE: November 22, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 21, 2003:

Boone, Calhoun, Clay, Fayette, Gilmer, Greenbrier, Marion, McDowell, Mercer, Monongalia, Monroe, Raleigh, Summers, Webster, Wetzel, and Wyoming Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–30295 Filed 12–4–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1500–DR]

West Virginia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1500–DR), dated November 21, 2003, and related determinations.

EFFECTIVE DATE: November 25, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 21, 2003:

Boone, Clay, Kanawha, Lincoln, and Wayne Counties for Public Assistance (already designated for Individual Assistance.)

Logan County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–30296 Filed 12–4–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Maritime Vulnerability Self-Assessment Tool

AGENCY: Transportation Security Administration (TSA), Department of Homeland Security (DHS).

ACTION: Notice of availability of TSA's maritime vulnerability self-assessment tool.

SUMMARY: TSA announces the availability of the TSA Maritime Self-Assessment Risk Module (TMSARM), developed to support the United States Coast Guard's (USCG) regulatory efforts promulgated pursuant to the Maritime Transportation Security Act (MTSA) of 2002. MTSA regulations mandate that any facility or vessel that might be involved in a transportation security incident conduct a vulnerability assessment and submit a security plan to the USCG by December 31, 2003. The

Coast Guard published a series of final rules implementing portions of the maritime security initiatives mandated by MTSA, including the vulnerability assessment and security plan requirements. The USCG final rules provide a list of tools that may be used to conduct vulnerability self-assessments. This list includes TMSARM, a no-cost, web-based, flexible vulnerability assessment tool designed by TSA specifically to meet the requirements of MTSA.

FOR FURTHER INFORMATION CONTACT: For additional information or questions, contact Nick Lakis, Office of Maritime and Land Security, Transportation Security Administration Headquarters, West Building, Floor 9, TSA–8, 601 South 12th Street, Arlington, VA 22202–4220; e-mail: *nick.lakis@dhs.gov*. For issues regarding the DHS/TSA's vulnerability self-assessment tool, contact Lynne Wolstenholme, Office of Threat Assessment and Risk Management, Transportation Security Administration Headquarters, West Tower, Floor 9, TSA–3, 601 South 12th Street, Arlington, VA 22202–4220; e-mail: *tsarisk@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

On October 22, 2003, the USCG published in the **Federal Register** (68 FR 60447) a series of final rules, codified in the new Subchapter H of Title 33 of the Code of Federal Regulations (CFR), which adopted, with changes, the series of temporary interim rules published July 1, 2003 (68 FR 39240). This series of rules addresses security assessments and plans, as well as other security standards, measures, and provisions that are mandated by the Maritime Transportation Security Act (MTSA) of 2002 (Pub. L. 107–295, 116 Stat. 2064, Nov. 25, 2002). One of these MTSA requirements is that any facility or vessel that might be involved in a transportation security incident (TSI) conduct a vulnerability assessment and submit a security plan to the USCG by December 31, 2003. The MTSA defines a TSI as ''a security incident that results in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area.''

TSA, in coordination with other Federal agencies, academia, and industry, developed a vulnerability self-assessment tool, the TSA Maritime Self-Assessment Risk Module (TMSARM), specifically to meet the security assessment requirements mandated by MTSA. This TSA tool is briefly discussed in the preamble of the USCG final rules. The tool supports three basic functions: (1) Capturing a current snapshot of the user's security system baseline; (2) providing users with a vulnerability assessment tool; and (3) assisting users in their development of a comprehensive security plan. TMSARM is available to Company Security Officers (CSO), Vessel Security Officers (VSO), and Facility Security Officers (FSO). This outstanding service is specific to TMSARM and is available to TMSARM users at no cost. The tool is easily accessible on TSA's website at *http://www.tsa.gov/public/interapp/editorial/editorial_0826.xml*, and the user determines all ratings. Any information entered into the tool will not become accessible to the Federal government unless and until the party entering the data formally submits this information to the TSA.

Elements of the Self-Assessment Tool

Although the USCG provides examples of security assessment tools in 33 CFR 101.510, the list is not intended to be exhaustive. The USCG does not require owners or operators to conduct security assessments using a specific tool, provided that the assessments meet the requirements of its regulations. TMSARM is merely one means of satisfying the USCG requirements.

In general, TMSARM focuses on preventing and mitigating a base array of threat scenarios developed for the various categories of vessels and facilities that comprise the maritime transportation sector and are covered by the USCG rules. Users rate their vessel/facility in terms of target attractiveness and several consequence categories that broadly describe health and well-being, economic consequence, and symbolic value. Users will first list the vessel/facility's baseline security countermeasures that apply for each of the threat scenarios and then rate the effectiveness of the countermeasures in detecting and preventing terrorist's actions against each of the provided threat scenarios. The countermeasures are divided into broad countermeasure groupings that represent different security layers that may be implemented against the various threat scenarios. Descriptive guidance for the effectiveness rating is provided for each of the countermeasure categories. The performance-based effectiveness ratings range from very high to very low, and describe the vessel/facility's ability to thwart the threat.

TSA has also developed guidance documents for the security countermeasure categories. These documents guide users on how to populate the sections of their security plans with the security information developed through use of both the TMSARM security checklist and the TMSARM vulnerability assessment tool. Additionally, the guidance documents identify specific security vulnerabilities from the USCG regulations and map them to the appropriate TMSARM security countermeasure effectiveness descriptions within the tool. Once vulnerabilities are identified, very specific guidance on how to fill out form USCG Form CG–6025 (Vulnerability and Security Measures Summary) is provided.

After the tool is applied across each of the provided threat scenarios to determine baseline countermeasures, users can re-apply the tool to assess the impact of adding new countermeasures or enhancing existing countermeasures. Additional or enhanced countermeasures are included in the security plan along with estimated resource requirements and a timeframe for implementation. Upon completion, users receive a report that summarizes their inputs. This report can be included in the security plan that is required to be submitted to the USCG. Users' input to the tool becomes part of a vulnerability assessment, which constitutes Sensitive Security Information (SSI) under TSA regulations at 49 CFR part 1520. SSI may be released only to persons with a need to know, except with the written permission of the TSA Administrator. Unauthorized release of SSI may result in civil penalties or other action.

Issued in Arlington, Virginia, on December 1, 2003.

James M. Loy,

Administrator.

[FR Doc. 03–30281 Filed 12–4–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–49]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development,

451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Shirley Kramer, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll-free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: **AIR FORCE:** Mr. Albert F. Lowas, Jr., Air Force Real Property Agency, 1700 North Moore St., Suite 2300, Arlington, VA 22209–2802; (703) 696–5501; **COE:** Ms. Shirley Middleswarth, Army Corps of Engineers, Civil Division, Directorate of Real Estate, 441 G Street, NW., Washington, DC 20314–1000; (202) 761–7425; **ENERGY:** Mr. Tom Knox, Department of Energy, Office of Engineering & Construction Management, CR–80, Washington, DC 20585; (202) 586–8715; **GSA:** Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; **INTERIOR:** Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS5512, Washington, DC 20240; (202) 219–0728; **NAVY:** Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; **VA:** Ms. Amelia E. McLellan, Director, Real Property Service (183C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 419, Washington, DC 20420; (202) 565–5398; (These are not toll-free numbers).

Dated: November 25, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 12/5/2003

Suitable/Available Properties

Buildings (by State)

California

Bldg. 4607
Yosemite Natl Park
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200340010
Status: Unutilized
Comment: 66 sq. ft. storage facility, mountainous terrain, off-site use only

Hawaii

Bldg. 255
Navy Marine Golf Course
Pearl Harbor Co: HI 96860–
Landholding Agency: Navy
Property Number: 77200340042
Status: Excess
Comment: 1946 sq. ft., possible asbestos/lead paint, most recent use—guest quarters, off-site use only

Iowa

23 Buildings
Former Naval Housing
Waverly Co: Bremer IA 50677–
Landholding Agency: GSA
Property Number: 54200340006
Comment: 2 to 3 bedroom homes, 864 to 1760 sq. ft., presence of asbestos/lead paint
GSA Number: 7–I–IA–0463–5

New York

Bldg. 240
Rome Lab
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 18200340023
Status: Unutilized
Comment: 39108 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 247
Rome Lab
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 18200340024
Status: Unutilized
Comment: 13199 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 248
Rome Lab
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 18200340025
Status: Unutilized
Comment: 4000 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 302
Rome Lab
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 18200340026
Status: Unutilized
Comment: 10288 sq. ft., presence of asbestos, most recent use—communications facility

Tennessee

Tract 01–202
Stones River Natl
Battlefield
Murfreesboro Co: Rutherford TN 37129–
Landholding Agency: Interior
Property Number: 61200340008
Status: Excess
Comment: 1796 sq. ft. residence, off-site use only

Texas

Tract 104–47
San Antonio Mission
San Antonio Co: Bexar TX 78223–
Landholding Agency: Interior
Property Number: 61200340012
Status: Unutilized
Comment: 136 sq. ft., Historical District, off-site use only

Virginia

SSA Trust Fund Bldg.
2301 Park Ave.
Lynchburg Co: VA 24501–
Landholding Agency: GSA
Property Number: 54200340010
Status: Excess
Comment: 3400 sq. ft., most recent use—Office
GSA Number: 4–G–VA–0734

West Virginia

Quarters 77, 78, 79
Hartzog Drive
Harpers Ferry Co: Jefferson WV 25425–
Landholding Agency: Interior
Property Number: 61200340013
Status: Excess
Comment: 1797 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—housing, off-site use only

Land (by State)

Michigan

IOM Site
Chesterfield Road
Chesterfield Co: Macomb MI
Landholding Agency: GSA
Property Number: 54200340008
Status: Excess
Comment: approx. 17.4 acres w/concrete block bldg. in poor condition, most recent use—radio antenna field, narrow right-of-way
GSA Number: 1–D–MI–0603F

Suitable/Unavailable Properties

Buildings (by State)

Colorado

Klein Water Treatment Plant
Rocky Mountain Arsenal
Denver Co: Adams CO 80022–
Landholding Agency: GSA
Property Number: 54200340012
Status: Surplus
Comment: water treatment plant
GSA Number: 7–D–CO–0442–3

Unsuitable Properties

Buildings (by State)

Alaska

Bldg. 4314
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200340001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 6527
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200340002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 7541
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200340003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 8111
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200340004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 9489
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200340005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 10547
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200340006
Status: Unutilized
Reason: Extensive deterioration

California

Bldg. 5057
Edwards AFB
Los Angeles Co: CA 93523–
Landholding Agency: Air Force
Property Number: 18200340007
Status: Excess
Reason: Extensive deterioration

Bldg. 6909
Edwards AFB
Los Angeles Co: CA 93523–
Landholding Agency: Air Force
Property Number: 18200340008
Status: Unutilized
Reason: Secured Area

28 Bldgs. /Area C
Edwards AFB
Los Angeles Co: CA 93523–
Landholding Agency: Air Force
Property Number: 18200340009
Status: Unutilized
Reason: Secured Area

Mobile Home/T00706
Yosemite Natl Park
5001 Trailer Court
El Portal Co: Mariposa CA 95318–
Landholding Agency: Interior
Property Number: 61200340009
Status: Unutilized
Reason: Extensive deterioration

133/215 Conlon
Golden Gate Natl Rec Area
Mill Valley Co: Marin CA 94941–
Landholding Agency: Interior
Property Number: 61200340011
Status: Unutilized
Reason: Extensive deterioration

Colorado

Bldg. 106
Peterson AFB
Colorado Springs Co: El Paso CO 80914–8090
Landholding Agency: Air Force
Property Number: 18200340010
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone; Secured Area.

Bldg. 107
Peterson AFB
Colorado Spring Co: El Paso CO 80914–8090
Landholding Agency: Air Force
Property Number: 18200340011
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone; Secured Area.

Bldg. 108
Peterson AFB
Colorado Spring Co: El Paso CO 80914–8090
Landholding Agency: Air Force
Property Number: 18200340012
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone; Secured Area.

Hawaii

Bldgs. 743, 1002, 6100
Johnston Atoll Airfield
Honolulu Co: HI
Landholding Agency: Air Force
Property Number: 18200340013
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone; Extensive deterioration

Bldg. 23
Naval Station
Ford Island Co: Honolulu HI 96818–
Landholding Agency: Navy
Property Number: 77200340041
Status: Excess
Reason: Extensive deterioration

Bldgs. 730, 766
Pearl City Peninsula
Pearl City Co: HI 96819–
Landholding Agency: Navy
Property Number: 77200340043
Status: Unutilized
Reason: Extensive deterioration

Illinois

Wings N & P
Bldg. 202
Argonne National Laboratory
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 41200340020
Status: Excess
Reason: Extensive deterioration

Kansas

6 Bldgs.

Cottonwood Point/Hillsboro Cove
Marion Co: Coffey KS 66861–
Landholding Agency: COE
Property Number: 31200340001
Status: Excess
Reason: Extensive deterioration

20 Bldgs.
Riverside
Burlington Co: Coffey KS 66839–8911
Landholding Agency: COE
Property Number: 31200340002
Status: Excess
Reason: Extensive deterioration

2 Bldgs.
Canning Creek/Richey Cove
Council Grove Co: Morris KS 66846–9322
Landholding Agency: COE
Property Number: 31200340003
Status: Excess
Reason: Extensive deterioration

6 Bldgs.
Santa Fe Trail/Outlet Channel
Council Grove Co: Morris KS 66846–
Landholding Agency: COE
Property Number: 31200340004
Status: Excess
Reason: Extensive deterioration

Residence
Melvern Lake Project
Melvern Co: Osage KS 66510–
Landholding Agency: COE
Property Number: 31200340005
Status: Excess
Reason: Extensive deterioration

2 Bldgs.
Management Park
Vassar Co: KS 66543–
Landholding Agency: COE
Property Number: 31200340006
Status: Excess
Reason: Extensive deterioration

Bldg.
Hickory Campground
Lawrence Co: KS 66049–
Landholding Agency: COE
Property Number: 31200340007
Status: Excess
Reason: Extensive deterioration

Bldg.
Rockhaven Park Area
Lawrence Co: KS 66049–
Landholding Agency: COE
Property Number: 31200340008
Status: Excess
Reason: Extensive deterioration

Bldg.
Overlook Park Area
Lawrence Co: KS 66049–
Landholding Agency: COE
Property Number: 31200340009
Status: Excess
Reason: Extensive deterioration

Bldg.
Walnut Campground
Lawrence Co: KS 66049–
Landholding Agency: COE
Property Number: 31200340010
Status: Excess
Reason: Extensive deterioration

Bldg.
Cedar Ridge Campground
Lawrence Co: KS 66049–
Landholding Agency: COE
Property Number: 31200340011
Status: Excess
Reason: Extensive deterioration

Bldg.
Woodridge Park Area
Lawrence Co: KS 66049–
Landholding Agency: COE
Property Number: 31200340012
Status: Excess
Reason: Extensive deterioration

Missouri

Bldg. 3
VA Medical Center
Jefferson Barracks Division
St. Louis Co: MO 63125–
Landholding Agency: VA
Property Number: 972003400013
Status: Underutilized
Reason: Secured Area

Bldg. 4
VA Medical Center
Jefferson Barracks Division
St. Louis Co: MO 63125–
Landholding Agency: VA
Property Number: 97200340002
Status: Underutilized
Reason: Secured Area

Bldg. 27
VA Medical Center
Jefferson Barracks Division
St. Louis Co: MO 63125–
Landholding Agency: VA
Property Number: 97200340003
Status: Underutilized
Reason: Secured Area

Bldg. 28
VA Medical Center
Jefferson Barracks Division
St. Louis Co: MO 63125–
Landholding Agency: VA
Property Number: 97200340004
Status: Underutilized
Reason: Secured Area

Bldg. 29
VA Medical Center
Jefferson Barracks Division
St. Louis Co: MO 63125–
Landholding Agency: VA
Property Number: 97200340005
Status: Underutilized
Reason: Secured Area

Bldg. 50
VA Medical Center
Jefferson Barracks Division
St. Louis Co: MO 63125–
Landholding Agency: VA
Property Number: 97200340006
Status: Underutilized
Reason: Secured Area

New Mexico

Bldg. 615
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5663
Landholding Agency: Air Force
Property Number: 18200340014
Status: Unutilized
Reasons: Secured Area Extensive deterioration

Bldg. 736
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5663
Landholding Agency: Air Force
Property Number: 18200340015
Status: Unutilized
Reason: Secured Area

Bldg. 1013
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5663
Landholding Agency: Air Force
Property Number: 18200340016
Status: Unutilized
Reason: Secured Area

Bldg. 20419
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5663
Landholding Agency: Air Force
Property Number: 18200340017
Status: Unutilized
Reason: Secured Area

Bldgs. 29014, 29016, 29017
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5663
Landholding Agency: Air Force
Property Number: 18200340018
Status: Unutilized
Reasons: Secured Area Extensive deterioration

Bldg. 30102
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5663
Landholding Agency: Air Force
Property Number: 18200340019
Status: Unutilized
Reason: Secured Area

Bldgs. 37532, 37534
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5663
Landholding Agency: Air Force
Property Number: 18200340020
Status: Unutilized
Reasons: Secured Area Extensive deterioration

Bldg. 57005
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5663
Landholding Agency: Air Force
Property Number: 18200340021
Status: Unutilized
Reasons: Secured Area Extensive deterioration

Bldgs. 57006, 57013
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5663
Landholding Agency: Air Force
Property Number: 18200340022
Status: Unutilized
Reasons: Secured Area Extensive deterioration

Ohio

Army Reserve Center
Plymouth Road
Jamestown Co: Greene OH 45335–
Landholding Agency: GSA
Property Number: 54200340009
Status: Surplus
Reason: Extensive deterioration
GSA Number: 4–G–VA–0734

Oklahoma

2 Bldgs.
Outlet Channel/Walker Creek
Waurika Co: OK 73573–0029
Landholding Agency: COE
Property Number: 31200340013
Status: Excess
Reason: Extensive deterioration

2 Bldgs.
Damsite South

Stigler Co: OK 74462–9440
Landholding Agency: COE
Property Number: 31200340014
Status: Excess
Reason: Extensive deterioration

19 Bldgs.
Kaw Lake
Ponca City Co: OK 74601–9962
Landholding Agency: COE
Property Number: 31200340015
Status: Excess
Reason: Extensive deterioration

30 Bldgs.
Keystone Lake
Sand Springs Co: OK 74063–9338
Landholding Agency: COE
Property Number: 31200340016
Status: Excess
Reason: Extensive deterioration

13 Bldgs.
Oologah Lake
Oologah Co: OK 74053–0700
Landholding Agency: COE
Property Number: 31200340017
Status: Excess
Reason: Extensive deterioration

14 Bldgs.
Pine Creek Lake
Valliant Co: OK 74764–9801
Landholding Agency: COE
Property Number: 31200340018
Status: Excess
Reason: Extensive deterioration

6 Bldgs.
Sardis Lake
Clayton Co: OK 74536–9729
Landholding Agency: COE
Property Number: 31200340019
Status: Excess
Reason: Extensive deterioration

24 Bldgs.
Skiatook Lake
Skiatook Co: OK 74070–9803
Landholding Agency: COE
Property Number: 31200340020
Status: Excess
Reason: Extensive deterioration

40 Bldgs.
Eufaula Lake
Stigler Co: OK 74462–5135
Landholding Agency: COE
Property Number: 31200340021
Status: Excess
Reason: Extensive deterioration

2 Bldgs.
Holiday Cove
Stigler Co: OK 74462–5135
Landholding Agency: COE
Property Number: 31200340022
Status: Excess
Reason: Extensive deterioration

18 Bldgs.
Fort Gibson
Ft. Gibson Co: Wagoner OK 74434–0370
Landholding Agency: COE
Property Number: 31200340023
Status: Excess
Reason: Extensive deterioration

2 Bldgs.
Fort Supply
Ft. Supply Co: Woodward OK 73841–0248
Landholding Agency: COE
Property Number: 31200340024
Status: Excess
Reason: Extensive deterioration

Game Bird House
Fort Supply Lake
Ft. Supply Co: Woodward OK 73841–0248
Landholding Agency: COE
Property Number: 31200340025
Status: Excess
Reason: Extensive deterioration

11 Bldgs.
Hugo Lake
Sawyer Co: OK 74756–0099
Landholding Agency: COE
Property Number: 31200340026
Status: Excess
Reason: Extensive deterioration

5 Bldgs.
Birch Cove/Twin Cove
Skiatook Co: OK 74070–9803
Landholding Agency: COE
Property Number: 31200340027
Status: Excess
Reason: Extensive deterioration

2 Bldgs.
Fairview Group Camp
Canton Co: OK 73724–0069
Landholding Agency: COE
Property Number: 31200340028
Status: Excess
Reason: Extensive deterioration

2 Bldgs.
Chouteau & D Bluff
Gore Co: Wagoner OK 74935–9404
Landholding Agency: COE
Property Number: 31200340029
Status: Excess
Reason: Extensive deterioration

2 Bldgs.
Newt Graham L&D
Gore Co: OK 74935–9404
Landholding Agency: COE
Property Number: 31200340030
Status: Excess
Reason: Extensive deterioration

6 Bldgs.
Damsite/Fisherman's Landing
Sallisaw Co: OK 74955–9445
Landholding Agency: COE
Property Number: 31200340031
Status: Excess
Reason: Extensive deterioration

10 Bldgs.
Webbers Falls Lake
Gore Co: OK 74435–5541
Landholding Agency: COE
Property Number: 31200340032
Status; Excess
Reason: Extensive deterioration

14 Bldgs.
Copan Lake
Copan Co: OK 74022–9762
Landholding Agency: COE
Property Number: 31200340033
Status: Excess
Reason: Extensive deterioration

South Carolina

Bldg.
Fishing Creek/Deer Run
Clarks Hill Co: SC 29821–0010
Landholding Agency: COE
Property Number: 31200340034
Status: Excess
Reason: Extensive deterioration

Texas

58 Bldgs.
Texoma Lake
Denison Co: TX 75020–6425
Landholding Agency: COE
Property Number: 31200340035
Status: Excess
Reason: Extensive deterioration

Virginia

Wharf 2
Naval Station
St. Juliens Creek Annex
Chesapeake Co: VA
Landholding Agency: Navy
Property Number: 77200340044
Status: Unutilized
Reason: Extensive deterioration

Bldg. M2
Naval Station
St. Juliens Creek Annex
Chesapeake Co: VA
Landholding Agency: Navy
Property Number: 77200340045
Status: Excess
Reason: Extensive deterioration

Bldg. 13
Naval Station
St. Juliens Creek Annex
Chesapeake Co: VA
Landholding Agency: Navy
Property Number: 77200340046
Status: Excess
Reason: Extensive deterioration

Bldg. 20
Naval Station
St. Juliens Creek Annex
Chesapeake Co: VA
Landholding Agency: Navy
Property Number: 77200340047
Status: Excess
Reason: Extensive deterioration

Bldg. 64
Naval Station
St. Juliens Creek Annex
Chesapeake Co: VA
Landholding Agency: Navy
Property Number: 77200340048
Status: Excess
Reason: Extensive deterioration

Bldgs. 65, 66, 67
Naval Station
St. Juliens Creek Annex
Chesapeake Co: VA
Landholding Agency: Navy
Property Number: 77200340049
Status: Excess
Reason: Extensive deterioration

Bldg. 86
Naval Station
St. Juliens Creek Annex
Chesapeake Co: VA
Landholding Agency: Navy
Property Number: 77200340050
Status: Excess
Reason: Extensive deterioration

Bldgs. 255, 275
Naval Station
St. Juliens Creek Annex
Chesapeake Co: VA
Landholding Agency: Navy
Property Number: 77200340051
Status: Excess
Reason: Extensive deterioration

Washington

Bldg. 2633
Naval Air Station
Oak Harbor Co: Island WA 98278–
Landholding Agency: Navy
Property Number: 77200340052
Status: Excess
Reason: Extensive deterioration

West Virginia

Radio Transmitter Rcv Site
Greenbrier Street
Charleston Co: WV 25311–
Landholding Agency: GSA
Property Number: 54200340011
Status: Excess
Reason: Within 2,000 ft. of flammable or explosive material
GSA Number: 4–U–WV–0547

Land (by State)

Kentucky

Ferry Access Site
Route 130
Uniontown Co: KY 42461–
Landholding Agency: GSA
Property Number: 54200340007
Status: Excess
Reason: Floodway
GSA Number: 4–D–KY–0612

Montana

Sewage Lagoons/40 acres
VA Center
Ft. Harrison Co: MT 59639–
Landholding Agency: VA
Property Number: 97200340007
Status: Excess
Reason: Floodway

[FR Doc. 03–29872 Filed 12–4–03; 8:45 am]

BILLING CODE 42–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Revised Recovery Plan for the Chittenango Ovate Amber Snail for Review and Comment

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces availability for public review of a draft revised recovery plan for the Chittenango ovate amber snail (*Novisuccinea chittenangoensis*). This species is federally listed as threatened under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan received on or before January 5, 2004, will be considered by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy through the following means:

1. Through a written request to the Field Supervisor, U.S. Fish and Wildlife Service, New York Field Office, 3817 Luker Road, Cortland, New York 13045.
2. By telephone: 607–753–9334 or fax 607–753–9699.
3. By e-mail to *Robyn_Niver@fws.gov.*
4. By accessing the Field Office Web site: *http://nyfo.fws.gov.*

Copies of the draft recovery plan may also be viewed at two public libraries: Moon Library, State University of New York College of Environmental Science and Forestry, 1 Forestry Drive, Syracuse, New York 13210 (Telephone: 315–470–6726).

Sullivan Free Library, 519 McDonald Street (Back side of Genesee Street), Chittenango, New York 13037 (Telephone: 615–687–6331).

FOR FURTHER INFORMATION CONTACT: Ms. Robyn Niver, U.S. Fish and Wildlife Service, New York Field Office, 3817 Luker Road, Cortland, New York 13045.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the federally listed species native to the United States. Recovery plans describe actions necessary for the conservation of the species, establish criteria which, when met, would result in a determination that the species no longer needs the protection of the Act, and provide estimates of the time and cost for implementing the needed recovery measures.

The Act requires recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and opportunity for public review and comment be provided during recovery plan development. The Service will consider all information received during a public comment period when preparing each new or revised recovery plan for approval. The Service and other Federal agencies will also take these comments into consideration in the course of implementing approved recovery plans.

The Chittenango ovate amber snail (*Novisuccinea chittenangoensis*) was listed as a threatened species in July 1978, and the initial recovery plan for the species was completed in March 1983. Since its discovery in 1905, only one extant *N. chittenangoensis* colony has been verified, from a site within the Chittenango Falls State Park in Madison County, New York. The Chittenango ovate amber snail was listed due to its rarity and population decline. Since listing, habitat protection and captive propagation measures have been implemented, but the species' status has become exceedingly precarious. The primary threats to the snail are its small population size and limited distribution as well as an undefined negative interaction with an introduced snail, *Succinea* sp. B. Additionally, potential threats persist from habitat changes and inadvertent human disturbance.

The Chittenango ovate amber snail is a terrestrial species that requires the cool, mild-temperature, moist conditions provided by the waterfalls and mist in its environment. Its habitat lies within a ravine at the base of a 167-foot waterfall, and the ledges where it is found comprise an early successional sere that is periodically rejuvenated to a bare substrate by floodwaters. The species requires a substrate rich in calcium carbonate and appears to prefer green vegetation such as the various mosses, liverworts, and other low herbaceous vegetation found within the spray zone adjacent to the falls. Clean water may be necessary to maintain essential habitat, although water quality may have only an indirect effect on the snail.

The recovery goal for the Chittenango ovate amber snail is to achieve long-term viability of the species in the wild, thereby allowing it to be taken off the Federal List of Endangered and Threatened Wildlife. The first phase of recovery for *N. chittenangoensis* will involve stabilizing the extant population at Chittenango Falls. To accomplish this, a habitat management/protection plan for Chittenango Falls is needed, along with research into the species' biological requirements and genetic status as well as possible means of controlling the competing *Succinea* sp. B and abating any additional threats to the snail and its habitat. Given the grave uncertainty about the in situ survival prospects of this snail, captive propagation is also viewed as essential for the species' stabilization.

Once the *N. chittenangoensis* population at Chittenango Falls is stabilized or increased, the second recovery phase for the species will involve establishing additional Chittenango ovate amber snail subpopulations at the Falls. In conjunction with long-term abatement

of threats to the species, this should safeguard the species from extinction caused by highly localized events. Long-term maintenance of *ex situ* populations will also help ensure the species' survival.

Public Information Solicited

The Service solicits public comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan. Written comments and materials regarding the plan should be addressed to the Field Supervisor (see **ADDRESSES** section). Comments and materials received will be available, by appointment, for public inspection during normal business hours at the above address.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: November 7, 2003.

Richard O. Bennett,

Acting Regional Director, Region 5, Fish and Wildlife Service, Department of the Interior.

[FR Doc. 03–30254 Filed 12–4–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the USGS Clearance Officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Address your comments and suggestions on the information collection requirement by either fax (202) 395–6566 or e-mail (*oira_docket@omb.eop.gov*) to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1028–0060). Send copies of your comments and suggestions to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the USGS, including whether the information will have practical utility;
2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The utility, quality, and clarity of the information to be collected; and,
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Mine, Development, and Mineral Exploration Supplement.

Current OMB approval number: 1028–0060.

Abstract: Respondents supply the U.S. Geological Survey with domestic production, exploration, and mine development data on nonfuel mineral commodities. This information will be published as an Annual Report for use by Government agencies, industry, and the general public.

Bureau form number: 9–4000–A.

Frequency: Annual.

Description of respondents: Nonfuel Mineral Producers and Exploration Operations.

Annual Responses: 754.

Annual burden hours: 566.

Bureau clearance officer: John E. Cordyack, Jr., (703) 648–7313.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 03–30196 Filed 12–4–03; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Rate Adjustments for Indian Irrigation Facilities

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of rate adjustments.

SUMMARY: The Bureau of Indian Affairs (BIA) owns or has an interest in irrigation facilities located on various Indian reservations throughout the United States. The BIA establishes irrigation assessment rates to recover its costs to administer, operate, maintain, and rehabilitate certain of those facilities. We are notifying you that we have adjusted the irrigation assessment rates at several of our irrigation facilities where we are required to recover our full costs of operation and maintenance.

EFFECTIVE DATE: The irrigation assessment rates shown in the tables were effective on January 1, 2003.

FOR FURTHER INFORMATION CONTACT: For details about a particular BIA irrigation facility, please use the tables in the **SUPPLEMENTARY INFORMATION** section to contact the regional or agency office where the facility is located.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rate Adjustment was published in the **Federal Register** on January 9, 2003 (68 FR 1191), to adjust the irrigation rates at several BIA irrigation facilities. The public and interested parties were provided an opportunity to submit written comments during the 60-day period subsequent to January 9, 2003.

Did the BIA Receive any Comments on the Proposed Irrigation Assessment Rate Adjustments?

Written comments were received for: (a) Fort Belknap Irrigation Project, Montana; (b) Wapato Irrigation Project, Washington; and (c) Wind River Irrigation Project, Wyoming.

What Issues Were of Concern by the Commentators?

The commentors were concerned with one or more of the following three issues: (1) Consultation with stakeholders; (2) how funds collected from stakeholders are expended on operation and maintenance; and (3) the impact of an assessment rate increase on the local agricultural economy.

How Does BIA Respond to the Concern of Consultation with Stakeholders?

Consultations between stakeholders and any of the BIA irrigation facilities are ongoing through local meetings held periodically at different locations convenient to the stakeholders of the individual irrigation facilities. At these consultation meetings, any issue of concern by a stakeholder can be brought up and discussed such as water operations, facility maintenance, and financial management. Stakeholders also can contact BIA representatives at the specific facility serving them using the tables in the **SUPPLEMENTARY INFORMATION** section to discuss issues of concern.

How Does BIA Respond to the Concern of How Funds Are Expended for Operation and Maintenance?

The BIA's records for expenditures on all of its irrigation facilities are public records and available for review by stakeholders or interested parties. These records can be reviewed during normal business hours at the individual agency offices. To review these records, stakeholders and interested parties are directed to contact the BIA representative at the specific facility serving them using the tables in the **SUPPLEMENTARY INFORMATION** section.

How Does BIA Respond to the Concern of an Irrigation Assessment Rate Increase and its Impact on the Local Agricultural Economy?

All of the BIA's irrigation projects are important economic contributors to the local communities they serve, contributing millions in crop value annually. Historically, BIA tempered irrigation rate increases to demonstrate sensitivity to the economic impact on water users. This has resulted in a rate deficiency at most of the irrigation projects.

Over the past several years the BIA's irrigation program has been the subject of several Office of Inspector General (OIG) audits. In the most recent audit, No. 96–I–641, March 1996, the OIG concluded, ''Operation and maintenance revenues were insufficient to maintain the projects, and some projects had deteriorated to the extent that their continued capability to deliver water was in doubt. This occurred because operation and maintenance rates were not based on the full cost of delivering water, including the costs of systematically rehabilitating and replacing project facilities and equipment, and because project personnel did not seek regular rate increases to cover the full cost of operation.'' This audit recommendation is still outstanding.

A previous OIG audit, No. 88–42, February 1988, reached the same conclusion. A separate audit performed on the Wapato Irrigation Project, No. 95–I–1402, September 1995, reinforced the general findings of the OIG on the BIA's irrigation program. This pointed out a lack of response by the BIA to the original findings of the OIG in addressing this critical issue over an extended period of time. The BIA must systematically review and evaluate irrigation assessment rates and adjust them when necessary to reflect the full costs to properly operate, and perform all appropriate maintenance on, the irrigation facility infrastructure for safe and reliable operation. If this review and evaluation is not accomplished, a rate deficiency can eventually accumulate. Overcoming rate deficiencies can result in the BIA having to raise irrigation assessment rates in larger increments and over shorter time frames than would have been otherwise necessary.

Does the BIA Have Any Proposed Rate Adjustments That Were Not Put Into Effect?

The proposed rate adjustment for the 2003 irrigation season at the Wind River Irrigation Project from $12.00 to $13.00 was not put into effect. After further consultation with the stakeholders, the BIA agreed to delay the proposed rate adjustment until the 2004 irrigation season. For the 2004 irrigation season a rate adjustment from $12.00 to $14.00 is proposed to make up the lost revenue for the 2003 irrigation season. The proposed rate adjustment is in a separate notice.

Where Can I Get Information on the Regulatory and Legal Citations in This Notice?

You can contact the individuals listed in the contact tables below or you can use the Internet site for the Government Printing Office at *http://www.gpo.gov*.

What Authorizes Us To Issue This Notice?

Our authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583; 25 U.S.C. 385). The Secretary has in turn delegated this authority to the Assistant Secretary—Indian Affairs under part 209, chapter 8.1A, of the Department of the Interior's Departmental Manual.

Does This Notice Affect Me?

This notice affects you if you own or lease land within the assessable acreage of one of our irrigation facilities, or you have a carriage agreement with one of our irrigation facilities.

Who Can I Contact for Further Information?

The following tables list the regional and agency contacts for the irrigation facilities where the BIA recovers its costs for local administration, operation, maintenance, and rehabilitation.

Northwest Region Contacts

Stanley Speaks, Regional Director Bureau of Indian Affairs, Northwest Regional Office 911 N.E. 11th Avenue Portland, Oregon 97232–4169 Telephone (503) 231–6702	
Name:	Contacts:
Flathead Irrigation Project	Ernest T. Moran, Superintendent,Flathead Agency Irrigation Division,PO Box 40,Pablo, Montana 59855–5555,Telephone: (406) 675–2700.
Fort Hall Irrigation Project	Eric J. LaPointe, Superintendent,Fort Hall Agency,PO Box 220,Fort Hall, Idaho 83203–0220,Telephone: (208) 238–2301.
Wapato Irrigation Project	Pierce Harrison, Project Administrator,Wapato Irrigation Project,PO Box 220,Wapato, WA 98951–0220,Telephone: (509) 877–3155.

Rocky Mountain Region Contacts

Keith Beartusk, Regional Director Bureau of Indian Affairs, Rock Mountain Regional Office 316 North 26th Street Billings, Montana 59101. Telephone: (406) 247–7943	
Name:	Contacts:
Blackfeet Irrigation Project	Ross Denny, Superintendent,Cliff Hall, Irrigation Manager,Box 880,Browning, MT 59417,Telephones: (406) 338–7544, Superintendent;(406) 338–7519, Irrigation.

Crow Irrigation Project	Gordon Jackson, Superintendent,Dan Lowe, Irrigation Manager, PO Box 69,Crow Agency, MT 59022,Telephones: (406) 638–2672, Superintendent;(406) 638–2863, Irrigation.
Fort Belknap Irrigation Project	Cleo Hamilton, Superintendent,Dan Spencer, Irrigation Manager,R.R.1, Box 980,Harlem, MT 59526,Telephones: (406) 353–2901 Superintendent;(406) 353–2905, Irrigation.
Fort Peck Irrigation Project	Spike Bighorn, Superintendent,PO Box 637,Poplar, MT 59255,Rhonda Knutsen, Irrigation Manager, 602 6th Avenue North,Wolf Point, MT 59201, Telephones: (406) 768–5312, Superintendent;(406) 653–1752, Irrigation.
Wind River Irrigation Project	Steven Pollock, (Acting) Superintendent,Hilare Peck, Irrigation Manager,PO Box 158,Fort Washakie, WY 82514,Telephones: (307) 332–7810, Superintendent;(307) 332–2596, Irrigation.
Southwest Region Contacts	
Rob Baracker, Regional Director Bureau of Indian Affairs, Southwest Regional Office 615 First Street, NW Albuquerque, New Mexico 87102 Telephone (505) 346–7587	
Name: Pine River Irrigation Project	Contacts: Michael Stancampiano, Superintendent, Kenneth Caveney, Irrigation Engineer, PO Box 315, Ignacio, CO 81137–0315, Telephones: (970) 563–4511, Superintendent; (970) 563–1017, Irrigation.
Western Region Contacts	
Wayne Nordwall, Regional Director Bureau of Indian Affairs, Western Regional Office PO Box 10 Phoenix, Arizona 85001 Telephone (602) 379–6600	
Name: Colorado River Irrigation Project	Contacts: Allen Anspach, Superintendent, R.R. 1, Box 9–C, Parker, AZ 85344, Telephone: (928) 669–7111.
Duck Valley Irrigation Project	Paul Young, Superintendent, 1555 Shoshone Circle, Elko, Nevada 89801, Telephone: (775) 738–0569, Superintendent.
Fort Yuma Irrigation Project	William Pyott, Land Operations Officer, P.O. Box 11000, Yuma, Arizona, Telephone: (520) 782–1202.
San Carlos Irrigation Project Joint Works	Carl Christensen, Irrigation Manager, 13805 N. Arizona Boulevard, Coolidge, AZ 85228, Telephone: (520) 723–6216.
San Carlos Irrigation Project Indian Works	Joe Revak, Pima Agency, Land Operations, Box 8, Sacaton, AZ 85247, Telephone: (520) 562–3372.
Uintah Irrigation Project	Lynn Hansen, Irrigation Manager, PO Box 130, Fort Duchesne, UT 84026, Telephone: (435) 722–4341.
Walker River Irrigation Project	Robert Hunter, Superintendent, 1677 Hot Springs Road, Carson City, Nevada 89706, Telephone: (775) 887–3500.

What Will BIA Charge for the 2003 Irrigation Seasons?

The rate tables below show how we billed each of our irrigation facilities for the 2003 irrigation season as indicated. An asterisk immediately following the name of the facilities notes the irrigation facilities where rates were adjusted.

NORTHWEST REGION RATE TABLE

Name	Rate category	2003 season rate
Flathead Irrigation Project (See Note #1 below)	Basic per acre	$19.95
Fort Hall Irrigation Project*	Basic per acre	22.00
Fort Hall Irrigation Project—Minor Units	Basic per acre	14.00
Fort Hall Irrigation Project—Michaud*	Basic per acre	30.00
	Pressure per acre	43.50
Wapato Irrigation Project—Ahtanum Unit*	Billing Charge Per Tract	5.00
	Farm unit/land tracts up to one acre (minimum charge)	13.00
	Farm unit/land tracts over one acre—per acre	13.00
Wapato Irrigation Project—Toppenish/Simcoe Units*	Billing Charge Per Tract	5.00
	Farm unit/land tracts up to one acre (minimum charge)	13.00
	Farm unit/land tract over one acre—per acre	13.00
Wapato Irrigation Project—Wapato/Satus Unit*	Billing Charge Per Tract	5.00
	Farm unit/land tracts up to one acre (minimum charge)	51.00
	"A" farm unit/land tracts over one acre—per acre	51.00
	Additional Works farm unit/land tracts over one acre—per acre	56.00
	"B" farm unit/land tracts over one acre—per acre	61.00

NORTHWEST REGION RATE TABLE—Continued

Name	Rate category	2003 season rate
	Water Rental Agreement Lands—per acre	62.00

Note #1.—The Flathead Irrigation Project assessment rate for the 2004 season was proposed in 68 FR 1191–1196 at $21.45 per acre. This rate is considered implemented for the 2004 season and will be published in the Federal Register notice for the 2004 irrigation season.

ROCKY MOUNTAIN REGION RATE TABLE

Name	Rate category	2003 season rate
Blackfeet Irrigation Project	Basic per acre	$13.00
Crow Irrigation Project	Basic per acre	16.00
Fort Belknap Irrigation Project	Indian per acre	7.00
	Non-Indian per acre	14.00
Fort Peck Irrigation Project	Basic per acre	14.00
Wind River Irrigation Project	Basic per acre	12.00

WESTERN REGION RATE TABLE

Project name	Rate category	2003 season rate
Colorado River Irrigation Project	Basic per acre up to 5.75 acre-feet	$47.00
	Excess Water per acre foot over 5.75 acre-feet	17.00
Duck Valley Irrigation Project	Basic per acre	5.30
Fort Yuma Irrigation Project (See Note #2 below)	Basic per acre up to 5.0 acre-feet	60.00
	Excess Water per acre-foot over 5.0 acre-feet	10.50
San Carlos Irrigation Project (Joint Works)	Basic per acre	20.00
San Carlos Irrigation Project (Indian Works)	Basic per acre	56.00
Uintah Irrigation Project*	Basic per acre	11.00
Walker River Irrigation Project	Indian per acre	7.32
	non-Indian per acre	15.29

Note #2.—The Fort Yuma Irrigation Project is owned and operated by the Bureau of Reclamation (Reclamation). The irrigation rate assessed for operation and maintenance are established by Reclamation and are provided for informational purposes only. The BIA only collects the irrigation assessments on behalf of Reclamation.

SOUTHWEST REGION RATE TABLE

Name	Rate category	2003 season rate
Pine River Irrigation Project	Minimum Charge per tract	$25.00
	Basic per acre	8.50

Consultation and Coordination With Tribal Governments (Executive Order 13175)

The BIA irrigation facilities are vital components of the local agriculture economy of the reservations on which they are located. To fulfill its responsibilities to the tribes, tribal organizations, water user organizations, and the individual water users, the BIA communicates, coordinates, and consults on a continuing basis with these entities on issues of water delivery, water availability, costs of administration, operation, maintenance, and rehabilitation. This is accomplished at the individual irrigation facilities by agency and regional representatives, as appropriate, in accordance with local protocol and procedures. This notice is one component of the BIA's overall coordination and consultation process to provide notice and request comments from these entities on adjusting irrigation assessment rates.

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

The rate adjustments will have no adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increased use of foreign supplies) should the proposed rate adjustments be implemented. This is a notice for rate adjustments at BIA owned and operated irrigation facilities, except for the Fort Yuma Irrigation Project. The Fort Yuma Irrigation Project is owned and operated by the Bureau of Reclamation with a portion serving the Fort Yuma Reservation.

Regulatory Planning and Review (Executive Order 12866)

These rate adjustments are not a significant regulatory action and do not need to be reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rate making is not a rule for the purposes of the Regulatory Flexibility Act because it is ''a rule of particular applicability relating to rates.'' 5 U.S.C. 601(2).

Unfunded Mandates Act of 1995

These rate adjustments impose no unfunded mandates on any governmental or private entity and are

in compliance with the provisions of the Unfunded Mandates Act of 1995.

Takings Implications (Executive Order 12630)

The Department has determined that these rate adjustments do not have significant ''takings'' implications. The rate adjustments do not deprive the public, state, or local governments of rights or property.

Federalism (Executive Order 13132)

The Department has determined that these rate adjustments do not have significant Federalism effects because they pertain solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of states.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act of 1995

These rate adjustments do not affect the collections of information which have been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget, under the Paperwork Reduction Act of 1995. The OMB Control Number is 1076–0141 and expires April 30, 2006.

National Environmental Policy Act

The Department has determined that these rate adjustments do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(d)).

Dated: November 21, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 03–30253 Filed 12–4–03; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Lytton Rancheria of California Ordinance Governing the Sale, Consumption, and Possession of Alcoholic Beverages

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Lytton Rancheria of California Liquor Ordinance. The ordinance regulates and controls the distribution, sale, consumption, possession, inspection, licensing, enforcement and legal compliance associated with the introduction of alcohol at the Casino San Pablo premises, Contra Costa County, California.

EFFECTIVE DATE: This Ordinance is effective on December 5, 2003.

FOR FURTHER INFORMATION CONTACT: Duane T. Bird Bear, Office of Tribal Services, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., MS–320–SIB, Washington, DC 20240, Telephone: (202) 513–7641.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian Country. The Tribal Council of the Lytton Rancheria of California, also known as the Lytton Band of Pomo Indians, adopted a Tribal Liquor Ordinance on April 10, 2001. The purpose of this ordinance is to govern the distribution, sale, consumption, possession, inspection, licensing, enforcement and legal compliance associated with the introduction of alcohol on the Casino San Pablo premises in the County of Contra Costa, California.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs. Amendments to the ordinance are subject to the approval of the Assistant Secretary for Indian Affairs and shall be published in the **Federal Register** before the amendments become effective.

I certify that the Tribal Liquor Ordinance was duly adopted by the Tribal Council of the Lytton Band of Pomo Indians on April 10, 2001.

Dated: November 21, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

The Lytton Rancheria of California Liquor Ordinance reads as follows:

Resolution of the Lytton Rancheria (Lytton Band of Pomo Indians)

Adopting an Ordinance Governing the Sale, Consumption, and Possession of Alcoholic Beverages at Lytton's Casino San Pablo

Whereas: The Lytton Band of Pomo Indians (''the Tribe'') plans to own and operate the Casino San Pablo and to offer Class II and Class III gaming there pursuant to federal and tribal law, a tribal-state compact, and its Municipal Services Agreement with the City of San Pablo; and

Whereas: The Tribe has determined that it is in its best interest for the sale of alcoholic beverages at Casino San Pablo to continue pursuant to state, federal, and tribal law after the Tribe becomes the owner and operator of Casino San Pablo;

It is therefore resolved that the Tribe hereby adopts the following Ordinance, to become effective as set forth therein:

Lytton Rancheria (Lytton Band of Pomo Indians) Contra Costa County, California

Sale, Possession, and Consumption of Alcoholic Beverages

The Tribal Council (hereinafter ''Council'') of the Lytton Rancheria (hereinafter ''Tribe''), also known as the Lytton Band of Pomo Indians, hereby enacts this Ordinance to govern the sale and consumption of alcoholic beverages on Rancheria lands in Contra Costa County, California.

Preamble

A. Title 18, United States Code, Section 1161, provides Indian tribes with authority to enact ordinances governing the consumption and sale of alcoholic beverages on their Reservations, provided such ordinance is certified by the Secretary of the Interior and published in the **Federal Register** and such activities are in conformity with state law.

B. Pursuant to Article III of the Tribe's Constitution, the Tribal Council is the governing body of the Tribe. Pursuant to Article XIII of the Constitution, the Tribal Council is empowered to promulgate and enforce tribal laws exercising the Tribe's regulatory authority for the protection of public health and safety (Section 13.1 (f)) and administering all lands and assets and managing all economic affairs, planning and enterprises of the Tribe (Section 13.1(e); and to regulate the conduct of all persons who enter the jurisdiction of the Tribe (Section 13.1(i)).

C. Pursuant to Article I of the Tribe's Constitution, the territorial jurisdiction of the Tribe includes all lands held in

trust by the United States for and possessed or occupied by the Tribe or its members.

D. Pursuant to Section 819 of the Omnibus Indian Advancement Act of 2000 (''the Act''), the United States is to become the owner in trust for Tribe of that certain Contra Costa County, California property (''the Property'') described in the Act, which is commonly known as Casino San Pablo. Immediately upon acceptance by the United States of the Property in trust of the Tribe, the Tribe will become the owner and operator of Casino San Pablo (the ''Facility'') pursuant to the Indian Gaming Regulatory Act. The Facility will be an integral and indispensable part of the Tribe's economy, providing income to the Tribe and training and employment to its members. The Tribal Council has determined that it is in the Tribe's best interest to offer alcoholic beverages for sale and consumption in the Facility.

E. Pursuant to its Ordinance Restricting Gaming Activities And Areas At Lytton's Casino San Pablo To Persons Of The Age Of Twenty-One Years Old And Older, the Tribe has restricted gaming activities in the Facility to persons over the age of twenty-one years old.

F. It is the purpose of this Ordinance to set out the terms and conditions under which the sale and consumption of said alcoholic beverages may take place.

General Terms

1. The sale of alcoholic beverages within the Facility, for on-Premises consumption only, is hereby authorized.

2. No alcoholic beverages may be sold at any location on the Rancheria other than inside the Facility.

3. The sale of said alcoholic beverages authorized by this Ordinance shall be in conformity with all applicable laws of the State of California, and the sale of said beverages shall be subject to state sales tax, federal excise tax and any fees required by the Federal Bureau of Alcohol, Tobacco and Firearms. This includes but is not limited to the following examples:

a. No person under the age of 21 years shall consume, acquire or have in his or her possession at the Premises any alcoholic beverage.

b. No person shall sell alcohol to any person under the age of 21 at the Premises.

c. No person shall sell alcohol to a person apparently under the influence of liquor at the Premises.

4. Where there may be a question of a person's right to purchase liquor by reason of his or her age, such person shall be required to present any one of the following types of identification which shows his or her correct age and bears his or her signature and photograph: (1) Driver's license or identification card issued by any state Department of Motor Vehicles; (2) United States Active Duty Military card; (3) passport.

5. All liquor sales within the Premises shall be on a cash only basis and no credit shall be extended to any person, organization or entity, except that this provision does not prevent the use of major credit cards.

Posting

6. This Ordinance shall be conspicuously posted within the Premises at all times it is open to the public.

Enforcement

7. This Ordinance may be enforced by the Tribal Council and by any additional tribal government agencies to which the Tribal Council may from time to time by resolution delegate such enforcement powers. Enforcement sanctions may include, but are not limited to, the assessment of monetary fines not to exceed $500 and revocation of authorization to sell alcohol at the Facility. Prior to any enforcement action, any alleged violator of this Ordinance shall be provided with at least three (3) days notice in writing of an opportunity to be heard during a hearing at which due process is provided. The decision of the Tribal Council or other agency with delegated authority after such hearing shall be final.

Severability

8. If any provision or application of this Ordinance is determined by the Tribal Council or other agency with delegated authority to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this Ordinance or to render such provisions inapplicable to other circumstances.

Amendment

9. This Ordinance may only be amended by a majority vote of the Tribal Council and such amendment shall be subject to the provisions of Title 18, United States Code, Section 1161.

Sovereign Immunity

10. Nothing in this Ordinance in any way limits, alters, restricts or waives the Tribe's sovereign immunity from unconsented suit, claim, or action.

Effective Date

11. This Ordinance shall not be effective until: (1) It is certified by the Secretary of the Interior and published in the **Federal Register**, and (2) the Property is accepted by the United States in trust for the Tribe. Its effective date shall be the date of the happening of the later of those actions.

Certification

The foregoing Resolution was adopted by a vote of 7 for, and -0- against and -0- abstentions, at a duly called meeting of the Tribal Council of the Lytton Rancheria (aka the Lytton Band of Pomo Indians) at which a quorum was present, on this 10th day of April, 2001.

Margie Mejia,
Tribal Chair.
Danny O'Campo,
Tribal Secretary.

[FR Doc. 03–30243 Filed 12–4–03; 8:45 am]
BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1990–EX]

Notice of Availability of Final Supplemental Environmental Impact Statement; Glamis Marigold Mining Company/Marigold Mine Millennium Expansion Project, Humboldt Co., NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is given that the Winnemucca Field Office of the Bureau of Land Management (BLM) has prepared, by third party contractor, a Final Supplemental Environmental Impact Statement (SEIS) on the Glamis Marigold Mining Company/Marigold Mine Millennium Expansion Project, located in Humboldt County, Nevada.

EFFECTIVE DATES: The period of availability for public review of the Final SEIS ends 30 days after publication of this notice in the **Federal Register** by the Environmental Protection Agency. At that time, public comments will be reviewed and considered in the decision making process. The Record of Decision will reflect any changes made to the Draft SEIS.

ADDRESSES: A copy of the Final SEIS can be obtained from: Bureau of Land Management, Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, Nevada 89445.

FOR FURTHER INFORMATION CONTACT: Jeffrey D. Johnson, Project Manager, at the above Winnemucca Field Office address or telephone (775) 623–1500.

SUPPLEMENTARY INFORMATION: The Final SEIS analyzes the direct, indirect and cumulative impacts related to expansion of existing mine facilities (pits, overburden dumps & heap leach pads) and development of the Millennium Projects. Development includes construction of five new pits, overburden disposal areas, two additional heap leach facilities, drainage diversions, haul and exploration roads and ancillary facilities. Alternatives analyzed include: (1) Moving the Trout Creek Diversion toward the west, farther from the Red Rock Pit, (2) increasing backfilling along the west high wall of the Red Rock Pit, and (3) taking no action. The agency-preferred alternative is alternative number 2; increasing backfilling along the west high wall of the Red Rock Pit. The Final SEIS contains in its entirety the analysis originally presented in the Draft SEIS (issued April 5, 2003) with all text changes presented in bold type. In addition, letters received during the Draft SEIS comment period and the agency's responses to the comments have been incorporated into the Final SEIS.

Dated: June 30, 2003.

Terry Reed,

Field Manager.

Editor's Note: This document was received at the Office of the Federal Register on December 1, 2003.

[FR Doc. 03–30193 Filed 12–4–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–04–1010–PH]

Notice of Public Meeting, Western Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), Western Montana Resource Advisory Council will meet as indicated below.

DATES: A meeting will be held February 19, 2004 at the BLM Missoula Field Office, 3255 Fort Missoula Road, Missoula, Montana beginning at 9 a.m. The public comment period will begin at 11:30 a.m. and the meeting will adjourn at approximately 3:00 p.m.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in western Montana. At the February 19 meeting, possible topics we plan to discuss include: updates on the Dillon, Butte and Limestone Hills planning processes, election of chair and vice-chair, weeds, possible pilot projects, an update on Land and Water Conservation Fund (LWCF) projects, outyear budget planning and initiatives, and an update on the proposed changes to the grazing regulations.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Marilyn Krause, Resource Advisory Council Coordinator, at the Butte Field Office, 106 North Parkmont, Butte, Montana 59701, telephone 406–533–7617 or Nancy Anderson, Field Manager, Missoula Field Office, telephone 406–329–3914.

Dated: November 24, 2003.

Nancy T. Anderson,

Field Manager.

[FR Doc. 03–30255 Filed 12–4–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

Information Collection; Request for Extension

AGENCY: National Park Service.

ACTION: Notice of request for extension of a currently approved information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Park Service (NPS) is announcing its intention to request an extension of a currently approved collection of information (OMB# 1024–0231) for 36 CFR part 51, § 51.47 regarding the appeal of a preferred offeror determination, §§ 51.54 and 51.55 regarding NPS approval of the construction of capital improvements by concessioners, and section 51.98 concerning recordkeeping requirements with which concessioners must comply.

The information is being collected to meet the requirements of section 403(7) and (8) of the NPS Concessions Management Improvement Act of 1998 (the Act), concerning the granting of a preferential right to renew a concession contract, section 405 of the Act regarding the construction of capital improvements by concessioners, and section 414 of the Act regarding recodkeeping requirements of concessioners. The information will be used by the agency in considering appeals concerning preferred offeror determinations, agency review and approval of construction projects and determinations with regard to the leasehold surrender interest value of such projects, and when necessary, agency review of a concessioner's books and records related to its activities under a concession contract.

DATES: Comments on this notice must be received no later than February 3, 2004.

Additional Information or Comments: Contact Cynthia Orlando, Concession Program Manager, National Park Service, 1849 C Street, NW., (2410), Washington, DC 20240, or 202/513–7144.

SUPPLEMENTARY INFORMATION:

Title: Concession Contract—36 CFR 51.

OMB Control Number: 1024–0231.

Expiration Date of Approval: November 30, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: The Office of Management and Budget (OMB) regulations as 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies information collection activities that NPS will submit to OMB for approval. The OMB control number for this collection of information is 1024–0231, and is identified in 36 CFR Section 51.104.

NPS has identified burden estimates based on its experience with concession contracts and on information previously supplied by concessioners or offerors in response to concession prospectuses. NPS will request a 3-year term of

approval for this information collection activity.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: NPS concessioners, and, in the case of appeals of preferred offeror determinations, offerors in response to concession prospectuses.

Total Annual Responses: 758.

Total Annual Burden Hours: 3,276.

Send comments on (1) the need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. Please refer to OMB control number 1024–0231 in all correspondence. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Copies of the information collection can be obtained from Cynthia L. Orlando, Concession Program Manager, National Park Service, Department of the Interior, 1849 C Street, NW., (2410), Washington, DC 20240.

Dated: October 30, 2003.

Leonard E. Stowe,

Acting NPS Information Collection Clearance Officer, Washington Administrative Program Center.

[FR Doc. 03–29987 Filed 12–4–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: NPS requests comments on extending and modifying two existing NPS information collection instruments that are processed by the existing, Internet-based Research Permit and Reporting System. One information collection instrument, the Application for a Scientific Research and Collecting Permit, is used by applicants to apply to parks for scientific research and collecting permits for natural or social science activities that require permits. The other instrument, the Investigator's Annual Report, is used by permittees to submit their required annual progress reports. NPS will use the information you submit in response to this notice to assist its decision-making regarding whether or not to request extension of, and to make modifications to, the two collections of information administered through the existing Research Permit and Reporting System. Once NPS develops and adopts any modifications that may be appropriate, NPS currently expects to submit a request for an extension of the existing, but slightly modified, collection of information package to OMB with a request that OMB approve the package and assign an OMB clearance number to the two collection of information forms that are part of this system.

	Estimated numbers of	
	Responses	Burden hours
Research Permit and Reporting System	6,000	4,875

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on the need for gathering the information in the two collections of information being considered for modification and extension. The NPS also is asking for comments on the practical utility of the information being gathered; the validity and accuracy of the reporting burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

You may obtain copies of the existing application form, annual reporting form, and related guidance and explanatory material from the NPS Research Permit and Reporting System Web site at: *http://science.nature.nps.gov/research.* You also may obtain copies of the documents and additional information from the source identified below.

If you wish to comment, you may submit your comments by any one of several methods. Although you may mail comments to the postal address given here, due to delays caused by processing of mail you may wish to use a different method. You may send your comments by facsimile to the fax number given below. You may instead comment via the Internet to the e-mail address given here (Please submit e-mail comments as an attached ASCII or MSWord file and avoid the use of special characters and any form of encryption. Please also include ''Attn: NPS Research Permit and Reporting System'' and your name and return address in your e-mail message. If you would like, but do not receive, a confirmation from the system that we have received your e-mail message, contact us directly at the phone number given here). Finally, you may hand-deliver comments to the address given below.

Our practice is to make comments, including respondent names and addresses (business or home, whatever we receive), available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. We will not consider anonymous comments.

DATES: Public comments will be accepted on or before 60 days from the date this notice is published in the **Federal Register**.

Send Comments To: Dr. John G. Dennis. By mail: Natural Resources (3127 MIB), National Park Service, 1849 C Street, NW., Washington, DC 20240. By hand delivery: Natural Resources (11th floor), National Park Service, 1201 Eye Street, NW., Washington, DC 20005. By fax: 202–371–2131. By e-mail: *researchcoll@nps.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. John G. Dennis. Voice: 202–513–7174 Fax: 202–371–2131; E-mail: *researchcoll@nps.gov*.

SUPPLEMENTARY INFORMATION:

Title: National Park Service Research Permit and Reporting System.

Bureau Form Number: Application for a Scientific Research and Collecting Permit: 10–741; Investigator's Annual Report: 10–226.

OMB Number: 1024–0236.

Expiration Date: 4/30/2004.

Type of Request: Revision of a previously approved collection.

Description of Need: The currently approved information collection responds to the statutory requirement

that NPS preserve park resources and regulate the use of units of the National Park System. The information currently collected identifies: (1) Names and business contact information for people who seek a permit to conduct natural or social science research and collecting activities in individual units of the National Park System, (2) what activities they wish to conduct, (3) where they wish to conduct the activities, (4) whether or not they wish to collect specimens as part of the activities they propose to conduct, and (5) for applicants who have received a permit, annual summaries of the actual results of their permitted activities. NPS uses the collected information for managing the use and preservation of park resources and for reporting the status of permitted research and collecting activities. NPS is considering proposing to change both the Application for a Scientific Research and Collecting Permit and the Investigator's Annual Report to improve their usability by respondents and to improve the focus of the information NPS collects to address specific needs that use of the two forms over the last three years has revealed. Examples of such needs associated with managing the permit include additional information about the project scope and status, such as expected total time span of the project, specific identification of project personnel who will be working in the park, status of processing collected specimens, planned schedules for the field work phases of the project, and expected end date for the project.

More specifically, NPS is considering proposing changes to the Application to improve the use of the Application for both scientific research and collecting and scientific education activities. NPS is considering proposing changes to the Application to improve the clarity of information provided to, and obtained from, respondents who request use of a non-NPS repository regarding the duty the respondents have for securing acceptance by the proposed non-NPS repository of becoming the curator for collections authorized in the permit. NPS is considering proposing changes to the Application to better understand the schedule of field work activities. NPS is considering proposing changes to the Investigator's Annual Report to reduce the complexity of the form by assigning responsibility to NPS, not the respondent, for determining the appropriate activity code for each permitted project.

Automated Data Collection: The information collection and status reporting system for which the renewal of two components of a single collection of information package is being proposed in this notice currently is available to applicants, permittees, and the public through the NPS Research Permit and Reporting System Web site (*http://science.nature.nps.gov/research*). In addition to considering the modification of the two information collection forms, NPS is developing modification to the Internet site to increase the effectiveness and efficiency of this automation system to facilitate the permit application and progress reporting process.

Description of Respondents: Representatives of academic and other research institutions, Federal, state, or local agencies, research businesses; other scientific parties seeking an NPS research and collecting permit; permittees who submit the annual report of accomplishment that is one of the permit conditions.

Estimated Average Number of Respondents: 3,000 per year.

Estimated Average Number of Responses: 6,000 per year. For each permit cycle, each respondent will respond usually once to prepare and submit the application for a permit and respondents who are successful in being awarded a permit will respond a second time to submit the Investigator's Annual Report. Given the most applicants are successful in being awarded a permit and that permit renewal usually occurs annually, the number of responses will approach a total that is two times the number of respondents.

Estimated Average Burden Hours Per Two-Part Response: 1,625 hours per year total for responding to both parts of the collection information.

Frequency of Response: 2 times per respondent per year—once to submit the application and once to submit the Investigator's Annual Report.

Estimated Annual Reporting Burden: 4,875 hours.

Dated: November 12, 2003.

Leonard E. Stowe,

Acting National Park Service Information Collection Clearance Officer.

[FR Doc. 03–29988 Filed 12–4–03; 8:45 am]

BILLING CODE 43210–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intent To Renew Request for Clearance of Information Collection, Backcountry Use Permit, Opportunity for Public Comment

AGENCY: National Park Service, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3507) the National Park Service (NPS) invites public comment on a request for renewal of the information collection requirements of NPS Standard Form 10–4–4, Backcountry Use Permit. The permit was initially authorized under OMB Control No. 1024–0022. The Backcountry Use Permit is the primary form used to provide access into NPS backcountry areas including those areas that require a reservation to enter or where use limits are imposed in accordance with other NPS regulations. Such permitting enhances hazard warnings, search and rescue efforts and resource protection.

DATES: Public comments will be accepted until February 3, 2004

ADDRESSES: Send comments to Lee Dickinson, National Park Service, 1849 C Street NW., (org. code 2460), Washington, DC 20240 or e-mail at *Lee_Dickinson@nps.gov.* All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. Copies of this form may be obtained from the Internet at *http://www.nps.gov/policy/DOrders/BUP.pdf* or by contacting Lee Dickinson.

FOR FURTHER INFORMATION CONTACT: Lee Dickinson, National Park Service, 1849 C Street NW., (org. code 2460)., Washington, DC 20240 by telephone at 202–513–7092 or by e-mail at *Lee_Dickinson@nps.gov*

SUPPLEMENTARY INFORMATION: In 1976, the NPS initiated a backcountry registration system in accordance with the regulations found at 36 CFR 1.5, 1.6 and 2.10. The objective of the backcountry use permit system is to provide campers access to backcountry areas of national parks with continuing opportunities for solitude, while enhancing resource protection and providing a means of disseminating public safety messages regarding backcountry travel.

NPS backcountry program managers, by designating access routes and overnight camping locations, can redistribute campers in response to user impact, high fire danger, flood or wind hazard, bear activity or other situations that may temporarily close a portion of the backcountry. The NPS may also use the permit system as a means of ensuring that each backcountry user receives up-to-date information on backcountry sanitation procedures, food storage, wildlife activity, trail conditions and weather projections so that concerns for visitor safety are met.

The Backcountry Use Permit is an extension of the NPS statutory authority responsibility to protect the park areas it administers and to manage the public use thereof (16 U.S.C. 1 and 3). NPS regulations codified in 36 CFR Parts 1 through 7, 12 and 13, are designed to implement statutory mandates that provide for resource protection and public enjoyment.

Estimated annual number of respondents: 295,339.

Estimated annual number of responses: 295,339.

Estimated average burden hours per response: 5 minutes.

Estimated frequency of response: the collection information must be provided each time a visitor or group wants to enter into the park's backcountry overnight. Frequency of response will depend on number of visits to parks annually.

Estimated annual resorting burden: 24,612 hours per year.

The NPS especially invites public comments as to:

a. Whether the collection of information is necessary for the proper performance of the functions of the Service, and whether the information will have practical utility.

b. The accuracy of the Service's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

c. the quality, utility, and clarity of the information to be collected; and

d. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical or other forms of information technology.

Dated: November 7, 2003.

Leonard E. Stowe,

Acting, Information Collection Clearance Officer, National Park Service.

[FR Doc. 03–29989 Filed 12–4–03; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–040]

Sunshine Act Meeting

AGENCY: International Trade Commission.

TIME AND DATE: December 10, 2003 at 2 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1057 (Preliminary)(Certain Processed Hazelnuts from Turkey)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before December 11, 2003; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before December 18, 2003.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: December 3, 2003.

By order of the Commission:

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–30350 Filed 12–3–03; 11:24 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[Docket No. FBI 109; RIN 1100–AA14]

Implementation of Section 104 of the Communications Assistance for Law Enforcement Act

AGENCY: Federal Bureau of Investigation, (FBI), Justice.

ACTION: Final notice of capacity; supplement for the purpose of responding to remand.

SUMMARY: By this notice, the FBI is responding to a court decision to remand for further explanation two issues from the final notice of capacity. The final notice of capacity was published on March 12, 1998, at 63 FR 12218, pursuant to the requirements of the Communications Assistance for Law Enforcement Act (''CALEA''), 47 U.S.C. 1001, *et seq*. Because the court did not vacate the final notice of capacity, we are providing further explanation as to the two remanded issues and are not republishing the final notice of capacity. Telecommunications carriers should note that the provisions of 47 U.S.C. 1003(d) do not apply to today's notice and should not file a ''carrier statement'' in response thereto. Comments on this notice may be submitted in accordance with the instructions below.

DATES: Written comments must be received at CALEA Implementation Unit, 14800 Conference Center Drive, Chantilly, VA 20153 on or before February 3, 2004.

FOR FURTHER INFORMATION CONTACT: Contact the CALEA Implementation Unit, Federal Bureau of Investigation (FBI) at (703) 814–4700, or at CALEA Implementation Unit, 14800 Conference Center Drive, Chantilly, VA 20153.

I. Background

Congress enacted CALEA in 1994 to require telecommunications carriers to ensure that their networks have the capability to enable local police, Federal officers and all other law enforcement agencies to conduct lawfully authorized electronic surveillance. Electronic surveillance is an indispensable tool used in investigating serious crimes, including terrorism, drug trafficking, and kidnaping. Congress has long recognized the importance of this investigative technique, and has authorized and governed its use through several laws, including Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. 2510 *et seq*. (''Title III''), the Electronic Communications Privacy Act of 1986, 18 U.S.C. 2701 *et seq*. (''ECPA''), and the Pen Registers and Trap and Trace Devices provisions, 18 U.S.C. 3121 *et seq*., as those laws were recently modified by the USA PATRIOT Act, Public Law 107–56, 115 Stat. 272, recently.

Under these laws, the government can obtain authority to intercept various forms of transmitted communications, including but not limited to, telephone conversations, pager messages, electronic mail, and computer data transmissions. Communications interceptions, commonly referred to as ''wiretaps,'' are strictly regulated by Title III. With few and limited exceptions, wiretaps are prohibited without prior court authorization. The threshold level of proof to obtain such authorization includes a determination that probable cause exists to believe that the communications to be intercepted will constitute evidence of a crime.

The government can also obtain authority from a court to use a ''pen register'' or ''trap and trace device.'' This requires a lower amount of proof than that required under Title III. Pen registers and traps and traces may not be used to intercept communications; rather, they are used to acquire ''call identifying information.'' This information includes the dialing and signaling associated with a communication. *See* 47 U.S.C. 1001(2) (definition of ''call identifying information''). Telephone numbers and the routing information in a packet header are both examples of call

identifying information. Pen registers are devices or processes for acquiring outgoing dialing, routing, addressing and signaling information, and traps and traces are used to record such information as it is incoming. 18 U.S.C. 3127(3), (4).

The electronic surveillance laws cited above delineate the government's lawful authority to intercept communications and acquire call-identifying information. CALEA, by contrast, is intended to preserve the government's technical ability to engage in electronic surveillance as allowed by law. It does so by requiring ''telecommunications carriers'' to design or modify their systems to ensure the government's ability to intercept communications and acquire call-identifying information, pursuant to lawful authorization. *See generally* 47 U.S.C. 1002.

In addition, CALEA contains ''capacity requirements.'' *See generally id* § 1003. The capacity provisions generally require carriers to be capable of supporting a certain number of communications interceptions, pen registers, and traps and traces at the same time. These provisions also require the Attorney General to issue a notice of the maximum and actual capacity requirements setting forth the ''maximum'' and ''actual'' number of communications interceptions, pen registers, and traps and traces that all government agencies may, in the future, conduct and use at the same time. The FBI Director is the authorized delegate of the Attorney General with respect to the implementation of CALEA, and therefore has issued such notices of capacity on the Attorney General's behalf.[1]

A. Notices of Capacity

In 1995, the FBI published an initial notice of capacity which expressed capacity requirements in terms of a ''percentage of engineered capacity.'' 60 FR 53643 (Oct. 16, 1995). After receiving comments from the public we revised that methodology and published a second notice of capacity. 62 FR 1902 (Jan. 14, 1997). After an additional round of comments, we published the final notice of capacity (referred to herein as the ''final notice'') on March 12, 1998. 63 FR at 12218–12310. At all times, we sought and incorporated the comments of the telecommunications industry, which assisted us in understanding the challenges facing the industry and others in applying the capacity requirements. The FBI acted on behalf of all Federal, State and local law enforcement agencies nationwide in establishing these capacity requirements.

The capacity requirements contained in the final notice were based on data obtained through a survey of Federal and State court clerks, law enforcement agencies, and telecommunications carriers. These entities were requested to provide records of any past surveillance activity conducted between January 1, 1993, and March 1, 1995. After gathering and organizing this data, we formed ''baseline'' numbers of surveillances for each region in the country.[2] The final notice identified capacity requirements for telecommunications carriers offering local exchange services (referred to as ''wireline'') and wireless carriers providing certain commercial mobile radio services, specifically cellular service and personal communications service (PCS).[3]

Counties[4] were used as the geographic region in identifying capacity requirements for wireline carriers. With respect to wireless services, the Federal Communications Commission (FCC) utilizes 306 Metropolitan Statistical Areas (MSA) and 428 Rural Statistical Areas (RSA) for cellular licensing purposes; and 51 Major Trading Areas (MTA) and 493 Basic Trading Areas (BTA) for PCS licensing. Each of these geographic regions was used in identifying capacity requirements for cellular and PCS services respectively. For purposes of this publicaiton, we will collectively refer to all of these types of wireless service areas as ''market service areas.''

The baseline numbers were derived from analysis of the number of surveillances that were ongoing on particular days during the survey period.[5] The final notice describes in detail how the baselines were calculated. *See* 63 FR 12224–26. As the final notice describes, we chose to count multiple surveillances ongoing on the same day as occurring ''simultaneously'' for the purpose of determining capacity requirements. For example, if the survey data had indicated that on January 2, 1993, in a particular market service area, Title III surveillance had been established on two cellular telephones, and a pen register had been installed on a third, then these would have been counted as three simultaneous surveillances. Having formed baselines, we thereafter generated the capacity requirements by multiplying the baseline by a growth factor. The FBI chose in the final notice to publish capacity requirements in the form of a single ''actual'' and ''maximum'' number for each region, rather than as separate numbers for the different types of surveillance (communications interceptions and pen registers/traps and traces).

B. Court Decision

On January 18, 2002, the District of Columbia Circuit ruled on a number of challenges to the final notice. *See USTA* v. *FBI,* 276 F.3d 620 (D.C. 2002). While the Court's decision largely upheld the final notice, it vacated one issue and remanded two others to the FBI. The Court vacated the statement in the final notice (63 FR 12219) that ''law enforcement considers 5 business days from a telecommunications carrier's receipt of a court order to be a reasonable time within which to permit an incremental expansion up to the maximum capacity.'' *USTA,* 276 F.3d at 627. The Court also required the FBI to provide further explanation of: (1) our decision to count any two historical surveillances occurring on the same day as simultaneous and, (2) our decision to set forth only one ''actual'' and one ''maximum'' capacity requirement number per region, rather than separate requirements for each type of surveillance.

The Court's concern with both of these issues centered on the explanations contained in the final notice. The Court did not vacate these portions of the final notice, but directed the district court to remand them to the FBI for a more adequate explanation.

II. Response to the Remand

This publication responds to the Court's remand by addressing both issues as follows. First, we provide additional explanation, not previously before the Court, for our interpretation of the term ''simultaneously.'' Second, we are supplying carriers with supplemental guidance with regard to the previously-published numerical capacity requirements by providing a method of breaking those numbers down between communications

[1] *See* 28 CFR 0.85(o).

[2] We use the term ''surveillances'' herein, to refer to multiple instances of any type of surveillance, whether communications interceptions, pen registers, and/or traps and traces.

[3] *See* 63 FR 12220. In the final notice of capacity, PCS was considered a service operating in the licensed portion of the 2 GHz band of the electromagnetic spectrum, from 1850 MHz to 1990 MHz. *Id.*

[4] The term ''counties'' includes boroughs and parishes as well as the District of Columbia and independent cities. U.S. territories (*i.e.*, American Samoa, Guam, Mariana Islands, Puerto Rico, and the U.S. Virgin Islands) were considered as single entities.

[5] A single surveillance is an interception, pen register or trap and trace established with respect to a single subscriber line. Thus, a single court order might authorize multiple ''surveillances'' as that term is used herein. *See* 63 FR 12224.

interceptions and acquisitions of call-identifying information.[6] This additional guidance should further assist carriers in their efforts to comply with CALEA's capacity requirements, while at the same time it will address the concerns raised by the remand. Following the end of the comment period, the FBI will review any such comments it receives and publish a finalized notice in the **Federal Register**.

A. Meaning of ''Simultaneously''

The first issue we address herein is the interpretation of the term ''simultaneously.'' The Court of Appeals noted that the final notice ''treated interceptions as 'simultaneous' if they occurred on same day, even though they may each only take moments and do not overlap in the least.'' *USTA,* 276 F.3d at 626. We understand the Court's concern to be that communications, such as telephone calls for example, could be short in duration, and interceptions of two or more of them on the same day might ''not overlap'' if they occurred at different times. The Court directed us to provide further explanation for our determination of capacity requirements based not on a number of overlapping communications interceptions, but on a number of surveillances ongoing on the same day.[7]

In response to the Court's direction, the FBI provides the following further explanation of its capacity methodology. First, the FBI examined the statutory language of CALEA. This examination suggested that 47 U.S.C. 1003 permits using same day data. The statute only requires that the government provide estimates of interceptions, pen registers, and trap and traces that law enforcement ''may conduct and use simultaneously.'' 47 U.S.C. 1003(a)(1)(A), (B). The word ''may'' indicates that capacity requirements should represent a number of interceptions that might take place. Second, the FBI examined how other courts have interpreted the word simultaneously. These cases suggested that the word simultaneous can be interpreted more broadly than coterminous, giving the FBI additional latitude to use the data available. Third, the FBI offers an explanation of how technology impacts capacity requirements. This explanation shows how using the number of same day ongoing surveillances provides a technology neutral approach allowing carriers to use their expertise to efficiently design their systems. For example, some technical intercept solutions require dedicated hardware for the duration of a court order regardless of whether the target is actually communicating, while an alternative technical intercept solution requires carriers' resources only when communications occur. Finally, we explain how the capacity requirements are based on data and expressed in terms within the FBI's and other law enforcement agencies' expertise. The FBI's particular expertise includes knowledge of the historical patterns of criminal activity within our jurisdiction, and of the investigative resources historically needed to detect and prevent such activity. Our expertise also includes an understanding of the frequency with which we have had to rely on electronic surveillance as a tool, and of the implications of limitations on its use in the future.

1. Statutory Language

As set forth above, CALEA requires the government to estimate the number of interceptions, pen registers, and trap and trace devices, that law enforcement authorities ''may conduct and use *simultaneously.*'' 47 U.S.C. 1003(a)(1)(A), (B) (emphasis added). These terms, including the word ''simultaneously,'' are not defined in CALEA.

First, we believe that CALEA's language supports the FBI's approach to the capacity requirements, even when viewing the term ''simultaneously'' as referring only to precisely coterminous actions. This is because Congress directed us to estimate the number of interceptions, pen registers, and traps and traces that law enforcement agencies ''*may* conduct and use simultaneously.'' (emphasis added). The term ''may'' indicates that capacity requirements should represent a number of interceptions that might take place, which is precisely what the FBI approach accomplishes. For example, in our experience, criminal suspects may, like anyone else, make and receive phone calls at any time of the day or night. Thus when two or more telephones are under lawful surveillance on the same day, calls may occur at any time and thus ''may'' result in communications interceptions at the same exact time. Our establishment of capacity requirements based on a number surveillances on the same day is therefore a reasonable basis on which to predict the number of precisely coterminous interceptions that law enforcement agencies ''may'' conduct.

Second, in common usage, the word ''simultaneously'' could encompass events that are not precisely coterminous but happen on the same day or around the same time. This understanding has been applied in court opinions as well. *See, e.g., Mendes-Silva* v. *United States,* 980 F.2d 1482, 1486 (D.C. Cir. 1993) (''simultaneous administration'' of drug defined by party as administration on ''the same day''), *cert. denied,* 479 U.S. 923 (1986); *San Luis Obispo Mothers for Peace* v. *NRC,* 789 F.2d 26, 40 n.11 (D.C. Cir. 1986) (''simultaneous occurrence'' of earthquake and nuclear accident defined as occurrence of the two events within ''48 hours''). Courts also refer to actions, such as the filing of motions, as ''simultaneous'' if they occur on the same day. *See generally, Spenkelink* v. *Wainwright,* 442 U.S. 1301, 1303 (1979) (per Rehnquist, J., in chambers) (''[t]he District Court simultaneously entered a second order''); *Dillard* v. *Industrial Comm'n of Virginia,* 416 U.S. 783, 792 (1974) (insurance company ''[s]imultaneously'' applied for a regulatory hearing and discontinued payments to insured); *City of Orrville* v. *FERC,* 147 F.3d 979, 984 (D.C. Cir. 1998) (on ''same day'' that one party requested a rehearing another party ''simultaneously moved to intervene''). The FBI's treatment of interceptions occurring on the same day as simultaneous, is therefore, a permissible interpretation of this statutory term.

We further note that the statute directs us to give notice of a number of simultaneous surveillances of all types, not just interceptions. In pertinent part, it states that the Attorney General should ''provide * * * notice of the * * * number of communications interceptions, pen registers, and trap and trace devices * * * that the Attorney General estimates that government agencies authorized to conduct electronic surveillance may *conduct and use simultaneously.*'' 47 U.S.C. 1003(a)(1)(A) (emphasis added). This provision plainly contemplates, among other things, the ''use'' of a pen register or trap and trace device, simultaneously with the ''conduct'' of one or more interceptions. Although, as the Court observed, two communications interceptions might not overlap if they occur at different times of the day, the same cannot be said for either the simultaneous ''use'' of

[6] For the purposes of this publication, we will use the term ''pen register/trap and trace'' to refer to the acquisition of call-identifying information, whether incoming, outgoing or both.

[7] The Court referred only to overlapping communications interceptions, and not to pen registers/traps and traces, in its discussion of ''simultaneously.'' As set forth below, however, the statute also refers to the simultaneous use of pen register or trap and trace devices, as well as the simultaneous use of such a device along with the conduct of one or more communications interceptions. For purposes of this publication, we will first address the Court's cited concerns with regard to non-overlapping communications interceptions.

two or more pen registers or trap and devices, or the simultaneous use of such device(s) with the conduct of an interception. Since a pen register or trap and trace device may be said to be in ''use'' for so long as it is installed on a line, and not just when it is actually obtaining information, then its ''use'' would continue throughout each day over the time period that it is installed. The device's use would then occur ''simultaneously'' with the conduct of any communication interceptions on the same day, irrespective of the time. It would also be simultaneous with the use of any other pen register or trap and trace devices on the same day. Our approach to the capacity requirements is consistent with this reading of the statutory language, since we counted the numbers of ongoing surveillances of all types on a single day in determining the baselines. For all of the reasons discussed above, we opine that it is appropriate to determine and express the capacity requirements in terms of a number of surveillances ongoing on the same day.

2. Law Enforcement Needs and Capacity Requirements

The FBI's approach to the capacity requirements is based on the premises: (A) that carriers will need to use certain resources to assist with each lawful surveillance, and (B) that more resources might be needed for each additional surveillance initiated while others are ongoing. As the Court is aware, we sought, to determine a number of surveillances that might be ongoing on the same day within particular geographic regions. Having notice of this number, we believed, carriers (as well as law enforcement agencies) would be able to anticipate and plan for the amount of resources they might need to use in order to facilitate the specified number of surveillances. Ultimately, therefore, our approach was intended to ensure the important goals that carriers will have the appropriate notice and will make the appropriate level of resources available in order to meet law enforcement's surveillance needs.

We now seek to provide the Court with further explanation of our approach. First, determining the capacity requirements as a number of ongoing surveillances is an approach that is ''neutral'' as to the system design chosen by the carrier to meet the requirements. By contrast, determining and expressing the requirements in terms of a number of overlapping communications interceptions would assume the carrier's system only utilizes additional resources when the communications interceptions overlap. In fact, some carriers' systems require additional dedicated resources for each additional ongoing surveillance, notwithstanding whether communications interceptions overlap.

Second, our approach allows the industry the flexibility to use its expertise to design different systems and allows law enforcement agencies to benefit from such expertise. Under the FBI's approach, a carrier is not precluded from designing and implementing different systems for meeting the requirements, including systems that do not require dedicated resources for each additional surveillance. If the number of overlapping communications were relevant to a carrier's chosen design, the telecommunications industry may rely on its special, if not unique, expertise in determining the extent to which that might occur.

(a) The Final Notice Determined Capacity Requirements in a System-Neutral Manner

Determining capacity requirements in a system-neutral manner is necessary because CALEA did not authorize the FBI to require any specific system design. *See* 47 U.S.C. 1002(b)(1). In addition, we know that carriers in fact use designs that differ in their capabilities to accommodate multiple surveillances at the same time. To accommodate these realities, we sought to give carriers notice of a number of surveillances that may be conducted at the same time, because they may need to use more resources to support each additional surveillance while others are ongoing. This is in fact the case in systems that are designed to use specific resources for the entire time that a surveillance is ongoing, even when no communication is actually being intercepted.

For example, some telecommunications switches are designed to send lawfully intercepted communications and call-identifying information to a law enforcement agency over a high-capacity connection referred to as a ''T1.'' These systems are designed such that a T1 connection must be dedicated to the surveillance for the entire time that the surveillance is in effect. The number of T1 connections that can be supported at one time by a telecommunications switch is limited. Hence, such a carrier would likely need to be able to support multiple T1 connections in order to facilitate multiple surveillances on the same switch on the same day.

CALEA's legislative history indicates that Congress may have contemplated a similar example when enacting CALEA's capacity provisions in the first instance. At the time of CALEA's enactment, Congress was made aware by the FBI of a number of cases where lawfully authorized surveillance had been impeded due to insufficient ''cellular port capacity.'' *See* H.R. Rep. No. 103–827, 103rd Cong., 2nd Sess., at 15 (1994). At this time, cellular telephone surveillance was conducted by accessing a subject's communications at the telecommunications switch through one of a limited number of access ports used for maintenance. Hence, each interception required the use of another access port, and the number of interceptions that could be active at the same time was limited by the number of available ports.

In both of the above examples, the ability of the carrier's system to accommodate multiple surveillances at the same time is limited. Importantly, this ability is limited by the number of surveillances ongoing at the same time, not by the number of overlapping communications actually being intercepted at the same time. If we were to adopt an alternative approach by determining capacity requirements based on a number of overlapping communications interceptions, then the capacity requirements based thereon would not provide carriers with systems similar to the examples above with notice of the number of surveillances they could be required to accommodate at the same time. Such carriers might then underestimate the resources necessary to support those surveillances. In order to ensure that all carriers will have the information they need in order to meet law enforcement's needs, the capacity requirements should therefore be based on a number of ongoing surveillances.

We are aware, however, that some carriers' systems function differently. For example, some telecommunications switches are capable of sending intercepted communications and call-identifying information over an ordinary phone line, by ''dialing-out'' such information each time a communication occurs. In these systems, the switch resources are released after the intercepted communications are transmitted and become available for other uses. The carriers' ability to facilitate multiple surveillances in these cases might to some degree be affected by the number of overlapping communications interceptions. Nevertheless, we cannot base the capacity requirements on an assumption that all carriers' systems have this or similar abilities, because, in fact, many do not.

Nothing in our approach to the capacity requirements would preclude a carrier from meeting them by using a ''dialing-out'' capability or any other system design. Having notice of the number of surveillances that law enforcement agencies may conduct at any given time, carriers and their manufacturers and suppliers could engineer methods of facilitating that number of surveillances without reliance on additional resources being dedicated for each additional surveillance maintained. If it were relevant to the system design, members of the telecommunications industry, as discussed below, have special expertise in determining the frequency with which communications (and the interceptions thereof) might overlap.

Applying our preceding explanation, we believe that determining capacity requirements based on a number of same-day surveillances is the most appropriate method for ensuring that carriers will be able to meet law enforcement's surveillance needs.

(b) The Final Notice Allows for Different System Designs and Allows Law Enforcement To Benefit From Industry Expertise

Another benefit not previously presented to the Court is that the capacity requirements stated in the final notice allow carriers to design a system that can meet the requirements through different methods. Stating capacity requirements in terms of a number of simultaneous surveillances thus allows law enforcement agencies to benefit from the special expertise of the telecommunications industry. With notice of the number of simultaneous surveillances that they should be able to facilitate, carriers can use their own expertise to decide how to design a system to facilitate that number of surveillances.

CALEA recognizes that carriers, manufacturers and suppliers are naturally in a position to assess the capabilities of their own systems, and to design and implement technical changes to their systems to meet different demands. The structure of CALEA reflects a recognition that members of the telecommunications industry possess expertise in engineering technical requirements necessary to facilitate lawful surveillance. For example, CALEA allows carriers to design systems that follow an industry-adopted set of technical standards that meet CALEA's requirements. See 47 U.S.C. 1006(c); *see also USTA* v. *FCC,* 227 F.3d 450, 460 (referencing CALEA's ''unique structure'' in delegating the establishment of technical standards to both the telecommunications industry and the FCC).

In order for law enforcement agencies to obtain the benefit of industry expertise, it is most appropriate that the capacity requirements be determined and expressed in terms of a certain number of ongoing surveillances. The industry is then left free to design an appropriate system to meet these requirements. As discussed below, such designs might involve the dedication of certain resources for the duration of each surveillance, or might rely on shared resources that are invoked only when a communication is actually being intercepted and then released when the communication is over, or some combination of both. The capacity requirements set forth in the Final Notice, as discussed above, are ''system neutral'' in that they do not assume any particular system design.

Carriers, along with their manufacturers and suppliers, possess special expertise in assessing their subscribers's potential use of their telecommunications systems. Carriers routinely in the ordinary course of their business engage in ''traffic engineering'' to determine the ''busy hour,'' when the frequency and/or duration of their subscribers'' telecommunications activity is highest. In order to guarantee a certain level of service to their subscribers, carriers are necessarily well informed of the level of burden that subscribers are likely to place on the telecommunications system at any given time. Without such knowledge they would not be able to provide the level of service that their subscribers expect. For example, wireline telephone carriers routinely estimate the number of their subscribers who are likely to pick up their telephones at the same time in order to place a call. The same types of assessments are routinely made by carriers with regard to the design and implementation of new ''features'' that the carrier offers to subscribers, such as call-waiting or conference calling. The carrier's telecommunications system is designed in such a way as to be able to satisfy the subscribers' demands as closely as possible. Such assessments are particularly within the scope of the industry's particular expertise.

Carriers and other industry members are therefore specially, if not uniquely, qualified to assess the burdens that a certain number of surveillances could place on their telecommunications systems. In one sense, the carrier's design of a system to meet CALEA's requirements is analogous to the design of any other ''feature'' that may be associated with a subscriber's service. Carriers and other members of the telecommunications industry are specially qualified to assess the frequency and duration of the communications made by a subscriber under surveillance, and the extent to which a given number of surveillances might involve communications that overlap, in the event that such an assessment is relevant to the particular system design chosen by the carrier. Indeed, a carrier's routine assessment of its subscribers' use of the telecommunications system will necessarily include an assessment of such use by those subscribers who happen to be under lawful surveillance. For example, in a wireline carrier's system, if an assessment of the frequency and duration of the phone calls made or received by subscribers under surveillance is relevant to the carrier's design of a system to meet the capacity requirements, then the carrier can use its expertise to make that determination. Law enforcement agencies, in turn, will benefit from the industry's expertise in this regard.

3. The Capacity Requirements Are Based on Data and Expressed in Terms Within the FBI's and Other Law Enforcement Agencies's Expertise

The FBI chose the aforementioned approach towards determining capacity requirements because the data and the terms in which we stated the capacity requirements were within our expertise, the area of law enforcement. The data we acquired through our survey, as discussed above, included information regarding the number of surveillances ongoing at certain times within a given geographic area. Our particular expertise allowed us to analyze and derive conclusions from this data regarding the number of surveillances likely to be sought by law enforcement agencies in particular geographic regions at the same time. These data did not include information from which we could determine the number of overlapping communications interceptions. In addition, as outlined below, stating the capacity requirements in such terms would have had little meaning or usefulness to other law enforcement agencies. We offer the following explanation to illustrate why it was reasonable for the capacity requirements to be based on, and expressed in terms of, a number of ongoing surveillances.

The FBI's particular expertise includes knowledge of the historical patterns of criminal activity within our jurisdiction, and of the investigative resources historically needed to detect and prevent such activity. Our expertise

also includes an understanding of the frequency with which we have had to rely on electronic surveillance as a tool, and of the implications of limitations on its use in the future. Indeed, we are necessarily familiar with the frequency with which we have sought to conduct communications interceptions, in part through our compliance with the requirements of Federal law regarding reports to the Administrative Office of the Courts. *See* 18 U.S.C. 2519. Therefore, we believe it was reasonable that our survey focus on determining the frequency with which all law enforcement agencies nationwide have relied upon electronic surveillance in their investigations.

As already stated, the data acquired through our survey cannot be used to determine the frequency of overlapping communications interceptions. Such data did not include any information regarding the hours, minutes and times of day that particular communications interceptions occurred. Rather, the survey data reflects the days over which surveillances were ongoing.

The FBI now offers this further explanation to justify why our reliance on data reflecting numbers of ongoing surveillances was reasonable. First and foremost, an analysis thereof was within the FBI's expertise in assessing the level of investigative resources needed to combat crime. Conversely, a survey and analysis focused on the number of overlapping communications interceptions would not be within our traditional expertise. Such an exercise would be more akin to the ''traffic engineering'' studies traditionally engaged in by the telecommunications industry. For example, it would require us to make determinations about the extent to which individuals will make or receive phone calls at the same time. As discussed above, if that assessment were relevant to the system design chosen by a carrier, then the carrier is in the most appropriate position to make it.

Second, the capacity requirements set forth in the final notice, in addition to satisfying the requirement for notice to carriers, will serve as guidance to law enforcement agencies in understanding potential technical limitations on the use of electronic surveillance. Agencies can readily comprehend, and if necessary, plan for, being able to conduct only a certain limited number of surveillances at a given time. On the other hand, stating the capacity requirements in terms of a number of overlapping communications interceptions would have little or no meaning to law enforcement agencies.

We further note that initiating a new study to determine the frequency of overlapping communications interceptions would consume a large amount of time and resources, would be problematic, and, for all of the reasons discussed herein, would ultimately not be beneficial to our goal of ensuring that law enforcement's needs are met. Such a study would require us to gather and analyze numerous evidence files in an attempt to determine the exact times at which communications were intercepted and whether or not they overlapped. Because most surveillances are conducted by agencies other than the FBI, most of these files would need to be obtained from third parties, such as other law enforcement agencies or the courts. Given the number of surveillances determined from our survey, this could involve hundreds of files. Moreover, it is also doubtful that such data could even be used to derive a ''typical'' frequency of overlap among interceptions on which we could reliably base the capacity requirements. First, not every communication that might be intercepted through an ongoing surveillance actually is intercepted, such that it is recorded and entered into evidence files. In particular, some communications made over the facilities subject to the surveillance are not recorded because they are not pertinent to the investigation. *See* 18 U.S.C. 2518(5) (this is often referred to as the ''minimization'' requirement under Title III). An incomplete picture of the potential for overlap might therefore be presented through a review of evidence files. Second, the probability for overlap when conducting surveillances in different types of cases could vary greatly. In our experience, some surveillances, such as those in bookmaking or drug dealing cases, may involve many communications interceptions over a relatively short period of time. In other cases, such as kidnaping, only a few communications may be actually intercepted.

Finally, as described above, we believe that estimating the number of overlapping intercepted communications would not be ultimately beneficial to effectively estimating law enforcement's capacity requirements. In particular, as we discuss above, we believe that capacity requirements are most appropriately based on a number of surveillances being conducted on the same day, not on a number of overlapping interceptions.

B. Breakdown of Capacity Requirements by Type of Surveillance

The second issue we address in this publication is the breakdown of capacity requirements by type of surveillance. The statute, as discussed above, directs us to provide ''notice of *the* actual *number* of communications interceptions, pen registers, and trap and trace devices.'' 47 U.S.C. 1003(a)(1) (emphasis added). The FBI decided, therefore, in the final notice to provide an ''actual'' and a ''maximum'' number representing a total number of surveillances, for each county and market service area. The Court questioned our explanation of the basis for this decision, noting that the FBI's numbers ''drew no distinction between different types of interceptions (*e.g.*, communications content versus mere pen registers).'' *USTA,* 276 F.3d at 626. According to the Court, different types of surveillance may ''impose different demands'' on the carrier's ability to meet the capacity requirements. *Id.* at 627. The Court further noted, as we stated in the final notice, that more delivery channels may be needed in order to facilitate a communications interception as opposed to the operation of a pen register and/or a trap and trace device. *Id.* The Court therefore remanded this issue to us for a more adequate explanation.

The FBI has considered this issue and continues to find that it is appropriate, given the statutory requirements, to state the capacity requirements for each geographic region as a single actual and single maximum number. Moreover, our approach was consistent with the methodology we used to determine the capacity requirements, which, as described above, focused on the highest number of surveillances of any type that were ongoing on a single day or days during the survey period.

Nevertheless, we find that we can further address the court's concerns and at the same time benefit law enforcement agencies and telecommunications carriers, by providing additional guidance on the application of the capacity requirements. We set forth our analysis of the issue and our finding that the method described below achieves this goal by limiting the number of simultaneous communications interceptions that are required to be accommodated in the counties and market service areas with the highest capacity requirements. By so limiting the number of communications interceptions, we are now giving the carriers providing service in these regions guidance that allows them to

draw a distinction between different types of surveillances in meeting the capacity requirements.

1. National Average Ratio Is Not an Appropriate Basis

As we stated in the final notice, the ratio of interceptions to pen registers/traps and traces according to the national average, is not an appropriate basis on which to determine capacity requirements. 63 FR 12235–36. This is because our survey determined that the historical experience of each county and market service area varies greatly. In some regions, all or nearly all historical surveillances consisted of communications interceptions, while in others, all of the surveillances were pen registers or traps and traces. *Id*. The national average ratio of communications interceptions to pen registers/traps and traces is not therefore representative of any specific geographic region.

2. Conclusions From Historical Survey Information

Because a national average ratio would not be appropriate to use, we decided to examine the breakdown between different types of surveillance at the county and market service area level. Using the FBI's original survey data, we examined the percentage of communications interceptions that were included within the historical experience of each county and market service area.[8] Some general conclusions were able to be drawn from this examination, as described below.

We first examined the data for geographic regions with low historical experience figures, and correspondingly low capacity requirements. Within this group, the portion of total historical experience that consisted of communications interceptions varied widely. For example, for counties with a total historical experience of 10 or less, the percentage amount of communications interceptions from total historical experience ranged from zero to 100. The same variance (zero to 100) was found for wireless services licensed by MSA/RSA, MTA and BTA, but only in market service areas with a total historical experience of 5 or less.[9]

Continuing with this comparison process for regions with successively higher total historical experience amounts, we found that the percentage of communications interceptions tended to decrease as the total historical experience increased. For the county with the highest historical experience, we found that 25 percent of the total experience were communications interceptions. For the market services area with the highest historical experience, 50 percent of the total historical experience consisted of communications interceptions.

3. Establishment of Percentage Groups

Based on the overall relationships described above, we determined that a breakdown of the capacity requirements by surveillance type could be achieved by placing limits on the extent to which the number of surveillances reflected in the capacity requirements could include communications interceptions. The tendency in our data, as described above, was for a decreasing proportion of communications interceptions as the total number of surveillances increased. We concluded therefore that a set of percentages that decrease as historical experience increases, could be used to limit the number of communications interceptions as a proportion of the total capacity requirement.

We therefore established decreasing percentages, and assigned groups of particular geographic regions to those percentages (hereinafter ''percentage groups'') with respect to all counties and market service areas described in the final notice. For counties, the FBI has established four percentage groups: 100, 75, 50, and 25 percent. For each of the three different types of wireless geographic regions (*i.e.*, MSA/RSA, MTA, and BTA) the FBI has established three percentage groups: 100, 75, and 50 percent.

As explained further below, the applicable percentage indicates the highest proportion of capacity requirements (actual and maximum capacity requirements) that could consist of communications interceptions. Regions with low historical experience, and correspondingly low capacity requirements, fall within the 100 percent group. A carrier operating within such a region must be able to accommodate the number of surveillances indicated by the capacity requirement such that all (100 percent) of the surveillances are communications interceptions, or all are pen registers/traps and traces, or some combination of both types of surveillance equal to the capacity requirement. This is consistent with our findings regarding the variability of the types of surveillances within the historical experience of regions with low levels of such experience.

At the other end of the range, regions with high historical experience levels fall within the 25 percent group for counties, or the 50 percent group for market service areas. Carriers operating within these regions must still be able to accommodate the total number of surveillances indicated by their capacity requirement, but the proportion of that number that could be communications interceptions is limited by the applicable percentage. The determination of the percentage groups and the application of the percentage is described in further detail below.

4. Determination of Percentage Groups Applicable to Geographic Regions

Carriers can determine the applicable percentage group by looking at the ''historical experience'' number associated with their capacity requirements as published in the final notice.

We assigned particular regions to the percentage groups based on their total historical experience. We first examined the historical data to locate the region with the highest number of historical surveillances wherein 100 percent of them were communications interceptions. This number was 10 for capacity requirements determined by county and 5 for capacity requirements determined by market service area. This number became the upper limit of the 100 percent group, and all counties with a historical experience of 10 or less, and market service areas with a historical experience of 5 or less, were then deemed within the 100 percent group.

The process was continued by examining the historical data for all those counties not already falling within the 100 percent group, in order to determine the appropriate upper limit for the 75 percent group. We examined the data for the remaining regions for the highest number of surveillances wherein 75 percent of the total consisted of communications interceptions. This number was 44 for counties and 10 for market service areas. Again, the process was continued with those geographic regions not already deemed to be within the 100 or 75 percent groups. That is, we examined the data regarding the remaining regions to determine the region with the highest number of historical surveillances wherein 50 percent of the total consisted of communications interceptions. This number was 100 for counties. For wireless market service areas, this number was 106, which was also the highest historical experience figure. Hence, all remaining market

[8] A ''historical experience'' figure, representing the baseline number of simultaneous surveillances is published for each county and market service area in the appendices to the final notice.

[9] We used the historical interception activity of cellular carriers to develop projections of future capacity requirements for PCS carriers. *See* 63 FR 12226.

service areas, those with historical experience figures between 11 and 106 (inclusive), were assigned to the 50 percent group. For wireline services, the remaining counties with a historical experience of 101 or more, were determined to be within the 25 percent group.

Thus, the percentage group applicable to a particular county or market service area can be determined according to its total historical experience, as summarized below.

a. Counties

Counties with a total historical experience between 0 and 10 (inclusive), are in the 100 percent group; between 11 and 44 (inclusive), are in the 75 percent group; between 45 and 100 (inclusive) are in the 50 percent group; and greater than 100, are in the 25 percent group. The following chart summarizes these determinations:

Historical experience	Percentage group
0–10	100
11–44	75
45–100	50
101 or more	25

b. Market Service Areas

The following describes the percentage groups for wireless carriers regardless of the type of geographic region (MSA/RSA, MTA, and BTA). Market service areas with a total historical experience between zero and five (inclusive) are in the 100 percent group; between six and ten (inclusive) are in the 75 percent group; and greater than ten, are in the 50 percent group. The following chart summarizes these determinations:

Historical experience	Percentage group
0–5	100
6–10	75
11 or more	50

5. Application of Percentage to Actual and Maximum Capacity Requirements

Carriers can use the applicable percentage to determine the number of simultaneous communications interceptions that they should be capable of accommodating within their total capacity requirements.

As described above, the actual and maximum capacity requirements specify a total number of surveillances. The applicable percentage is then multiplied by the capacity requirement to determine the highest number of simultaneous surveillances that could be in the form of communications interceptions. If the calculation results in a fraction, then the number of communications interceptions should be rounded up.

The percentage does not change the total number of surveillances specified in the actual and maximum capacity requirements, and does not change the total number of surveillances that carriers must be able to accommodate simultaneously in order to meet the capacity requirements. In cases where the carrier's capacity requirements fall within the 75 percent group, or lower, the percentage will clearly limit the number of simultaneous communications interceptions that a carrier is required to be capable of accommodating. Thus, a carrier must at all times be able to accommodate a number of surveillances equal to its capacity requirement, and the total number of surveillances may be all pen registers/traps and traces or a combination of these and communications interceptions. However, the number of communications interceptions will not exceed the limit, if any, indicated by the applicable percentage. The examples below will illustrate this.

Example 1

Montgomery County, Maryland has a historical experience of 66, an actual capacity requirement of 84, and a maximum capacity requirement of 110. The historical experience of 66 places it within the 50 percent group. Multiplying the percentage by the capacity requirements indicates that the actual capacity requirement is limited to 42 communications interceptions and the maximum capacity requirement is limited to 55 communications interceptions. A carrier providing service in this county is required to be capable of accommodating an actual capacity of 84 pen registers/traps and traces, or any combined number of surveillances equal to 84 where the number of communications interceptions is equal to 42 or less. For example, the carrier must be capable of accommodating 42 simultaneous communications interceptions and 42 simultaneous pen registers/traps and traces. For a further example, the carrier must be capable of accommodating 10 simultaneous communications interceptions and 74 simultaneous pen registers/traps and traces. The same form of analysis applies to the maximum capacity requirements.

Example 2

Metropolitan Statistical Area / Rural Statistical Area (MSA/RSA) 234, Athens, Georgia, has a historical experience of 7, an actual capacity requirement of 12, and a maximum capacity requirement of 20. The historical experience of 7 places it within the 75 percent group. Multiplying the percentage by the capacity requirements indicates that the actual capacity requirement is limited to 9 communications interceptions and the maximum capacity requirement is limited to 15 communications interceptions. A carrier providing service in this MSA/RSA is required to be capable of accommodating an actual capacity of 12 pen registers/traps and traces, or any combined number of both types of surveillances equal to 12, where the number of communications interceptions is equal to 9 or less. For example, the carrier must be capable of accommodating 9 simultaneous communications interceptions and 3 simultaneous pen registers/traps and traces. For a further example, the carrier must be capable of accommodating 2 simultaneous communications interceptions and 10 simultaneous pen registers/traps and traces. The same form of analysis applies to the maximum capacity requirements.

Example 3

Harris County, Texas has a historical experience of 294, an actual capacity requirement of 371, and a maximum capacity requirement of 484. The historical experience of 294 places it within the 25 percent group. Twenty-five percent of 371 is 92.75, which is rounded up to 93. The actual capacity requirement is limited to 93 communications interceptions and the maximum capacity requirement is limited to 121 communications interceptions. A carrier providing service in this county is required to be capable of accommodating an actual capacity of 371 pen registers/traps and traces, or any combined number of both types of surveillances equal to 371 where the number of communications interceptions is equal to 93 or less. For example, the carrier must be capable of accommodating 93 simultaneous communications interceptions and 278 simultaneous pen registers/traps and traces. For a further example, the carrier must be capable of accommodating 10 simultaneous communications interceptions and 361 simultaneous pen registers/traps and traces. The same form of analysis applies to the maximum capacity requirements.

III. Applicable Administrative Procedures and Executive Orders

A. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* requires the preparation of an initial regulatory flexibility analysis whenever an agency is required by law ''to publish general notice of proposed rulemaking for any proposed rule.'' 5 U.S.C. 603(a). This publication provides our response to the remand instructions of the Court of Appeals, by providing further explanation and guidance regarding the final notice of capacity issued pursuant to CALEA, 47 U.S.C. 1003. We are not republishing the final notice of capacity, and are therefore not changing the final regulatory flexibility analysis provided with the final notice. Rather, this publication pertains only to the two discrete issues remanded by the Court, those being our interpretation of the term ''simultaneously'' and our decision to present only one ''actual'' and one ''maximum'' capacity requirement per geographic region. Our initial regulatory flexibility analysis is therefore limited to those issues.

The reason for this publication is to respond to the Court's remand instructions. Our objective in issuing it, is to provide further explanation for our interpretation of the term ''simultaneously'' and to provide additional guidance on the application of the capacity requirements with respect to different types of surveillance (interceptions versus pen registers/traps and traces).

The Regulatory Flexibility Act requires a description of, and if feasible, an estimate of the number of small entities to which a proposed rule will apply. 5 U.S.C. 603(b)(3). A ''small entity'' in the wired or wireless telecommunications business includes an entity that is independently owned and operated, not dominant in its field of operation, and has fewer than 1,500 employees. 5 U.S.C. 601(6)(1); 15 U.S.C. 632; 13 CFR 121.201. The Bureau of the Census issued the 1997 Economic Census on October 20, 2000. The Economic Census profiles the U.S. economy every 5 years, from the national to the local level. The 2002 Economic Census is currently being conducted, and thus the 1997 data represents the most current information. The 1997 Economic Census reports that there were 2,797 wired telecommunications communications (NAICS code 513310) firms, of which all but 24 had fewer than 1,000 employees. *See* 1997 Economic Census, Establishment and Firm Size, Publication EC97S51S–SZ. It further reports that there were 1,238 cellular and other wireless telecommunications (NAICS code 513322) firms, of which all but 12 had fewer than 1,000 employees. Firms engaged as telecommunications resellers (NAICS code 513330) numbered 1,417, of which all but 2 had fewer than 1,000 employees. We are unaware of any source of further information from which we could determine the number of firms that are independently owned and operated and not dominant in their field of operation.

This publication imposes no reporting or record-keeping requirements. The final notice imposed certain compliance requirements, the application of which is further guided and clarified by the statements herein. We are not republishing the final notice, nor changing the existing numerical capacity requirements stated therein. We are also providing further guidance as to the application of the capacity requirements in regions with the highest requirements, by setting a maximum number of communications interceptions that is lower than the total capacity requirement. The economic impact of compliance with the capacity requirements for small entities that operate in regions affected by this guidance, therefore, might be lowered if the entity employed a system that could benefit from a requirement for fewer simultaneous communications interceptions. In all other cases the economic impact created by the final notice will remain unchanged by this publication. We therefore find that there will be no significant economic impact on small businesses as a result of this publication. The FBI is unaware of any rules which would overlap, duplicate or conflict with this publication or the statements therein.

B. Executive Order 12866: Regulatory Planning and Review

This publication has been drafted and reviewed in accordance with Executive Order 12866. The FBI does not find that it constitutes a ''significant regulatory action'' in accordance with that Order. In particular, we had already determined that the final notice of capacity did not meet the criterion for a ''significant regulatory action'' and that it would not result in an annual impact on the economy in excess of $100,000,000, nor would economically impact State, local or tribal governments. 63 FR 12220. This publicaton does not significantly alter the economic analysis contained in the final notice, except that compliance costs may be reduced in some cases.

In this publication, we are neither republishing the final notice, nor changing the existing numerical capacity requirements stated therein. We are providing further guidance as to the application of the capacity requirements in regions with the highest requirements, by setting a maximum number of communications interceptions that is lower than the total capacity requirement. The economic impact of compliance with the capacity requirements for entities that operate in regions affected by this guidance, therefore, might be lowered if the entity employed a system that could benefit from a requirement for fewer simultaneous communications interceptions. In all other cases the economic impact created by the final notice, remains unchanged by this publication. Although not required by Executive Order 12866, this publication has been submitted for review by the Office of Management and Budget.

C. Executive Order 13132: Federalism

This publication will not have a substantial direct effect of the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this publication does not have any federalism implications that warrant preparation of a federalism impact statement.

D. Executive Order 12988: Civil Justice Reform

This publication meets the applicable standards set forth in sections 3(a) and 3(b) of Executive Order 12988, Civil Justice Reform.

E. Unfunded Mandates Reform Act of 1995

We determined in the final notice of capacity that it would not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. This publication only provides further explanation and guidance with regard to two matters contained in the final notice of capacity and would neither alter the analysis contained in the final notice, nor would result in any increase in any expenditures. Therefore, no actions deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532(a).

F. Small Business Regulatory Enforcement Fairness Act of 1996

This publication is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. We determined in the final notice of capacity that it would not have an annual effect on the economy of $100,000,000 or more; would not cause a major increase in costs or prices; and would not result in a significant adverse effect on competition, employment, investment or productivity, and innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets. This publication only provides further explanation and guidance with regard to two matters contained in the final notice of capacity and would neither alter the analysis contained in the final notice, nor would result in any increase in expenditures. Some reductions in expenditures by small businesses are possible in certain cases.

G. Paperwork Reduction Act

This Supplement contains no information collection or record-keeping requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Dated: November 4, 2003.

Valerie E. Caproni,

General Counsel, Federal Bureau of Investigation.

[FR Doc. 03–30258 Filed 12–4–03; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 26, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or E-Mail: *reeves.vanessa2@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316 / this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Revision of a currently approved collection.

Title: Workforce Investment Act: National Emergency Grant (NEG) Assistance-Application and Reporting Procedures.

OMB Number: 1205–0439.

Affected Public: State, local, or tribal government.

Type of Response: Reporting.

Frequency: On occasion and quarterly.

Number of Respondents: 150.

Information collection	Estimated number of respondents	Frequency	Estimated annual responses	Average response time (hours)	Estimated annual burden hours
SF–434 (OMB No. 0348–0043)	150	1 time	150	0.75	113
Narrative Summary	150	1 time	150	1	150
TAA Certification Report	50	1 time	50	0.5	25
ETA–9103	150	1 time	150	1.5	225
ETA–9105	75	1 time	75	0.5	38
ETA–9106	150	1 time	150	1	150
ETA–9107	100	1 time	100	0.25	25
ETA–9104	150	Quarterly	600	0.5	300
Grant Modifications	140	1 time	140	0.5	70
Total			1,565		1,096

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Department of Labor/Employment and Training Administration announces policies and application and reporting procedures for states and local entities to enable them to access funds for National Emergency Grant (NEG) programs. NEGs are discretionary grants intended to complement the resources and service capacity at the State and local area levels by providing supplemental funding for workforce development and employment services and other adjustment assistance for dislocated workers and other eligible individuals as defined in sections 101, 134 and 173 of the Workforce Investment Act; sections 113, 114 and 203 of the Trade Act of 2002; and 20 CFR 671.140.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–30248 Filed 12–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Security Programs: Training and Employment Guidance Letter Interpreting Federal Law

The Employment and Training Administration interprets federal law requirements pertaining to unemployment compensation (UC) and public employment services (ES). These interpretations are issued in Training and Guidance Letters (TEGLs) to the State Workforce Agencies. The TEGL described below is published in the **Federal Register** in order to inform the public.

TEGL 18–01, Change 1

TEGL 18–01, Change 1, using a Q & A format, answers additional questions related to the appropriate uses of the Reed Act distribution made on March 13, 2002.

Dated: December 1, 2003.

Emily Stover DeRocco,

Assistant Secretary of Labor.

Employment and Training Administration Advisory System, U.S. Department of Labor, Washington, DC 20210

CLASSIFICATION: Reed Act
CORRESPONDENCE SYMBOL: DL
DATE: March 19, 2003

Training and Employment Guidance Letter No. 18–01 Change 1

To: All State Workforce Liaisons, Allstate Workforce Agencies, Allstate Worker Adjustment Liaisons, Allone-Stop Center System Leads
From: Emily Stover DeRocco, Assistant Secretary
Subject: Reed Act—Questions and Answers

1. *Purpose.* To answer questions related to the use of Reed Act funds that have arisen since the issuance of Training and Employment Guidance Letter (TEGL) 18–01.

2. *References.* Section 209 of the Temporary Extended Unemployment Compensation Act of 2002 (TEUCA), which is Title II of the Job Creation and Worker Assistance Act of 2002, P.L. No. 107–147, signed by the President on March 9, 2002; Title IX of the Social Security Act (SSA); the Federal Unemployment Tax Act (FUTA); the Wagner-Peyser Act; TEGL 18–01 (67 FR 34730 (May 15, 2002)); TEGL 24–01; and Unemployment Insurance Program Letter (UIPL) 39–97 (62 FR 63960 (December 3, 1997)), UIPL 39–97, Change 1 (January 16, 2002) and UIPL 20–02 (April 4, 2002).

3. *Background.* TEGL 18–01 described the permissible uses of the $8 billion Reed Act distribution that was made to the states' accounts in the Unemployment Trust Fund on March 13, 2002. In general, this distribution is available for the payment of unemployment compensation (UC) and the administration of state UC laws and public employment offices.

RESCISSIONS: None
EXPIRATION DATE: Continuing

Since the issuance of TEGL 18–01, the Department has received questions concerning permissible uses of Reed Act funds. In addition, the Department has reviewed state legislative proposals appropriating the Reed Act funds, some of which raised issues of consistency with federal law. The following Questions and Answers address these matters.

4. *Action.* State administrators should distribute this advisory to appropriate staff. States must adhere to the requirements of Federal law that are contained in this advisory.

5. *Inquiries.* Questions should be addressed to your Regional Office.

6. *Attachment.*

Reed Act Distributions Under the Temporary Extended Unemployment Compensation Act of 2002—Questions and Answers

Attachment—Reed Act Distributions Under the Temporary Extended Unemployment Compensation Act of 2002—Questions and Answers

1. *Question:* Since my state's legislature meets in session only for short periods each year, my state's law delegates certain legislative functions, including certain appropriation functions, to the Governor. May the Governor ''appropriate'' Reed Act funds under this delegation?

Answer: No. Question and Answer 9 in Attachment I to TEGL 18–01 explains that Section 903(c)(2), SSA, provides that a state may use Reed Act funds for administrative purposes only ''pursuant to a specific appropriation made by the legislative body of the State.'' (Emphasis added.) That section of the SSA goes on to provide that a withdrawal may be made for the payment of administrative expenses ''if and only if'' the appropriation law meets certain requirements. Among these requirements is that ''the purposes and the amounts'' must be ''specified in the law making the appropriation.'' Senate Report No. 1621 elaborated on the appropriation requirement. It states that a state may use Reed Act funds for administrative expenses only ''through a special appropriation act of its legislature'' and that such use of Reed Act funds is ''subject to rigid control by the state legislature (which control is specified in the bill in detail).'' (Emphasis added. 1954 U.S.C.C.A.N. 2909, 2910, 2914.)

2. *Question:* May Reed Act funds be used for administrative expenses incurred before the date of enactment of the state appropriations?

Answer: No. Under Section 903(c)(2)(C), SSA, a state's Reed Act appropriation law must provide that ''the expenses are incurred after'' the date of the enactment of the appropriation.

3. *Question:* May my state use Reed Act funds to deliver employment services outside its One-Stop system?

Answer: In general, no. Reed Act funds may be used for expenses incurred by a state ''for the administration of its unemployment compensation law and public employment offices.'' As noted in TEGL 18–01, ''administration of * * * public employment offices'' means ''any function fundable under the Wagner-Peyser Act.'' Section 7(e), Wagner-Peyser, provides that ''all job search, placement, recruitment, labor employment statistics, and other labor exchange services authorized under subsection (a) shall be provided, consistent with the other requirements of this Act, as part of the one-stop delivery system established by the state.''

Section 7(b)(2), Wagner-Peyser, does authorize provisions of services outside the One-Stop. However, these services may be provided only to ''groups with special needs, carried out pursuant to joint agreements between the employment service and the appropriate local workforce investment board and chief elected official or officials or other public agencies or private nonprofit organization.'' (Emphasis added.) Thus, for Reed Act purposes, moneys may be expended outside the one-stop system on these groups with special needs only if there is an agreement with the state's ES agency.

Note that the state's share of the $100 million Reed Act distributions made in each of fiscal years 2000 through 2002 may be used only for UC administration. (See Question and Answer 20 in Attachment I to TEGL 18–01.)

4. *Question:* May my state legislature appropriate Reed Act funds to an agency other than the state agency (or agencies) administering the UC program and the employment service (ES) program?

Answer: No. While nothing prohibits the UC or ES agencies from providing Reed Act funds to other agencies to perform permissible Reed Act activities (*e.g.*, information technology services supporting the UC and ES agencies), the appropriation must be made to the UC and/or ES agency.

The intent behind the Reed Act was to allow states to supplement their federal UC and ES grants. (See, for example, H. Rep. 21 (1954 U.S.C.C.A.N. 2909–2911); H. Rep. 251, 107th Cong. 1st Sess. 58–59.) Therefore, just as the state agency administering the state's UC law receives the federal UC administrative grant, the same agency is to receive Reed Act funds for administering the UC law. Similarly, just as the state agency administering the state's ES program receives the Wagner-Peyser grant, the same agency is to receive Reed Act funds for administering its public employment offices.

Appropriating Reed Act funds only to the state UC and/or ES agencies, which have expertise in determining what are permissible UI and Wagner-Peyser Act functions, helps assure that Reed Act funds are used only for permissible purposes. This in turn will help avoid federal questions regarding use.

If the state legislature appropriated Reed Act funds to an agency other than the state agency administering the state UC or ES programs prior to the effective date of this TEGL, the Department will not raise any issues with respect to the appropriation to such other agency. However, the state UC and/or ES agencies, as appropriate, should work with such other state agency to assure that Reed Act funds are used consistently with federal law requirements.

5. *Question:* May Reed Act funds be used to pay travel expenses incurred by trainees?

Answer. Only to the same extent Wagner-Peyser Act funds may be used for this purpose. Generally, Wagner-Peyser Act funds may not pay for transportation costs, but there are two exceptions:

• Section (7)(b)(2) of the Wagner-Peyser Act discusses ''services for groups with special needs, carried out pursuant to joint agreements between the employment service and the appropriate workforce investment board and chief elected official or officials or other public agencies or private nonprofits organization.'' Costs of transporting members of such groups may be funded from Reed Act funds.

• Section 7(b)(3), Wagner-Peyser, identifies ''the extra costs of exemplary models for delivering'' Wagner-Peyser services as an allowable use of Wagner-Peyser funds. If transportation were part of an exemplary service delivery model for such services, it may be funded from Reed Act.

In both cases, transportation costs would be allowable only if the transportation involves transporting customers to enable them to access and receive employment services funded under the Wagner-Peyser Act or the Reed Act.

[FR Doc. 03–30249 Filed 12–4–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date on notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Rhode Island
RI030001 (Jun. 13, 2003)

Volume II

Pennsylvania
PA030001 (Jun. 13, 2003)
PA030002 (Jun. 13, 2003)
PA030003 (Jun. 13, 2003)
PA030004 (Jun. 13, 2003)
PA030005 (Jun. 13, 2003)
PA030006 (Jun. 13, 2003)
PA030007 (Jun. 13, 2003)
PA030008 (Jun. 13, 2003)
PA030009 (Jun. 13, 2003)
PA0300010 (Jun. 13, 2003)
PA0300013 (Jun. 13, 2003)
PA0300014 (Jun. 13, 2003)
PA0300016 (Jun. 13, 2003)
PA0300018 (Jun. 13, 2003)
PA0300019 (Jun. 13, 2003)
PA0300021 (Jun. 13, 2003)
PA0300023 (Jun. 13, 2003)
PA0300024 (Jun. 13, 2003)
PA0300025 (Jun. 13, 2003)
PA0300026 (Jun. 13, 2003)
PA0300030 (Jun. 13, 2003)
PA0300031 (Jun. 13, 2003)
PA0300032 (Jun. 13, 2003)
PA0300033 (Jun. 13, 2003)
PA0300040 (Jun. 13, 2003)
PA0300042 (Jun. 13, 2003)
PA0300052 (Jun. 13, 2003)
PA0300059 (Jun. 13, 2003)
PA0300060 (Jun. 13, 2003)
PA0300061 (Jun. 13, 2003)
PA0300065 (Jun. 13, 2003)

West Virginia
WV030001 (Jun. 13, 2003)
WV030002 (Jun. 13, 2003)
WV030003 (Jun. 13, 2003)
WV030006 (Jun. 13, 2003)
WV030010 (Jun. 13, 2003)

Volume III

Kentucky
KY030003 (Jun. 13, 2003)
KY030025 (Jun. 13, 2003)
KY030027 (Jun. 13, 2003)
KY030029 (Jun. 13, 2003)
KY030035 (Jun. 13, 2003)

Mississippi
MS030003 (Jun. 13, 2003)
MS030050 (Jun. 13, 2003)
MS030055 (Jun. 13, 2003)
MS030056 (Jun. 13, 2003)

Volume IV

None

Volume V

Louisiana
LA030053 (Jun. 13, 2003)

Volume VI

Colorado
CO030001 (Jun. 13, 2003)
CO030002 (Jun. 13, 2003)
CO030003 (Jun. 13, 2003)
CO030004 (Jun. 13, 2003)

CO030005 (Jun. 13, 2003)
CO030006 (Jun. 13, 2003)
CO030007 (Jun. 13, 2003)
CO030009 (Jun. 13, 2003)
CO030011 (Jun. 13, 2003)
CO030012 (Jun. 13, 2003)
CO030016 (Jun. 13, 2003)

Volume VII

Nevada
NV030002 (Jun. 13, 2003)
NV030009 (Jun. 13, 2003)

General Wage Determination Publication

General wage determination issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov)* of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 26th day of November, 2003.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–29998 Filed 12–4–03; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Public Law 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by January 5, 2003. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. Applicant

Robert A. Blanchette, Department of Plant Pathology; 1991 Upper Buford Circle; 495 Borlaug Hall, University of Minnesota, St. Paul, MN 55108–6030.

Activity for Which Permit is Requested

Take and Enter Antarctic Specially Protected Areas. The applicant proposes enter the historic huts in the Ross Sea Region (Cape Evans—ASPA #154, Cape Royds—ASPA #156, and Discovery Hut—ASPA #157) to collect samples of deterioration in and around the huts, evaluate damage from historic chemical and fuel spills, assess microbial populations at the sites and set up environmental monitoring of humidity and temperature within the huts. This work is being done in cooperation with the conservators from the New Zealand Antarctic Heritage Trust and researchers from the University of Waikato, New Zealand.

Location

Cape Evans Historic Site (ASPA #154), Cape Royds (ASPA #156), and Discovery Hut, Ross Island (ASPA #157):

Dates

January 1, 2004 to December 31, 2007.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 03–30197 Filed 12–4–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

National Science Board; Committee on Education and Human Resources

Date and Time: December 4, 2003, 12 noon–1 p.m., Open Session.

Place: The National Science Foundation, Stafford One Building, 4201 Wilson Boulevard, Room 220, Arlington, VA 22230.

Status: This meeting will be open to the public.

Matters To Be Considered:

Thursday December 4, 2003

Open Session 12 noon to 1 p.m.

Approval of the Board's response to Section 22 of the NSF Authorization Act, December, 2002.

FOR FURTHER INFORMATION CONTACT: Cathy Hines, Operations Officer, NSB, (703) 292–7000, *http://www.nsf.gov/nsb.*

Cathy Hines,

Operations Officer.

[FR Doc. 03–30328 Filed 12–2–03; 4:22 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board and Its Subdivisions

Federal Register Citation of Previous Announcement: Volume 68, Number 220, **Federal Register,** pages 64661–64662, November 14, 2003.

Previously Announced Date and Time: Wednesday, November 19, 2003.

Additional Concurrent Session

Open

National Science Board, Ad Hoc Task Group on Long-Lived Data Collections, (2:30–3:30 p.m.), Room 1295.

Place: The National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, *http://www.nsf.gov/nsb.*

FOR FURTHER INFORMATION CONTACT: National Science Board Office (703) 202–7000.

Status: Open.

Changes in the Meeting: A one-hour open meeting was added to the agenda after the schedule was published on the Web and in the **Federal Register.** Public announcement of this additional session was made on the NSF Web site ahead of the meeting; no earlier notice was possible. The following topic was discussed.

Discussion: Possible Workshop on Users of Long-Lived Data Collections.

Michael P. Crosby,

Executive Officer, NSB.

[FR Doc. 03–30329 Filed 12–2–03; 4:22 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348 and 50–364]

Southern Nuclear Operating Company, Joseph M. Farley Nuclear Plant; Notice of Intent to Prepare an Environmental Impact Statement and Conduct Scoping Process

Southern Nuclear Operating Company (SNC) has submitted an application for renewal of Facility Operating Licenses, NPF–2 and NPF–8 for an additional 20 years of operation at the Joseph M. Farley Nuclear Plant, Units 1 and 2. The Farley Nuclear Plant (FNP) is located in Houston County, Alabama about 16.5 miles east of the City of Dothan, Alabama. The operating licenses for Farley Nuclear Plant, Units 1 and 2, expire on June 25, 2017, and March 31, 2021, respectively. The application for renewal was received on September 15, 2003, pursuant to 10 CFR part 54. A notice of receipt and availability of the application, which included the environmental report (ER), was published in the **Federal Register** on October 6, 2003, (68 FR 57715). A notice of acceptance for docketing of the application for renewal of the facility operating license was published in the **Federal Register** on October 30, 2003, (68 FR 68135). A notice of an opportunity for a hearing regarding the application was published in the **Federal Register** on November 5, 2003, (68 FR 62640). The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) in support of the review of the license renewal application and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29. In addition, as outlined in 36 CFR 800.8, ''Coordination with the National Environmental Policy Act,'' the NRC plans to coordinate compliance with section 106 of the National Historic Preservation Act in meeting the requirements of the National Environmental Policy Act (NEPA).

In accordance with 10 CFR 51.53(c) and 10 CFR 54.23, SNC submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR part 51 and is available for public inspection at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html,* which provides access through the NRC's Electronic Reading Room link. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov.* The application may also be viewed on the Internet at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/farley.html.* In addition, the Houston Love Memorial Library, 212 West Burdeshaw Street, Dothan, Alabama and the Lucy Maddox Memorial Library, 11880 Columbia Street, Blakely, Georgia have agreed to make the ER available for public inspection.

This notice advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the Commission's ''Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants,'' (NUREG–1437) in support of the review of the application for renewal of the FNP operating licenses for an additional 20 years. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. The NRC is required by 10 CFR 51.95 to prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with the National Environmental Policy Act (NEPA) and the NRC's regulations found in 10 CFR part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the supplement to the GEIS.

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth.

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant.

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to, but are not part of the scope of the supplement to the GEIS being considered.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies.

h. Describe how the supplement to the GEIS will be prepared, and include any contractor assistance to be used.

The NRC invites the following entities to participate in the scoping:

a. The applicant, Southern Nuclear Operating Company.

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

d. Any affected Indian tribe.

e. Any person who requests or has requested an opportunity to participate in the scoping process.

f. Any person who intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include

a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold public meetings for the FNP license renewal supplement to the GEIS. The scoping meetings will be held at the Quality Inn, 3053 Ross Clark Circle, Dothan, Alabama, on Thursday, January 8, 2004. There will be two sessions to accommodate interested parties. The first session will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second session will convene at 7 p.m. with a repeat of the overview portions of the meeting and will continue until 10 p.m., as necessary. Both meetings will be transcribed and will include: (1) An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Additionally, the NRC staff will host informal discussions one hour before the start of each session at the Quality Inn. No formal comments on the proposed scope of the supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting Mr. Cushing, by telephone at 1–800–368–5642, extension 1424, or by Internet to the NRC at *FarleyEIS@nrc.gov* no later than January 2, 2004. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. Mr. Cushing will need to be contacted no later than December 17, 2003, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scope of the FNP license renewal review to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be delivered to the NRC, Room T–6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. during Federal workdays. To be considered in the scoping process, written comments should be postmarked by February 6, 2004. Electronic comments may be sent by the Internet to the NRC at *FarleyEIS@nrc.gov* and should be sent no later than February 6, 2004, to be considered in the scoping process. Comments will be available electronically and accessible through ADAMS at *http://www.nrc.gov/reading-rm/adams.html.*

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Notice of opportunity for a hearing regarding the renewal application was the subject of the aforementioned **Federal Register** notice (68 FR 62640). Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection in ADAMS at *http://www.nrc.gov/reading-rm/adams.html.* The staff will then prepare and issue for comment the draft supplement to the GEIS, which will be the subject of separate notices and separate public meetings. Copies will be available for public inspection at the above-mentioned addresses, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final supplement to the GEIS, which will also be available for public inspection.

Information about the proposed action, the supplement to the GEIS, and the scoping process may be obtained from Mr. Cushing at the aforementioned telephone number or e-mail address.

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

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–30247 Filed 12–4–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of December 8, 2003:

A closed meeting will be held on Tuesday, December 9, 2003 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (5), (7), 9(B) and (10) and 17 CFR 200.402(a) (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Tuesday, December 9, 2003 will be:

Formal orders of investigation;
Institution and settlement of administrative proceedings of an enforcement nature;
Institution and settlement of injunctive actions;
Litigation matters; and
Adjudicatory matters.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: December 2, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–30325 Filed 12–2–03; 4:18 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48855; File No. SR–BSE–2003–07]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. To Amend Its Listed Securities Requirements Relating to the Mandatory Establishment of Independent Audit Committees for All Listed Issuers

December 1, 2003.

I. Introduction

On July 16, 2003, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to add new requirements concerning audit committees to its Listed Securities Requirements in Section 10 of Chapter XXVII of the Rules of the Board of Governors of the BSE (''BSE Rules''). The proposed rule change would require each issuer listed on the BSE to establish an independent audit committee and to comply with other specified standards relating to audit committees, as mandated by section 10A(m) of the Act [3] and Rule 10A–3 thereunder.[4] The proposed rule change also includes certification, enforcement, and other compliance requirements, as well as a provision that sets forth the operative dates for the new requirements. The Exchange also committed to adopt additional listing policies and requirements pertaining to issuer corporate governance.

The proposed rule change was published for comment in the **Federal Register** on October 28, 2003.[5] The Commission received no comments on the proposal. On November 19, 2003, the BSE submitted an amendment to the proposed rule change.[6] This order approves the proposal, publishes notice of Amendment No. 1, and approves Amendment No. 1 on an accelerated basis.[7]

II. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] Specifically, the Commission finds that the proposal relating to independent audit committees for listed companies is consistent with section 6(b)(5) of the Act,[9] which requires, among other things, that the BSE's rules be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. Moreover, the Commission believes that the BSE's proposal to add the new requirements concerning audit committees is appropriate and consonant with section 10A(m) of the Act [10] and Rule 10A–3 thereunder relating to audit committee standards for listed issuers. The Commission notes that the BSE intends to file an additional rule proposal relating to other corporate governance listing standards.[11]

Furthermore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[12] to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 1, the BSE expanded, with respect to investment companies, the scope of the proposed provision regarding complaint procedures. Rule 10A–3 requires audit committees to establish procedures for ''the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters.''[13] The amended BSE proposal would require that audit committees of investment companies also establish procedures for the confidential, anonymous submission of such concerns by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company. This revision responds to a recommendation by the Commission that self-regulatory organizations take into account, in adopting rules to comply with Rule 10A–3, the fact that most services are rendered to an investment company by employees of third parties, such as the investment adviser, rather than by employees of the investment company.[14] In Amendment No. 1, the Exchange also made several technical revisions to the rule text. The Commission believes that it is appropriate to accelerate approval of this amendment, because it conforms the rule text to similar rules of the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. that were approved by the Commission,[15] and the amendment raises no new substantive issues.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–2003–07 and should be submitted by December 26, 2003.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78j–1(m).

[4] 17 CFR 240.10A–3.

[5] *See* Securities Exchange Act Release No. 48668 (October 21, 2003), 68 FR 61494 (''Notice'').

[6] *See* letter from John Boese, Vice President, Legal and Compliance, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 18, 2003 (''Amendment No. 1''). In Amendment No. 1, the BSE made minor, non-substantive changes to the text of the proposed rule and, with respect to investment companies, expanded the scope of the requirement that audit committees establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters.

[7] Rule 10A–3 requires each national securities exchange and national securities association to have rules that comply with its requirements approved by the Commission no later than December 1, 2003. By the Commission approving the proposed rule change, the Exchange can comply with this deadline.

[8] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78j–1(m).

[11] *See* Notice at note .

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 240.10A–3(b)(3)(ii).

[14] *See* Securities Act Release No. 8220, Securities Exchange Act Release No. 47654, and Investment Company Act Release No. 26001 (April 9, 2003), 68 FR 18788 (April 16, 2003) (release adopting Rule 10A–3).

[15] *See* Securities Exchange Act Release Nos. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approval of, among other proposals, File Nos. SR–NYSE–2002–33 and SR–NASD–2002–141).

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[16] that Amendment No. 1 is approved on an accelerated basis, and that the proposed rule change (File No. SR–BSE–2003–07) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30252 Filed 12–4–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48858; File No. SR–CBOE–2003–07]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 by the Chicago Board Options Exchange, Inc., Relating to the Trading of Ratio Orders

December 1, 2003.

I. Introduction

On February 24, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow ratio orders to be executed through the CBOE. The CBOE filed Amendment No. 1 to the proposal on October 8, 2003.[3]

The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on October 28, 2003.[4] The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The CBOE proposes to amend CBOE Rule 6.53, ''Certain Types of Orders Defined,'' to allow ratio orders with certain permissible ratio limits, as defined below, to be executed through the CBOE. In addition, the CBOE proposes to revise paragraph (e) of CBOE Rule 6.45, ''Priority of Bids and Offers—Allocation of Trades,'' to include these types of permissible ratio orders in CBOE Rule 6.45(e), thereby providing such ratio orders with the exception to the priority rules that CBOE Rule 6.45(e) provides currently for spread, straddle, and combination orders.[5] The CBOE believes that because ratio orders are slight variations on the types of complex orders currently permitted on the CBOE, it is appropriate to treat ratio orders like spread, straddle, and combination orders for purposes of CBOE Rule 6.45(e).

CBOE Rule 6.53 lists and defines several types of orders that are executed through the CBOE including, among others, three types of complex orders: spread orders, combination orders, and straddle orders. The CBOE proposes to add certain ratio orders within permissible established limits to the list of orders included in CBOE Rule 6.53. CBOE Rule 6.53(n) would define a ratio order as either a spread, straddle, or combination order in which the stated number of option contracts to buy (sell) is not equal to the stated number of option contracts to sell (buy), provided that the number of contracts differs by a permissible ratio. Under CBOE Rule 6.53(n), a permissible ratio would be any ratio that is equal to or greater than one-to-three (.333) or less than or equal to three-to-one (3.0). For example, a one-to-two (.5) ratio, a two-to-three (.667) ratio, or a two-to-one (2.0) ratio is permissible, whereas a one-to-four (.25) ratio or a four-to-one (4.0) ratio is not.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [6] and, in particular, with the requirements of section 6(b)(5) of the Act,[7] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

The proposal will allow certain ratio orders to be executed through the CBOE. As described above, a ratio order is a spread, straddle, or combination order in which the stated number of option contracts to buy (sell) is not equal to the stated number of option contracts to sell (buy), provided that the number of contracts differs by a permissible ratio.[8] The Commission believes that ratio orders within certain permissible ratios may provide market participants with greater flexibility and precision in effectuating trading and hedging strategies. In addition, the Commission believes that including such ratio orders in the exception to the priority rules provided in CBOE Rule 6.45(e) will facilitate the execution of ratio orders. In this regard, the Commission believes that the procedures governing the execution of complex orders, such as ratio orders, serve to reduce the risk of incomplete or inadequate executions while increasing efficiency and competitive pricing by requiring price improvement before the order can receive priority over other orders.[9] The Commission also notes that the rules of other options exchanges treat certain ratio orders like other complex orders for purposes of their priority rules.[10]

The CBOE's rule also provides specific examples of permissible ratio orders. Specifically, the rule provides that a permissible ratio is any ratio that is equal to or greater than one-to-three and less than or equal to three-to-one. For example, as indicated in the rule, a one-to-two ratio, a two-to-three ratio, or a two-to-one ratio is permissible, whereas a one-to-four ratio or a four-to-one ratio is not. This should help to provide guidance to CBOE members of the permissible ratios allowed under CBOE rules for such ratio orders.

The Commission believes that permitting ratio orders to have ratios equal to or greater than one-to-three or

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[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from James M. Flynn, Attorney II, Legal Division, CBOE, to Yvonne Fraticelli, Division of Market Regulation, Commission, dated October 6, 2003 (''Amendment No. 1''). Amendment No. 1 revises the proposal to provide that the permissible ratio for a ratio order is any ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.0).

[4] *See* Securities Exchange Act Release No. 48672 (October 21, 2003), 68 FR 61499.

[5] CBOE Rule 6.45(e), ''Complex Order Priority Exception,'' currently states that: ''A member holding a spread, straddle, or combination order (or a stock-option order as defined in Rule 1.1(ii)(b)) and bidding (offering) on a net debit or credit basis (in a multiple of the minimum increment) may execute the order with another member without giving priority to equivalent bids (offers) in the trading crowd or in the book provided at least one leg of the order betters the corresponding bid (offer) in the book. Stock-option orders, as defined in Rule 1.1(ii)(a), have priority over bids (offers) of the trading crowd but not over bids (offers) of public customers in the limit order book.''

[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] Under the proposal, a permissible ratio is any ratio that is equal to or greater than one-to-three (.333) or less than or equal to three-to-one (3.0).

[9] *See, e.g.*, CBOE Rule 6.45(e). *See also* Securities Exchange Act Release No. 44955 (October 18, 2001), 66 FR 53819 (October 24, 2001) (order approving File No. SR–ISE–2001–18).

[10] *See, e.g.*, ISE rule 722(b)(2), ''Complex Order Priority,'' and PHLX Rule 1033(g), ''Ratio Spread Type Priority.''

less than or equal to three-to-one will help market participants to tailor their positions more precisely to implement their trading and hedging strategies. Because of concerns that a higher ratio could provide market participants with a means to enter a ratio order that was designed primarily to gain priority over orders on the limit order book or in the trading crowd, rather than to effectuate a bona fide trading or hedging strategy, the Commission would need to examine closely any proposal to provide a higher ratio for ratio orders and would be concerned about whether such a proposal would be consistent with investor protection and the public interest under the Act.[11]

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CBOE–2003–07), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30250 Filed 12–4–03; 8:45 am]

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[11] In this regard, the Commission notes that one exchange stated that a proposed three-to-one cap on the ratio for foreign currency option orders ''would prevent a trader seeking priority over an order on the book or in the crowd from restating an order as a ratio order. For example, such a cap would prevent a trader from recasting an order to buy 100 calls and sell one out-of-the-money put.'' *See* Securities Exchange Act Release No. 25503 (March 23, 1988), 53 FR 10323 (March 30, 1988) (order approving File No. SR–PHLX–87–33).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[(Release No. 34–48854; File No. SR–NASD–2003–135)]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Aggregate Odd-Lot Amounts for Display in SuperMontage Under Certain Circumstances

November 28, 2003.

On August 28, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to aggregate odd-lot share amounts inside the inside spread for display purposes via the SIZE MMID. On October 20, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The **Federal Register** published the proposed rule change, as amended, for comment on October 28, 2003.[4] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[5] and, in particular, the requirements of section 15A of the Act[6] and the rules and regulations thereunder. The Commission notes that the proposed rule change, as amended, permits Nasdaq to aggregate odd-lots for display purposes that better the Nasdaq inside market and that combined equal or are larger than one round lot, thus increasing transparency and providing investors with greater price information. Therefore, the Commission finds the proposed rule change is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, consistent with section 15A(b)(6) of the Act.[7] As proposed by Nasdaq, the proposed rule change will be effective on December 8, 2003.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change, as amended, (SR–NASD–2003–135) be, and it hereby is, approved.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated October 17, 2003 (''Amendment No. 1''). Amendment No. 1 replaced and superseded the original proposed rule change in its entirety.

[4] *See* Securities Exchange Act Release No. 48671 (October 21, 2003), 68 FR 61531.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30251 Filed 12–4–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Region IX Regulatory Fairness Board; Public Federal Regulatory Enforcement Fairness Roundtable

The Small Business Administration Region IX Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Roundtable on Thursday, December 4, 2003 at 1 p.m. at the SETA Headquarters, Board Room, 925 Del Paso Boulevard, Sacramento, CA 95815, to provide small business owners and representatives of trade associations with an opportunity to share information concerning the federal regulatory enforcement and compliance environment.

Anyone wishing to attend or to make a presentation must contact Robert Stitt in writing or by fax, in order to be put on the agenda. Robert Stitt, SBA Sacramento District Office, 650 Capital Mall, Suite 7–500, Sacramento, CA 95814, phone (916) 930–3722, fax (916) 930–3736 or (202) 481–5298, e-mail: *Robert.Stitt@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Dated: December 1, 2003.

Peter Sorum,

National Ombudsman (Acting).

[FR Doc. 03–30209 Filed 12–4–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4549]

60-Day Notice of Proposed Information Collection: DS–2028 Overseas Schools—Grant Status Report; OMB Control Number 1405–0033

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

[9] 17 CFR 200.30–3(a)(12).

with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: An extension of a currently approved collection.

Originating Office: A/OPR/OS.

Title of Information Collection: Overseas Schools ''Grant Status Report.

Frequency: Annually.

Form Number: DS–2028.

Respondents: Overseas school grantees.

Estimated Number of Respondents: 185.

Average Hours Per Response: 15 minutes.

Total Estimated Burden: 46.25.

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 INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Keith D. Miller, Department of State, Office of Overseas Schools, Room H328 SA–1, Washington, DC 20522–0132 who may be reached on 202–261–8200.

Dated: December 1, 2003.

Peggy M. Philbin,

Executive Director, Bureau of Administration, Department of State.

[FR Doc. 03–30275 Filed 12–4–03; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16356]

Extension of Comment Period on Whether Nonconforming 2002 and 2003 Ferrari 575 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Extension of comment period.

SUMMARY: This document announces the extension of the comment period on a petition for NHTSA to decide that 2002 and 2003 Ferrari 575 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States.

DATES: The closing date for comments on the petition is December 12, 2003.

ADDRESSES: Comments are to be submitted to: Docket Management, Room PL–401, 400 Seventh Street SW., Washington, DC 20590. Docket hours are from 9 am to 5 pm. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the document (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–787) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202) 366–3151.

SUPPLEMENTARY INFORMATION: On October 28, 2003, NHTSA published a notice (at 68 FR 61549) that it had received a petition to decide that nonconforming 2002 and 2003 Ferrari 575 passenger cars are eligible for importation into the United States. The notice solicited public comments on the petition and stated that the closing date for comments is November 28, 2003.

This is to notify the public that NHTSA is extending the comment period until December 12, 2003. This extension is based on a request from Ferrari North America, Inc. (FNA), the U.S. representative of the vehicle's manufacturer, Ferrari, SpA. In requesting the extension, FNA that ''the employee of Ferrari SpA who has, among other duties, principal responsibility for technical analysis of importation eligibility petitions has been traveling on company business and therefore has not yet provided FNA with the information needed by FNA to prepare comments in the proceeding.'' FNA contended that the requested 2-week extension of the comment period ''will not prejudice the parties or unduly delay the proceeding.''

NHTSA has granted FNA's request. All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 2, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–30279 Filed 12–4–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34424]

Canadian National Railway Company and Grand Trunk Corporation—Control—Duluth, Missabe and Iron Range Railway Company, Bessemer and Lake Erie Railroad Company, and The Pittsburgh & Conneaut Dock Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Decision No. 2 in STB Finance Docket No. 34424; Notice of Acceptance of Primary Application and Related Filings; Issuance of Procedural Schedule.[1]

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration the primary application and related filings filed November 5, 2003, by Canadian National Railway Company (CNR, a rail carrier that controls several rail carrier subsidiaries) and Grand Trunk Corporation (GTC, a noncarrier holding company through which CNR controls its U.S. rail carrier subsidiaries). CNR and GTC are referred to collectively as CN or as applicants. The primary application seeks Board approval and authorization under 49

[1] This decision covers: the railroad control application filed in STB Finance Docket No. 34424, *Canadian National Railway Company and Grand Trunk Corporation—Control—Duluth, Missabe and Iron Range Railway Company, Bessemer and Lake Erie Railroad Company, and The Pittsburgh & Conneaut Dock Company;* the trackage rights exemption notice filed in STB Finance Docket No. 34424 (Sub-No. 1), *Duluth, Winnipeg and Pacific Railway Company—Trackage Rights—Duluth, Missabe and Iron Range Railway Company;* and the trackage rights exemption notice filed in STB Finance Docket No. 34424 (Sub-No. 2), *Duluth, Missabe and Iron Range Railway Company—Trackage Rights—Duluth, Winnipeg and Pacific Railway Company.* The railroad control application filed in STB Finance Docket No. 34424 is referred to as the ''primary application.'' The trackage rights exemption notices filed in STB Finance Docket No. 34424 (Sub-Nos. 1 and 2) are referred to collectively as the ''related filings.''

U.S.C. 11321–26 for the acquisition by CN of control of three U.S. railroads: Duluth, Missabe and Iron Range Railway Company (DMIR), Bessemer and Lake Erie Railroad Company (B&LE), and the Pittsburgh & Conneaut Dock Company (P&C Dock). Because DMIR, B&LE, and P&C Dock are now controlled by Great Lakes Transportation LLC (GLT), the primary application is referred to as the ''CN/GLT Application,'' the transaction proposed in the primary application is referred to as the ''CN/GLT Transaction'' or the Transaction, and DMIR, B&LE, and P&C Dock are referred to collectively as the ''GLT Railroads.'' The related filings seek related trackage rights contingent upon approval of the primary application. The Board finds that the transaction proposed in the primary application is a ''minor transaction'' under 49 CFR 1180.2(c).

The Board has considered CN's petition suggesting a 146-day procedural schedule, also filed November 5, 2003. The Board is adopting a 156-day procedural schedule patterned upon the 156-day procedural schedule that was adopted earlier this year in the ''KCS/Tex Mex'' proceeding.[2] The 156-day procedural schedule adopted by the Board is essentially the same as the 146-day procedural schedule suggested by CN, except that the Board's schedule adds five days to the ''evidentiary proceeding'' stage and another five days to the ''final decision'' stage. The 156-day procedural schedule will allow the Board to issue a decision 45 days after the close of the record and 24 days prior to the statutory deadline, assuming that no unanticipated environmental review is required.

DATES: The effective date of this decision is December 5, 2003. Comments on CN's Environmental Appendix (submitted November 5, 2003, and supplemented November 10, 2003) are due by December 10, 2003. CN must submit its Safety Integration Plan (SIP) by December 15, 2003. Any person who wishes to participate in this proceeding as a party of record (POR) must file, no later than December 19, 2003, a notice of intent to participate. Comments on CN's SIP must be filed by January 22, 2004. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application and/or either or both of the related filings, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by January 26, 2004. Responses to comments, protests, requests for conditions, and other opposition, responses to comments of DOJ and DOT, and rebuttal in support of the primary application and/or either or both of the related filings must be filed by February 24, 2004. A public hearing/oral argument will be held the week of March 1, 2004 (the precise date and the location will be announced later). For further information respecting dates, *see* Appendix A (Procedural Schedule).

ADDRESSES: Send an original and 20 copies of all pleadings (except for environmental submissions, as discussed below) referring to STB Finance Docket No. 34424 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.[3] In addition, one copy of all documents in this proceeding must be sent to each of the following: (1) Secretary of the United States Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3645, Department of Justice, Washington, DC 20530; and (3) Paul A. Cunningham, Esq., Harkins Cunningham LLP, 801 Pennsylvania Avenue, NW., Suite 600, Washington, DC 20004–2664.

In addition to submitting an original and 20 copies of all paper documents filed with the Board, parties must also submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or compact discs (CDs), copies of all textual materials, electronic workpapers, data bases, and spreadsheets used to develop quantitative evidence. Textual materials must be in, or compatible with, WordPerfect 10.0. Electronic spreadsheets must be in, or compatible with, Lotus 1–2–3 Release 9 or Microsoft Excel 2002. A copy of each disk or CD submitted to the Board should be provided to any other party upon request. Further details are discussed below.

Comments (an original and 10 copies) on the Environmental Appendix and SIP should be submitted in writing to: Attn: Phillis Johnson-Ball, STB Finance Docket No. 34424, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565–1655. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

SUPPLEMENTARY INFORMATION: The CN/GLT Transaction proposed in the primary application contemplates the acquisition, by CN, of control of four carriers—the three GLT Railroads (DMIR, B&LE, and P&C Dock) and an affiliated water carrier (Great Lakes Fleet, Inc., referred to as GLF)—which now operate an integrated iron ore delivery chain that extends from ore mines in Minnesota to steel plants in Pennsylvania. The three GLT Railroads (DMIR, B&LE, and P&C Dock) and the affiliated GLT water carrier (GLF) are referred to collectively as the ''GLT Carriers.'' The proposed acquisition, by CN, of control of DMIR, B&LE, and P&C Dock is subject to the jurisdiction of the Board; the related acquisition, by CN, of control of GLF is not subject to the jurisdiction of the Board. *See* 49 U.S.C. 11323 (the Board's ''control jurisdiction'' extends only to transactions involving rail carriers). The related acquisition, by CN, of control of GLF is, however, subject to review by the U.S. Maritime Administration and the Coast Guard, and is also subject to review under the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

Canadian National. As of September 30, 2003, CN's rail network, which crosses North America from east to west and from north to south, serving major ports on three coasts, consisting of 17,539 route miles in 15 American states and eight Canadian provinces. CN's principal routes run: (1) Between Vancouver and Prince Rupert, BC, in the west, and Halifax, NS, in the east, serving every major metropolitan area in Canada; (2) between Chicago, IL, and Buffalo, NY, serving three major metropolitan areas (Chicago, IL, Detroit, MI, and Buffalo, NY) in the U.S.; (3) between Winnipeg, MB, and Chicago, IL; (4) between Chicago and the Gulf of Mexico, reaching every major metropolitan area on the Mississippi River (including St. Louis, MO, Memphis, TN, and New Orleans, LA); and (5) between Nebraska/Iowa and Chicago, extending from Sioux City and Council Bluffs, IA, in the west, to Chicago in the east. CN's U.S. operations are conducted by CNR and, through CNR's GTC subsidiary, by 10 U.S. railroads that are part of the CN system: Duluth, Winnipeg and Pacific

[2] *See Kansas City Southern—Control—The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company,* STB Finance Docket No. 34342, Decision No. 2 (STB served June 9, 2003, and published at 68 FR 35474 on June 13, 2003).

[3] For a document to be considered a formal filing, the Board must receive an original and 20 copies of the document, which must show that it has been properly served upon all Parties of Record. Documents transmitted by facsimile (Fax) will not be considered formal filings and are not encouraged because they would result in unnecessarily burdensome, duplicative processing. In addition, each formal filing must be accompanied by an electronic submission per the Board's requirements as discussed in detail in this decision.

Railway Company (DWP), Grand Trunk Western Railroad Incorporated (GTW), St. Clair Tunnel Company (SCTC), Illinois Central Railroad Company (IC), Chicago, Central & Pacific Railroad Company (CCP), Cedar River Railroad Company (CRRC), Waterloo Railway Company (WRC), Wisconsin Central Ltd. (WCL), Sault Ste. Marie Bridge Company (SSMB), and Wisconsin Chicago Link Ltd. (WCLL).

In 1999, CN acquired IC to position itself to better serve north-south ''NAFTA'' traffic by extending its system from Chicago to the Gulf Coast. As a result of the 1999 CN/IC transaction and CN's 1998 marketing alliance with The Kansas City Southern Railway Company (KCS), CN is today part of a NAFTA rail network offering shippers access to TFM, S.A. de C.V. (TFM), Mexico's largest rail system. In 2001, CN acquired WCL and its affiliates, thus providing CN with a connection between Chicago and the CN lines west of the Great Lakes. This connection is completely under CN ownership, with the exception of the 17-mile segment between Nopeming Junction, MN, and South Itasca, WI, over which CN's DWP subsidiary operates by means of trackage rights granted by DMIR.

The GLT Carriers. DMIR, a Class II railroad that owns 212 miles of rail line in Minnesota and Wisconsin, carries primarily: (1) Taconite pellets (a form of processed iron ore) from taconite plants in the Mesabi Range (a) to DMIR-owned docks on Lake Superior at Duluth, MN, and Two Harbors, MN (for loading onto vessels for movement to steel plants), and (b) to interchange points with other railroads; and (2) limestone from the dock at Duluth to Mesabi Range taconite plants. DMIR's Missabe Main Line runs 74 miles in a generally north-south direction between Mountain Iron, MN, and Duluth, MN. Its Iron Range Main Line runs 74 miles in a generally east-west direction between Iron Junction, MN (where the Missabe Main Line and the Iron Range Main Line intersect) and Two Harbors, MN. DMIR also operates 64 miles of branch lines. Among these branch lines are the Shaw Cut Off/Superior Branch, which runs 16 miles eastward from Emmert, MN, to Keenan, MN, where it meets the Missabe Main Line; the Taconite District, which runs 4.5 miles to the west of Calumet, MN (the Taconite District is not contiguous with any other DMIR line); and the Interstate Branch/Spirit Lake Branch, which runs from Adolph, MN (on the Missabe Main Line), 23 miles in a generally southward and eastward direction through Nopeming Junction, MN, to South Itasca, WI (near Superior, WI), where DMIR's property ends. DMIR's lines between Virginia, MN (in the north), and Duluth, MN, and South Itasca, WI (in the south), are generally parallel to CN's lines between Virginia and South Itasca, and, for the southernmost 17 miles of that corridor (*i.e.*, the 17-mile segment from Nopeming Junction, MN, to South Itasca, WI), CN and DMIR operate over the same track, pursuant to trackage rights granted by DMIR to CN's DWP subsidiary. DMIR itself operates via trackage rights over 10 miles of CN track between Shelton, MN, and Minorca Junction, MN, and over 19 miles of track of the Burlington Northern and Santa Fe Railway Company (BNSF) between Calumet, MN, and Emmert, MN (the Calumet-Emmert trackage rights enable DMIR to access its Taconite District).

B&LE, a Class II railroad operating between North Bessemer, PA (near Pittsburgh, PA), and the port at Conneaut, OH (on Lake Erie), carries principally coal, iron ore, and limestone. B&LE's main line runs between North Bessemer and Albion, PA, and its two northernmost branch lines run between Albion, PA, on the one hand, and, on the other hand, Conneaut, OH, and Wallace Junction, PA.

P&C Dock, a Class III railroad, does not own or operate any rail routes, but performs switching operations and ship-to-rail and rail-to-ship bulk transfer operations for B&LE at three docks at Conneaut, OH.

GLF is a water carrier (not a rail carrier) that owns a fleet of vessels that carry ore and other bulk commodities on the Great Lakes.

DMIR, B&LE, P&C Dock, and GLF are wholly owned subsidiaries of DMIR Holdings Corp. (DMIR Holdings), B&LE Holdings Corp. (B&LE Holdings), P&CD Holdings Corp. (P&CD Holdings), and GLF Holdings Corp. (GLF Holdings), respectively. DMIR Holdings, B&LE Holdings, P&CD Holdings, and GLF Holdings are noncarriers, and each is a wholly owned subsidiary of Great Lakes Transportation LLC (GLT). GLT is owned by Great Lakes Transportation Holdings, L.P., which is an affiliate of The Blackstone Group.

The CN/GLT Transaction. GTC and GLT have entered into a Stock Purchase Agreement (the CN/GLT Agreement), dated October 19, 2003, that provides that, subject to a number of conditions, GTC will purchase from GLT all of the issued and outstanding shares of DMIR Holdings, B&LE Holdings, P&CD Holdings, and GLF Holdings for an overall purchase price of $380 million, subject to certain adjustments provided for in the CN/GLT Agreement. CN advises that, if the CN/GLT Transaction is approved, it intends to pay the purchase price in cash on the closing date under the CN/GLT Agreement (CN expects to meet the cash requirements for consummation of the Transaction by borrowing under its existing revolving credit facility, combined with long-term debt), and it intends to consummate control of the GLT Railroads as soon as possible after a final order of the Board approving the primary application and authorizing the Transaction has become effective. CN further advises that, because it plans few operational changes in connection with the CN/GLT Transaction, it expects to fully implement that Transaction shortly after consummation of CN control of the GLT Railroads. CN adds that, although it does not anticipate any increases in total traffic and revenue handled by CN and the GLT Railroads as a result of the CN/GLT Transaction, it does anticipate that the Transaction would lead to more efficient operations and permit efficiency-related cost reductions. CN advises that it has no present plans to merge DMIR Holdings, B&LE Holdings, or P&CD Holdings into any other entity in the CN system, or to merge any of the GLT Railroads with any of CN's other subsidiaries.

Related Filings. DWP and DMIR operate two separate rail lines that run between Shelton Junction, MN (near Virginia, MN), and Nopeming Junction, MN (near Superior, WI). The related filings, which were made pursuant to 49 CFR 1180.2(d)(7), involve reciprocal grants of trackage rights that would allow each of DWP and DMIR to operate its trains, locomotives, cars, and equipment, with its own crews, over the other's essentially parallel line between Shelton Junction and Nopeming Junction. In STB Finance Docket No. 34424 (Sub-No. 1), DWP has filed a notice of exemption relating to trackage rights to be granted to DWP over DMIR's lines between Shelton Junction (Mileage B 2.71 on DMIR's Virginia Branch) and Nopeming Junction (Mileage R 5.77 on DMIR's Spirit Lake Branch), a distance of approximately 64 miles. In STB Finance Docket No. 34424 (Sub-No. 2), DMIR has filed a notice of exemption relating to trackage rights to be granted to DMIR over DWP's lines between Shelton Junction (MP 70.7 on DWP's Rainy Subdivision) and Nopeming Junction (MP 10.7 on DWP's Rainy Subdivision), a distance of approximately 60 miles. The reciprocal trackage rights provided for in the notices of exemption filed in STB Finance Docket No. 34424 (Sub-Nos. 1 and 2) are intended to be effective upon

acquisition by CN of control of DMIR, and, therefore, are contingent upon approval of the primary application.

CN/GLT Common Control: Purposes Served. CN contends that its acquisition of control of the GLT Railroads would serve three primary purposes.

First, acquisition of control of DMIR would give CN full ownership of the route over which all CN traffic between Winnipeg and Chicago now moves. CN notes that, at present, it must operate by means of trackage rights granted by DMIR over the 17-mile segment between Nopeming Junction and South Itasca.

Second, CN contends that acquisition of control of DMIR would increase CN's operational flexibility by allowing CN to institute ''directional running'' on the two parallel Shelton Junction-Nopeming Junction lines, which would reduce transit time and increase service reliability over CN's entire Winnipeg-Chicago corridor. CN adds that, because DMIR's Shelton Junction-Nopeming Junction line has newer ties and newer and heavier rail than DWP's Shelton Junction-Nopeming Junction line, the transfer to the DMIR line of some traffic that now uses the DWP line would allow CN to avoid the capital expenditures that would otherwise be required for centralized traffic control (CTC) and extensions of sidings on the DWP line.

Third, CN contends that acquisition of control of the four GLT Carriers (DMIR, B&LE, P&C Dock, and GLF), which provide an important supply line for the North American steel industry, would enable CN to develop closer and more extensive relationships with companies in and serving that industry.

CN/GLT Common Control: Public Interest Considerations. CN contends that the CN/GLT Transaction would benefit the public interest by connecting two transportation systems that do not compete with each other but, rather, complement each other. The CN/GLT Transaction, CN argues, would strengthen the GLT Railroads by making them part of the rail system operated by CN, a successful rail carrier that would have the commitment and ability to make long-term investments in plant, equipment, and systems as they become needed. CN contends that the CN/GLT Transaction would enable CN to lower its maintenance costs and to improve transit times and reliability for shippers by using the parallel DWP and DMIR lines between Shelton Junction and Nopeming Junction for freight moving between western Canada and Chicago. And, CN adds, the CN/GLT Transaction would eliminate the need for interchange between CN and DMIR, thus permitting some single-line rail operations to and from shippers on CN and on DMIR, which should result in reduced handling and shortened car transit times.

CN contends that, in view of the limited scope of the CN/GLT Transaction, the record of CN and its constituent railroads over the past decade in successfully implementing rail consolidations, the good operating condition of both systems, and the absence of any need for a sweeping ''Day One'' change in systems, the CN/GLT Transaction would present a low risk of implementation-related service difficulties.

CN contends that the CN/GLT Transaction would have no anticompetitive effects.

(1) *Horizontal Effects.* CN contends that the CN/GLT Transaction would not have adverse ''horizontal'' effects on competition. CN explains that, except for Virginia, MN, and Duluth, MN/Superior, WI, which each receive rail service from three or more rail carriers, the CN and GLT lines serve no common metropolitan areas or cities. CN further explains that there would be no 2-to-1 shippers (*i.e.*, there is no shipper now capable of receiving rail service from more than one independent railroad who would be reduced to having only one independent railroad available to it), and that, although there would arguably be one 3-to-2 shipper (*i.e.*, a shipper now capable of receiving rail service from three independent railroads that, as a result of the Transaction, would only have two independent railroads available), that shipper (Koppers, Inc., at Ambridge, MN) would not be adversely affected by the nominal reduction in horizontal competition.[4]

(2) *Vertical Effects.* CN contends that the CN/GLT Transaction would not have adverse ''vertical'' effects on competition. CN explains that there would be no harm to shippers from a reduction in source or geographic competition, because CN and the GLT Railroads do not serve competing origins or destinations. CN further explains that, although vertical effects might conceivably arise when a railroad with market power in one geographic market merges with a connecting railroad and, as a result of the merger, extends its market power to the connecting railroad's territory, closing gateways and thus foreclosing other connecting railroads from participating in movements to or from the first railroad's service area, vertical effects of this nature are unlikely as a matter of economic theory. CN adds that, in any event, applicants would not engage in such foreclosure by closing efficient gateways; rather, applicants would keep all existing active gateways affected by the CN/GLT Transaction open on commercially reasonable terms, and applicants would waive any defenses they might otherwise have as a result of the CN/GLT Transaction, under the Board's general policy that it does not separately regulate bottleneck rates, in circumstances where a shipper prior to the CN/GLT Transaction would have been entitled to regulation of a bottleneck rate under the Board's ''contract exception'' to the general rule.

Special Case: Eveleth Mines, LLC, d/b/a EVTAC Mining. CN advises: that, until May 2003, Eveleth Mines, LLC, d/b/a EVTAC Mining (EVTAC), operated a facility at Fairlane, MN (11 miles south of Virginia, MN), that processed raw iron ore into taconite pellets; that, although only DMIR was physically capable of carrying iron ore to, or processed taconite pellets from, the loading and unloading tracks at EVTAC's Fairlane facility, both CN and DMIR were capable of carrying general freight (*i.e.*, commodities other than iron ore and taconite) to and from other tracks at that facility; and that, therefore, if EVTAC had not closed the Fairlane facility in May 2003, that facility would have been regarded, as respects the CN/GLT Transaction, as a ''1-to-1'' facility for iron ore and taconite and a ''2-to-1'' facility for general freight. CN also advises, however, that it might be argued that CN could have built in to the Fairlane facility to handle its iron ore and taconite freight, or that EVTAC could have built out to CN to obtain competitive service from CN as respects EVTAC's iron ore and taconite movements. CN further advises: That, if the EVTAC facility should reopen and require rail service, CN would be prepared to offer competitive access to another railroad for general freight, so as to restore two-railroad competition for that traffic; that, to this end, CN intends, should EVTAC reopen, to grant trackage rights access to EVTAC to another railroad, or, if traffic volumes are too low to justify trackage rights operations, to provide haulage service or switching at a rate that would not disadvantage the other railroad; and that, to replicate any build-in or build-out opportunity that now exists as respects iron ore and taconite traffic, CN would also be prepared to provide another railroad access to the build-in or build-out point via trackage rights over the DWP line. CN adds that, although it would expect to negotiate the terms of such access (either as respects general freight or as

[4] *See* CN–2 at 53. *See also* CN–2 at 68 & n.3.

respects access to the build-in/build-out point) through voluntary agreement with a competing railroad, it is, of course, possible that the parties might be unable to agree on such terms. CN therefore contends that, if the Board approves the primary application, the Board should retain jurisdiction over the CN/GLT Transaction for a reasonable period for the purpose of reopening this proceeding if the EVTAC facility should resume operations and require rail service, if necessary to prescribe terms of access for a second rail carrier to handle general freight (*i.e.*, commodities other than iron ore and taconite) to and/or from the EVTAC facility, or to prescribe terms of access to a build-in or build-out point on the existing DWP line that would permit a second rail carrier to handle iron ore and taconite to/from that facility. CN adds that, because its trackage rights agreement with DMIR prohibits CN from transporting iron ore (including taconite pellets) over the DMIR line between Nopeming Junction and South Itasca, CN should not be required to permit use of that DMIR line for transportation of iron ore, except on commercial terms. CN also adds that, because CN does not have access to an ore dock of its own in the Duluth/Superior area, the railroad receiving trackage rights to a build-in/build-out point should not be one that presently owns such a dock.

Labor Protection. CN projects that the CN/GLT Transaction would result in the elimination of 122 positions and the transfer of 18 positions. CN also projects that the reciprocal grants of Shelton Junction-Nopeming Junction trackage rights provided for in the related filings would have no adverse effect on train and engine service employees. CN notes, however, that, whereas these projections represent CN's best estimate, based on information presently available, of the changes necessary to effect the public transportation benefits and the efficiencies of the CN/GLT Transaction, additional changes might be required as circumstances change, opportunities open elsewhere on the CN system, traffic and shipping patterns evolve, and CN acquires experience in operating the combined system. CN acknowledges that the applicable level of labor protection for the CN/GLT Transaction would be that set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.,* 360 I.C.C. 60, 84–90 (1979), *aff'd sub nom. New York Dock Ry.* v. *United States,* 609 F.2d 83 (2d Cir. 1979), and that the applicable level of labor protection for the Shelton Junction-Nopeming Junction trackage rights would be that set forth in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605, 610–15 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653, 664 (1980), *aff'd sub nom. Railway Labor Exec. Ass'n* v. *United States,* 675 F.2d 1248 (D.C. Cir. 1982). CN adds that management employees whose positions would be eliminated as a result of the Transaction, and who would not be offered a job opportunity elsewhere in the CN system, would be offered severance packages, and that, if relocation to another job is offered, CN would also offer to relocate the management employee in accordance with the then-current CN management relocation plan.

Primary Application and Related Filings Accepted

The Board agrees with CN that the CN/GLT Transaction proposed in the primary application would be a ''minor transaction'' under 49 CFR 1180.2(c), and the Board is accepting the primary application for consideration because it is in substantial compliance with the applicable regulations governing minor transactions. *See* 49 U.S.C. 11321–26; 49 CFR part 1180. The Board is also accepting for consideration the two related filings, which are also in compliance with the applicable regulations. The Board reserves the right to require the filing of supplemental information from CN or any other party or individual, if necessary to complete the record in this matter.

Public Inspection

The primary application and the related filings are available for inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1925 K Street, NW., in Washington, DC. In addition, they may be obtained from CN's representative (Mr. Cunningham) at the address indicated above.

Procedural Schedule

CN contends that, in view of the asserted public benefits of the CN/GLT Transaction, the asserted lack of competitive harm, and the asserted absence of complicating environmental factors or related applications, a shorter procedural schedule than the 180-day maximum procedural schedule allowed by statute would be appropriate. CN has therefore proposed a 146-day procedural schedule that provides for issuance of a decision by the Board on March 30, 2004.

The Board is adopting a 156-day procedural schedule patterned upon the 156-day procedural schedule that was adopted earlier this year in the ''KCS/Tex Mex'' proceeding. The Board's 156-day procedural schedule, although 10 days longer than the schedule suggested by CN, still provides for less total time than the 180-day procedural schedule (30 days + 105 days + 45 days) established by the deadlines set forth at 49 U.S.C. 11325(a), (d)(2). Comments on CN's Environmental Appendix (submitted November 5, 2003, and supplemented November 10, 2003) are due by December 10, 2003. CN must submit its Safety Integration Plan (SIP) by December 15, 2003. Any person who wishes to participate in this proceeding as a party of record (POR) must file, no later than December 19, 2003, a notice of intent to participate. Comments on CN's SIP must be filed by January 22, 2004. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application and/or either or both of the related filings, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by January 26, 2004. As in past proceedings, DOT will be allowed to file, on the reply due date (here, February 24, 2004), its comments in response to the comments of other parties, and CN will be allowed to late-file (as quickly as possible) a reply to DOT's responsive comments. Responses to comments, protests, requests for conditions, and other opposition, responses to comments of DOJ and DOT, and rebuttal in support of the primary application and/or either or both of the related filings must be filed by February 24, 2004. A public hearing/oral argument will be held the week of March 1, 2004 (the precise date and the location will be announced later). The Board's decision will be issued on April 9, 2004 (the 156th day after the date on which the primary application and the related filings were filed, and the 45th day after the close of the record). If, however, it is determined that an Environmental Impact Statement or Environmental Assessment is required, the procedural schedule will be adjusted as necessary.

Notice of Intent To Participate

Any person who wishes to participate in this proceeding as a POR must file with the Board, no later than December 19, 2003, an original and 20 copies of a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of the United States Department of Transportation, the Attorney General of the United States, and CN's representative (Mr. Cunningham). In

addition, as previously noted, parties must submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

The Board will serve, as soon as practicable, a notice containing the official service list (the service list notice). Each POR will be required to serve upon all other PORs, within 10 days of the service date of the service list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each POR also will be required to file with the Board, within 10 days of the service date of the service list notice, an original plus 10 copies of a certificate of service, along with an electronic copy, indicating that the service required by the preceding sentence has been accomplished. Every filing made by a POR after the service date of the service list notice must have its own certificate of service indicating that all PORs on the service list have been served with a copy of the filing. Members of the United States Congress (MOCs) and Governors (GOVs) are not parties of record, and therefore, need not be served with copies of filings, unless any such Member or Governor has requested to be, and is designated as, a POR.

The Board will serve copies of its decisions, orders, and notices only on those persons who are designated on the official service list as either POR, MOC, or GOV. All other interested persons are encouraged to make advance arrangements with the Board's copy contractor, ASAP Document Solutions,[5] to receive copies of Board decisions, orders, and notices served in this proceeding. ASAP Document Solutions will handle the collection of charges and the mailing and/or faxing of decisions, orders, and notices to persons who request this service.

An interested person does not need to be on the service list to obtain a copy of the primary application or any other filing made in this proceeding. The Board's Railroad Consolidation Procedures provide: ''Any document filed with the Board (including applications, pleadings, *etc.*) shall be promptly furnished to interested persons on request, unless subject to a protective order.'' 49 CFR 1180.4(a)(3). The primary application and other filings in this proceeding will also be available on the Board's Web site at *www.stb.dot.gov* under ''Filings.'' Furthermore, ASAP Document Solutions will provide, for a charge, copies of the primary application or any other filing made in this proceeding, except to the extent any such filing is subject to the protective order previously entered in this proceeding.

Comments, Protests, Requests for Conditions, and Other Opposition Evidence and Argument, Including Filings by DOJ and DOT

All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application and/or either or both of the related filings, including filings by DOJ and DOT, must be filed by January 26, 2004.

Parties (including DOJ and DOT) filing such comments, *etc.*, must submit an original and 20 copies thereof. Each such submission: must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; must refer to STB Finance Docket No. 34424; and must be clearly labeled with an identification acronym and number (*e.g.*, the primary application was labeled ''CN–2''), *see* 49 CFR 1180.4(a)(2). In addition, as previously noted, parties must submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

Comments, *etc.*, must be concurrently served by first class mail on the U.S. Attorney General and the Secretary of the United States Department of Transportation, CN's representative, and all other PORs, and should include the docket number and title of the proceeding, and the name, address, and telephone number of the commenting party and its representative upon whom service shall be made.

Because the CN/GLT Transaction proposed in the primary application has been determined to be a minor transaction, no responsive applications will be permitted. See 49 CFR 1180.4(d)(1).

Protesting parties are advised that, if they seek either the denial of the primary application or the imposition of conditions upon any approval thereof, on the theory that approval (or approval without imposition of conditions) would harm competition and/or their ability to provide essential services, they must present substantial evidence in support of their positions. *See Lamoille Valley R.R. Co.* v. *ICC,* 711 F.2d 295 (D.C. Cir. 1983).

Responses to Comments, Protests, Requests for Conditions, and Other Opposition, Including DOJ and DOT; Rebuttal in Support of Primary Application

Responses to comments, protests, requests for conditions, and other opposition submissions, responses to comments of DOJ and DOT, and rebuttal in support of the primary application and/or either or both of the related filings must be filed by February 24, 2004.

Environmental Matters

Under the regulations of the President's Council on Environmental Quality implementing the National Environmental Policy Act of 1969 (NEPA) and under the Board's environmental regulations as well, actions are separated into three classes that prescribe the level of documentation required in the NEPA process. Actions that may significantly affect the environment generally require the Board to prepare an Environmental Impact Statement (EIS). 40 CFR 1501.4(a)(1); 49 CFR 1105.4(f), 1105.6(a). Actions that may or may not have a significant environmental impact ordinarily require the Board to prepare a more limited Environmental Assessment (EA) (an EA is a document containing environmental analysis sufficient for the Board to determine whether it should prepare an EIS or may make a finding that the transaction will have no significant environmental impact). 40 CFR 1501.4(c); 49 CFR 1105.4(d), 1105.6(b). Actions that ordinarily have insignificant environmental effects may normally be categorically excluded from NEPA review, without a case-by-case review. 40 CFR 1500.4(p), 1501.4(a)(2), 1508.4; 49 CFR 1105.6(c). And, even when the Board's presumptive tonnage thresholds for environmental analysis are met, the Board may reclassify a particular transaction or modify the requirement that an EIS or EA be prepared, if the railroad applicant demonstrates that the proposed transaction has no potential for significant environmental effects. 49 CFR 1105.6(d).

Prior to filing the CN/GLT Application with the Board on November 5, 2003, CN discussed the CN/GLT Transaction with the Board's Section of Environmental Analysis (SEA) and explained that, in its view, the CN/GLT Transaction would have no significant environmental impacts, and that, therefore, preparation by the Board of an EIS or EA is not required to discharge the Board's obligations under NEPA. Pursuant to CN's discussions

[5] The mailing address is: ASAP Document Solutions, Suite 405, 1925 K Street, NW., Washington, DC 20006. The telephone number is: (202) 293–7878. The e-mail address is: *asapdoc.@verizon.net.*

with SEA, CN prepared an Environmental Appendix that describes what CN regards as the reasonably foreseeable impacts of the CN/GLT Transaction, and that explains why CN believes that there is no need to prepare either an EIS or an EA. CN argues, in essence: that the only reasonably foreseeable Transaction-related operational change involves coordinated use of the DWP/DMIR lines in the 64-mile Shelton Junction-Nopeming Junction corridor (which, CN advises, lies in a relatively sparsely populated area of northeastern Minnesota); that, if foreseeable increases in tonnage on the DMIR line are compared to traffic volumes now moving on the DMIR line, the Board's presumptive tonnage thresholds for environmental analysis would be exceeded on a total of 61.5 miles of the DMIR line; but that, if foreseeable increases in tonnage on the DMIR line are compared to the traffic volumes generated before the recent closing of EVTAC's Fairlane facility, the Board's presumptive tonnage thresholds would not be exceeded at all, except on the 6.0-mile segment running through the rural territory between Adolph and Nopeming Junction. CN contends, in essence, that whether potential traffic shifts are measured against a base that includes or excludes EVTAC traffic, the reality of the situation is that the environmental consequences of the CN/GLT Transaction would be insignificant and thus do not warrant environmental review beyond that entailed in the preparation and review of CN's Environmental Appendix.

CN offers the following points in support of this contention: (1) The Transaction should have no impact on land use, biological resources, or natural resources because there would be no construction or abandonment of rail lines, and no construction or operational changes in connection with rail yards or intermodal facilities; (2) there are no plans to dispose of or alter any properties that are 50 years old or older; (3) the only operational change contemplated by CN is the coordination of operations on the parallel DWP and DMIR lines between Shelton Junction and Nopeming Junction; (4) any traffic increases resulting from such coordination would reflect shifts of existing traffic, not new traffic or diversions from trucks or other railroads; (5) the DMIR line between Shelton Junction and Nopeming Junction runs through a lightly populated area; (6) the estimated increase in rail traffic on that line would be below the applicable tonnage threshold on nearly the entire length of that line, if the increase were measured against pre-May 2003 traffic volumes; (7) the potential environmental impacts from increased traffic on DMIR's Shelton Junction-Nopeming Junction line would be minimal (because there would be no increase in energy consumption, air quality would be unchanged or better, noise impacts would be insignificant, roadway at-grade crossings would remain safe, there would be little impact on rail safety, the quantities of hazardous materials shifted to the DMIR line would be modest, directional running should allow rail traffic to move more smoothly, and there would be no high and adverse impacts on any ''environmental justice'' populations); and (8) even the potential environmental impacts from increased traffic on the Adolph-Nopeming Junction segment of DMIR's Shelton Junction-Nopeming Junction line should be insignificant (CN claims that only 66 structures of any kind lie within 1,000 feet of the Adolph-Nopeming Junction right-of-way).

To facilitate public review of all aspects of the Environmental Appendix, and to provide an opportunity for comments to SEA on the CN/GLT Transaction, and, in particular, on CN's conclusion that the Transaction would have no significant environmental impacts, CN mailed copies of the Environmental Appendix to appropriate local, state, and federal environmental agencies and other interested parties, and placed notices in major newspapers delivered to potentially affected communities. December 10, 2003, is the date by which interested parties may submit comments on the Environmental Appendix directly to SEA.

CN has advised that, pursuant to the joint regulations adopted by the Board and the Federal Railroad Administration (FRA) to ensure adequate and coordinated consideration of safety integration issues by both the Board and FRA, *see* 49 CFR Parts 244 and 1106, CN will submit a Safety Integration Plan (SIP) to the Board and FRA by December 15, 2003. CN has further advised that it will distribute the SIP to appropriate government agencies and other interested parties, and will place notices in major newspapers delivered to potentially affected communities, to announce the availability of the SIP. Interested parties will have until January 22, 2004, to submit comments on the SIP to SEA. In accordance with past practice, the Board will include in any decision approving the CN/GLT Transaction a condition requiring CN to comply with the SIP. *See* 49 CFR 1106.4(b)(4).

Based on its consideration of all timely comments on the Environmental Appendix and the SIP and its own independent review of all available environmental information, SEA will recommend to the Board whether there is a need for formal environmental review of the CN/GLT Transaction, and the Board will then determine whether formal environmental review is required and, if so, whether an EIS or an EA should be prepared. If an EIS or an EA is required to meet the Board's obligations under NEPA, the procedural schedule set forth in this decision will be adjusted accordingly.

Public Hearing/Oral Argument

To afford interested parties an opportunity to address the Board respecting any issues arising out of the CN/GLT Transaction, a public hearing/oral argument will be held the week of March 1, 2004. The precise date and the location will be announced later.

Discovery

Discovery may begin immediately. The parties are encouraged to resolve all discovery matters expeditiously and amicably.

Electronic Submissions: In General

As already mentioned, in addition to submitting an original and 20 paper copies of each document filed with the Board, parties must submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or on compact discs (CDs), copies of all textual materials, electronic workpapers, data bases, and spreadsheets used to develop quantitative evidence. Parties unable to comply with the electronic submission requirement can seek a waiver from the Board. Textual materials must be in, or compatible with, WordPerfect 10.0. Electronic spreadsheets must be in, or compatible with, Lotus 1–2–3 Release 9 or Microsoft Excel 2002. Each disk or CD should be clearly labeled with the identification acronym and number of the corresponding paper document, *see* 49 CFR 1180.4(a)(2), and a copy of such disk or CD should be provided to any other party upon request. Also, each disk or CD should be clearly labeled as containing confidential or redacted materials. The data contained on the disks and CDs submitted to the Board will be subject to the protective order granted in Decision No. 1 (served October 29, 2003), and will be for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by computer data will facilitate timely review by the Board and its staff. The electronic

submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in the Board's regulations. *See* 49 CFR 1104.3(b).

Electronic Submissions: Workpapers, Data Bases, and Spreadsheets

In the past, the Board has encountered problems with the ''links'' in spreadsheets functioning properly when the spreadsheets are installed on desktop computers or network servers. To avoid such problems, parties submitting electronic workpapers, data bases, and/or spreadsheets should use naming and linking conventions that will permit the spreadsheets to operate on the Board's computers.[6] Electronic data bases should be compatible with the Microsoft Open Database Connectivity (ODBC) standard.[7] The Board currently uses Microsoft Access 2000, and data bases submitted should be either in this format or another ODBC-compatible format. Otherwise, submitters should explain why it is not possible to submit the data base in this format and seek a determination as to whether it is feasible for the Board to accept the data base in another format.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The primary application in STB Finance Docket No. 34424 and the related filings in STB Finance Docket No. 34424 (Sub-Nos. 1 and 2) are accepted for consideration.

2. The parties to this proceeding must comply with the Procedural Schedule adopted by the Board in this proceeding as shown in Appendix A.

3. The parties to this proceeding must comply with the procedural requirements described in this decision.

4. This decision is effective on December 5, 2003.

Decided: November 25, 2003.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

Appendix A: Procedural Schedule

November 5, 2003—Primary application, related filings, Environmental Appendix, and petition for establishment of procedural schedule filed.

November 10, 2003—Supplemented Environmental Appendix submitted.

December 5, 2003—Board notice of acceptance of primary application and related filings published in the **Federal Register**.

December 10, 2003—Comments on the Environmental Appendix due.

December 15, 2003—Safety Integration Plan (SIP) due.

December 19, 2003—Notices of intent to participate due.

January 22, 2004—Comments on the SIP due.

January 26, 2004—All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application and/or either or both of the related filings, including filings of the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), due.

February 24, 2004—Responses to comments, protests, requests for conditions, and other opposition due. Responses to comments of DOJ and DOT due. Rebuttal in support of the primary application and/or either or both of the related filings due.

Week of March 1, 2004—A public hearing/oral argument will be held the week of March 1, 2004 (the precise date and the location will be announced later).

April 9, 2004—Date of service of final decision (if no unanticipated environmental review is required).

[FR Doc. 03–30090 Filed 12–4–03; 8:45 am]

BILLING CODE 4915–00–P

[6] The Board will not specify a particular naming and linking convention. It is incumbent upon the submitter to use generic naming and linking conventions that will permit the spreadsheets to operate on desktop computers or from a network server. Questions concerning naming and linking matters and/or compatibility with the Board's computers can be addressed to William H. Washburn, Office of Economics, Environmental Analysis, and Administration, at (202) 565–1550.

[7] ODBC is a Windows technology that allows a database software package, such as Microsoft Access, to import data from a database created using a different software package. All databases must be supported with adequate documentation on data attributes, SQL queries, programmed reports, *etc.*

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 27, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before January 5, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0043.

Form Number: IRS Form 972.

Type of Review: Extension.

Title: Consent of Shareholder to Include Specific Amount in Gross Income.

Description: Form 972 is filed by shareholders of corporations to elect to include an amount in gross income as a dividend. The IRS uses Form 972 as a check to see if an amended return is filed to include the amount income and to determine if the corporation claimed the correct amount.

Respondents: Individuals or households, business or other for-profit.

Estimated Number of Respondents/Recordkeeping: 400.

Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping—13 min.
Learning about the law or the form—4 min.
Preparing the form—16 min.
Copying, assembling, and sending the form to the IRS—20 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 368 hours.

OMB Number: 1545–0138.

Form Number: IRS Form 2063.

Type of Review: Revision.

Title: U.S. Departing Alien Income Tax Statement.

Description: Form 2063 is used by a departing resident alien against whom a termination assessment has not been made, or a departing nonresident alien who has no taxable income from United States sources, to certify that they have satisfied all U.S. income tax obligations. The data is used by the IRS to certify that departing aliens have complied with U.S. income tax laws.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 20,540.

Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping—6 min.
Learning about the law or the form—3 min.
Preparing the form—26 min.
Copying, assembling, and sending the form to the IRS—13 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 17,049 hours.

Clearance Officer: R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New

Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–30242 Filed 12–4–03; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

Capital Asset Realignment for Enhanced Services (CARES) Commission; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Capital Asset Realignment for Enhanced Services (CARES) Commission will hold a meeting on December 18, 2003, at the Hotel Washington, Pennsylvania Avenue at 15th Street, NW., Washington, DC 20004. The meeting will begin at 10 a.m. and will end at 4 p.m. and is open to the public.

The purpose of the Commission is to conduct an external assessment of VA's capital asset needs and to assure that stakeholder and beneficiary concerns are fully addressed. The Commission is reviewing and reaching decisions on recommendations in the Draft National CARES Plan. The Commission also takes into consideration recommendations submitted by veterans service organizations, individual veterans, Congress, medical and nursing school affiliates, VA employees, local governments, community groups and others. Following its assessment, the Commission will make specific recommendations to the Secretary of Veterans Affairs on the realignment and allocation of VA capital assets to meet the demand for, and to enhance, veterans health care services over the next 20 years.

At the December 18 meeting, the Commission will conclude its review of the information received from nationwide site visits, public hearings, and various requests for data as well as information discussed in its regular public meetings. The Commission will engage in final deliberations regarding the Draft National CARES Plan and its impact in the various markets, and make decisions regarding its report to the Secretary.

No time will be allocated at these meetings for receiving oral presentations from the public. Any member of the public wishing additional information should contact Mr. Richard E. Larson, Executive Director, CARES Commission, at (202) 501–2000.

Dated: November 28, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–30227 Filed 12–4–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease Development of Property at the Department of Veterans Affairs Medical Center, Dayton, OH

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to designate.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) intends to designate Building 401 (23,600 square feet), with an abutting playground (11,500 square feet) at the Department of Veterans Affairs Medical Center, Dayton, Ohio, for an enhanced-use lease. The Department intends to enter into a 35-year lease of real property with a selected lessee/developer who would be responsible for all costs and risks associated with the design, development, renovation, expansion, operation, maintenance, and provision of services at an existing non-profit child care center.

FOR FURTHER INFORMATION CONTACT: Vanessa Chambers, Capital Asset Management and Planning Service (182C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–6554.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 8161, *et seq.* specifically provides that the Secretary may enter into an enhanced-use lease if he determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property or result in improved services to veterans. This project meets these requirements.

Approved: November 26, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–30226 Filed 12–4–03; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
December 5, 2003

Part II

Department of Homeland Security

Bureau of Customs and Border Protection

19 CFR Parts 4, 103, et al.
Required Advance Electronic Presentation of Cargo Information; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Parts 4, 103, 113, 122, 123, 178 and 192

[CBP Dec. 03–32]

RIN 1651–AA49

Required Advance Electronic Presentation of Cargo Information

AGENCY: Customs and Border Protection, Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide that the Bureau of Customs and Border Protection (CBP) must receive, by way of a CBP-approved electronic data interchange system, information pertaining to cargo before the cargo is either brought into or sent from the United States by any mode of commercial transportation (sea, air, rail or truck). The cargo information required is that which is reasonably necessary to enable high-risk shipments to be identified for purposes of ensuring cargo safety and security and preventing smuggling pursuant to the laws enforced and administered by CBP. These regulations are specifically intended to effectuate the provisions of section 343(a) of the Trade Act of 2002, as amended by the Maritime Transportation Security Act of 2002.

DATES: Effective Date: This rule is effective January 5, 2004.

Compliance Dates: The various compliance dates for these regulations are set forth, as applicable, in §§ 4.7(b)(5), 122.48a(e), 123.91(e), 123.92(e), and 192.14(e).

FOR FURTHER INFORMATION CONTACT: Legal matters: Glen E. Vereb, Office of Regulations and Rulings, 202–572–8724; Trade compliance issues:

Inbound vessel cargo: Kimberly Nott, Field Operations, 202–927–0042;

Inbound air cargo: David M. King, Field Operations, 202–927–1133;

Inbound truck cargo: Enrique Tamayo, Field Operations, 202–927–3112;

Inbound rail cargo: Juan Cancio-Bello, Field Operations, 202–927–3459;

Outbound cargo, all modes: Robert Rawls, Field Operations, 202–927–5301.

SUPPLEMENTARY INFORMATION:

Background

Section 343(a) of the Trade Act of 2002 (Pub. L. 107–210, 116 Stat. 933, enacted on August 6, 2002), as amended by section 108 of the Maritime Transportation Security Act of 2002 (Pub. L. 107–295, 116 Stat. 2064, enacted on November 25, 2002), required that the Secretary endeavor to promulgate final regulations not later than October 1, 2003, providing for the mandatory collection of electronic cargo information by the Customs Service (now the Bureau of Customs and Border Protection (CBP)), either prior to the arrival of the cargo in the United States or its departure from the United States by any mode of commercial transportation (sea, air, rail or truck). Under section 343(a), as amended (codified at 19 U.S.C. 2071 note), the information required must consist of that information about the cargo which is determined to be reasonably necessary to enable CBP to identify high-risk shipments so as to ensure cargo safety and security and prevent smuggling pursuant to the laws that are enforced and administered by CBP.

Proposed Rulemaking

Consequently, in accordance with the parameters set forth in section 343(a), as amended, a document was published in the **Federal Register** (68 FR 43574) on July 23, 2003, proposing to amend the Customs Regulations in order to require the advance electronic transmission of information pertaining to cargo prior to its being brought into, or sent from, the United States by sea, air, rail or truck.

In part, section 343(a), as amended, required that a broad range of parties likely to be affected by the regulations be consulted and their comments be taken into consideration in developing these regulations. For this reason, separate public meetings were held in January 2003 to address specific issues, and to obtain public input, related to the advance electronic presentation of information, respectively, for sea, air, rail or truck cargo. The CBP also received numerous public comments via e-mail. In addition, extensive meetings were held with workgroups of the subcommittee on advance cargo information requirements of the Treasury Advisory Committee on the Commercial Operations of the U.S. Customs Service (COAC). For a detailed discussion of the development of the proposed rule, and the evaluation of the comments received as the result of the consultation process, see 68 FR 43574–43592.

Discussion of Comments

A total of 128 commenters responded in timely manner to the July 23, 2003, notice of proposed rulemaking. What follows is a review of, and CBP's response to, the issues and questions that were presented by these commenters concerning the proposed regulations. The CBP also received comments pertaining to the preliminary regulatory impact analysis which was published as an appendix to the proposed rule. Those comments, and the corresponding CBP response, have been addressed separately immediately following this section under the heading, ''Comments on Economic Analysis''. In addition, a summary of the findings contained in the regulatory impact analysis for this rule can be found in the ''REGULATORY ANALYSES'' section of this document. For more detailed information, the complete regulatory impact analysis is available on the following Web site, *http://www.cbp.gov*

General; Issues Affecting Multiple Modes; Issuance of Separate House Bills of Lading

Comment: The requirement that a separate house bill of lading be issued for each shipper/consignee relationship imposed significant costs upon commerce. Carriers would now have to issue multiple bills of lading for each container of consolidated cargo, and they would charge a fee for each additional bill of lading, where the consolidated goods were tendered for shipment by a single freight forwarder and were destined to a single consignee in the United States. It was stated that CBP should modify AMS (the Automated Manifest System) so that it could receive vendor information for consolidated shipments without requiring the entry of entirely separate bills of lading.

CBP Response: The CBP reasonably needs detailed shipper information on the house bill of lading because this information is critical for targeting purposes under section 343(a)(2) of the Trade Act of 2002, as amended (19 U.S.C. 2071 note, section (a)(2)). Thus, where a freight forwarder or other consolidator receives goods from several foreign vendors (shippers) for consolidation and shipment to a single consignee in the United States, listing the freight forwarder or other consolidator, instead of the foreign vendor, as the shipper on the house bill of lading would be at odds with the intent of section 343(a). It is, of course, a business decision as to whether a forwarder or consolidator would choose to charge for any additional bill(s) of lading issued.

However, at the present time, the AMS system generally lacks the capability to process data for multiple shippers/consignees from a single house

bill of lading. The AMS systems were built with a one-to-one relationship—one shipper to one consignee. To alter this would require a complete redesign of the system for all modes of transportation. In addition, it would also force the entire bill of lading to be placed on hold rather than one specific shipment. This is not a programming process that CBP can undertake at this time and, more specifically, detailed communication with the trade community would be required.

Confidentiality

Comment: Proposed § 103.31a should be revised to indicate that advance cargo information which contained classified or sensitive unclassified information would be released only in accordance with applicable regulations, statutes, and orders. Also, it was believed that the vessel cargo declaration information required to be reported in advance could be different from the manifest information envisioned in 19 U.S.C. 1431.

CBP Response: Section 103.31a, as proposed pursuant to section 343(a)(3)(G), as amended (19 U.S.C. 2071 note, section (a)(3)(G)), exempts from disclosure advance cargo data for all inbound and outbound air, rail, or truck cargo unless the owner of the information expressly agrees in writing to its release. In addition, as far as vessel cargo data collected under 19 U.S.C. 1431 is concerned, section 1431 already adequately addresses the conditions under which such information may not be disclosed, including where the information is authorized to be kept secret in the interest of national defense, as provided in 5 U.S.C. 552(b)(1); or where disclosure of the information would pose a threat of personal injury or property damage (see 19 U.S.C. 1431(c)(2)(A) & (B)).

Comment: One commenter discussed the matter of public disclosure of outbound cargo information which would be required to be submitted to CBP electronically. It was stated that since cargo information on outbound ocean shipments would rely upon Automated Export System (AES) submissions and not upon vessel cargo manifests, such information should not be subject to the public disclosure provisions of 19 U.S.C. 1431. Another commenter, however, fully supported the release of cargo data from outward vessel cargo manifests pursuant to the disclosure provisions of section 1431.

CBP Response: The underlying cargo manifest statute in question, 19 U.S.C. 1431, applies to both inbound and outbound cargoes. Although manifests are actually comprised of numerous documents, including the Shipper's Export Declaration (SED), the SED document itself is exempt from public disclosure pursuant to 13 U.S.C. 301(g) unless the Secretary of Commerce determines that such exemption would be contrary to the national interest.

Also appearing in existing Customs Regulations (19 CFR 103.31) is a provision making available for copying and publication certain information and data appearing on outward manifests. The scope of that information is described and limited in § 103.31. As in the case of inward vessel cargo manifest information, § 103.31 also provides that certain parties may file certifications with CBP to request confidentiality for outward vessel cargo manifest information (19 CFR 103.31(d)(2)).

Automated Manifest System (AMS)

Comment: The CBP did not provide an updated response to the question of what carriers should do when the Automated Manifest System (AMS) was not functioning.

CBP Response: The CBP currently has procedures in place for the processing of cargo when automated systems have experienced a level of failure. The CBP offices routinely accept voluntary submissions of paper documents during this time from trade members looking for immediate release. The CBP's automated systems are designed to queue transmissions sent from the trade during downtime, and the system automatically begins to issue status and release messages when service is restored.

For the purposes of the 24-Hour rule, the trade has been instructed to present paper manifests to CBP in either the appropriate Container Security Initiative (CSI) port of departure, or at the Domestic port of arrival in order to allow for advance targeting. The CBP anticipates instructing the trade the same for the purposes of section 343(a) of the Trade Act of 2002. It will admittedly be difficult and not all submissions will be made promptly. The CBP will then use informed, considered judgement in the issuance of penalties, the mitigation of penalties and other possible action against particular shipments.

If downtime is identified as severe and anticipated to last a significant period, the trade is notified and instructed to present papers entries, in-bond transportation documents and other release paperwork to the CBP offices. Carriers are instructed to present paper manifests for their arriving conveyances. As CBP manually processes the release and other paperwork, determining risk and satisfaction of all requirements to the best of the inspector's ability, copies of those documents are presented to the carriers to gain release of the cargo, or to demonstrate authorization for it to move in-bond or within the port.

When the automated system resumes service, CBP policy is to enter the information about paper processing into the system to generate corresponding electronic release messages and to also ensure that historical records are updated, and the clocks for duties, taxes and fees are correctly started.

Over the last years, the Automated Commercial System (ACS) has been very reliable in its processing and suffered very little unscheduled downtime. The CBP has made downtime requirements available on its Web site for the enforcement of the 24-Hour rule and will also do the same for the purposes of section 343(a) of the Trade Act of 2002.

Comment: For ABI (Automated Broker Interface) filers (importer or brokers) that transmitted advance air or truck cargo data, it was asked whether their ABI Filer Codes would qualify as their unique identification code, or whether CBP would require that they obtain another code, such as an IATA (International Air Transport Association) code or a SCAC code (Standard Carrier Alpha Code).

CBP Response: The ABI filer that transmits advance cargo data would be identified by its 3-digit ABI Filer Code. However, in the air environment, since the Air Automated Manifest System (Air AMS) requires a 7-character code to identify parties transmitting house air waybill level information, ABI filers electing to transmit such advance cargo data will be assigned codes in the format ''BCBPXXX'', where, in place of the ''XXX'', the ABI filer would insert its own unique 3-digit ABI filer code.

Comment: Under the 24-hour rule for incoming vessel cargo, Non Vessel Operating Common Carriers (NVOCCs) had to apply for approval to become a Vessel AMS filer. The question was raised, in the context of other modes of inbound transportation (air and truck), as to whether an ABI filer of information would have to go through the same approval process, including some form of application and qualification testing, before being allowed to file advance cargo data with CBP for incoming shipments.

CBP Response: ABI transmission capabilities are available to all entry filers who handle truck entries and that have been authorized to participate in ABI under the procedures prescribed in part 143, subpart A, Customs Regulations (19 CFR part 143, subpart

A). In this context, it is the carrier's responsibility to ensure that the ABI transmitter of cargo data (broker or importer) receives the appropriate corresponding transportation information via fax or other means.

However, each new participant in the Air Automated Manifest System (Air AMS) will be required to undergo certification testing prior to full participation. Certification/authorization to participate in ABI will not, by itself, be sufficient to satisfy this requirement. The CBP will provide updated lists of approved Air AMS participants.

Comment: Under the 24-hour rule, where an NVOCC filed the advance vessel cargo data, the NVOCC then had to perform other duties otherwise undertaken by the incoming ocean carrier for the arriving cargo, such as handling the arrival of the cargo, obtaining permits for its transfer, and coordinating any in-bond movements. However, as to incoming air cargo, provided that accurate links existed between the house and master bills of lading, the issue arose as to whether the incoming air carrier would be responsible for all of the documentary transactions related to the arrival and movement of the air freight once it had landed at the port of arrival.

CBP Response: With consolidated shipments, given that an air carrier would transmit information for the incoming cargo at the master air waybill level, the carrier would be responsible for handling those transactions related to the arrival and movement of such cargo following its landing at the port of arrival. Coincident with this, any other eligible party transmitting (house bill) information for the incoming cargo would need to associate the house bill number with the master air waybill pertaining to such cargo (see § 122.48a(d)(2)(i) in this final rule).

Furthermore, CBP is currently working on additional programming changes to the Vessel Automated Manifest System (Vessel AMS) which would allow the incoming ocean carrier, after the cargo is landed at the port of arrival, to handle the movement of the cargo, and its clearance, etc., on the master bill of lading.

Comment: It was remarked that all CBP automated systems in place had to be able to accommodate the required manifest reporting sufficiently for legitimate trade to continue to flow smoothly.

CBP Response: The requirement that cargo information be electronically presented in advance allows CBP to effectively target any cargo that may need to be held for further examination prior to the arrival of the vessel or other conveyance, which thereby enables legitimate cargo to move smoothly through the chain of commerce.

C–TPAT Exemption

Comment: It was proposed that ''low-risk'' companies and those who were engaged in supply-chain security programs, such as the Customs-Trade Partnership Against Terrorism (C–TPAT), should be given a preference that would let such parties file their cargo declarations after, rather than prior to, the arrival of the cargo, or be subject to various relaxed restrictions in cargo information reporting. It was also suggested that CBP allow C–TPAT participants to use ''Buyers Consolidation'' (where multiple shippers/consignees were listed on a single bill of lading, instead of each shipper/consignee having to be included on a separate bill of lading). Otherwise, CBP was asked to explain what benefits accrued to C–TPAT members.

CBP Response: The CBP will not allow exemption from, or alteration of, the requirement that C–TPAT partners submit cargo information in advance of arrival under these regulations, which includes the requirement that each shipper/consignee relationship be documented by a separate house bill of lading; and, moreover, CBP believes that compliance with these regulations complements supply chain security and efficiency procedures being implemented by C–TPAT partners.

Furthermore, it is again emphasized that C–TPAT membership will continue to be viewed in a positive light for targeting purposes. It is more likely that shipments made by C–TPAT members will be readily and expeditiously cleared, and not be delayed for greater CBP scrutiny. Other related perquisites of C–TPAT partnership may include essential security benefits for suppliers, employees, and customers, such as a reduction in the number and extent of border inspections, an opportunity for self-policing rather than Customs verifications, and eligibility for account-based processes.

Account-based processing is only offered to importers at this time. Account-based processing provides advantages to importers such as web-based views into their importing history with CBP, the important elements of their bond sufficiency records, and the future ability to make periodic payments of the their duty statements. Each transaction is still reviewed as part of the manifest processing; while there may be a reduced number of trade compliance examinations, no account is exempt from enforcement or security screening.

Comment: It was asked whether CBP would take into consideration low-risk status and participation in programs, such as C–TPAT, when minor reporting discrepancies occurred.

CBP Response: While participants in programs such as C–TPAT will not be exempt from electronically filing their cargo information in advance, as noted above, such participation will also be taken into account in connection with the occurrence of minor discrepancies in the advance reporting of cargo data.

Exemption; U.S. Department of Defense (DoD)

Comment: Concern was expressed about the movement of military cargo on U.S. Department of Defense (DoD)-chartered aircraft, vessels, or trucks where DoD had exclusive use and control of the conveyance. The revised advance reporting time standards could adversely affect transit time for DoD cargo in the commercial transportation system. Exemptions were requested from advance cargo information reporting for DoD-chartered vessels, aircraft, and trucks.

CBP Response: In the proposed rule, CBP agreed that an exemption from the requirement of entry would be extended to certain DoD-chartered vessels or aircraft (see 68 FR at 43577 and 43579, respectively). To accomplish this, §§ 4.5 and 122.41, Customs Regulations (19 CFR 4.5 and 122.41), are amended in this final rule document to exempt from entry requirements (but not from clearance requirements) any vessel or aircraft that is chartered by and exclusively carrying cargo, the property of the U.S. Department of Defense (DoD), where the DoD-chartered vessel or aircraft is manned entirely by the civilian crew of the vessel or air carrier under contract to DoD. Any vessel or aircraft exempt from entry would, of course, also be exempt from advance cargo information filing under this final rule.

However, concerning trucks chartered by DoD, CBP has at least provisionally concluded that, balancing the potential risks posed against the costs at issue, an exemption from advance filing is not needed in this case. The advance filing time frame is sufficiently abbreviated that it should not have a negative effect on the transit time for military cargo moving in the commercial transportation chain (*e.g.*, a mere 30 minutes advance notice in the case of Free And Secure Trade (FAST) trade participants) (see the discussion for incoming truck cargo, *infra*).

Other Government Agencies; Single Portal for Collecting Data

Comment: It was advocated that CBP and the U.S. Food and Drug Administration (FDA) should harmonize the data elements and time frames for advance information that both agencies would now require. A single integrated computer system should be developed for the submission of advance information.

CBP Response: The CBP is working diligently with the FDA towards integrated filing and risk management mechanisms. In fact, an agreement was reached in May 2003 between CBP and FDA to modify CBP's Automated Commercial System (ACS) to enable importers, in most cases, to use this system to satisfy the advance informational requirements of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188) (the Bioterrorism Act) and implementing regulations. In the **Federal Register** of October 10, 2003 (68 FR 58974), FDA, in conjunction with CBP, issued an interim final rule requiring prior notice of food imported into the United States, beginning on December 12, 2003. The interim final rule requires that the prior notice be submitted to FDA electronically via either the CBP's Automated Broker Interface (ABI)/ACS Interface or the FDA's Prior Notice System Interface. The interim final rule on prior notice of imported food shipments is available at *http://www.cfsan.fda.gov/~lrd/fr03o10b.html.* The CBP is also making modifications to ACS to allow ACS to be used to satisfy the prior notice requirements of the Bioterrorism Act.

The CBP's Automated Commercial Environment (ACE) is intended to operate as a single window for the submission of import information to the Government, once it is developed and implemented as part of the International Trade Data System (ITDS). Nevertheless, in light of the urgent need, in particular, to implement both section 343(a), as amended, and the Bioterrorism Act, the Government cannot delay such implementation until a fully-interfaced, multi-agency electronic data interchange system is in place, either within ACS or ACE.

The Automated Commercial Environment (ACE)

By way of additional perspective on the Automated Commercial Environment (ACE), CBP Modernization began in 2001, with the ACE focusing on import and export cargo operations. The ACE, as just noted, along with other entities will ultimately form one system providing a ''single screen'' for the international business community to interact with CBP and other government agencies on import/export requirements. The ACE will power an expedited release process for carriers and shippers that have prefiled, been pre-approved, and have been subject to enforcement prescreening and targeting. An integrated risk management and targeting system will implement all types of enforcement and selectivity screening for commercial shipments. The ACE will provide both CBP and the business community with the tools and technology to ensure secure supply-chain management. The program will include tools that will provide for: advanced manifesting system for all modes of transportation; tracking of intermodal shipment movements and cargo moving in-bound; enhanced conveyance and transit cargo tracking for shipments from origin to destination. Finally, when exports are processed in ACE, CBP will have a complete end-to-end record of cross-border processing and international supply chain information.

To date, ACE has provided the infrastructure to support the establishment of 41 Importer Accounts. These accounts have access to a quick view of their importing and compliance history as well as the functionality to print numerous reports. This functionality also provides for interaction between the Accounts and CBP in the form of an Action Plan and a Significant Activity Log. Both the Trade Community and CBP now have access to an electronic automated Harmonized Tariff Schedule. Near term functionality for ACE will include the establishment of 1100 Accounts to include brokers, importers and truck carriers. The establishment of these accounts will allow the account holders to pay duties and fees on a Monthly Periodic Statement (April 2004) and provide for the capability of truck carriers to file an advanced electronic Truck Manifest (October 2004), which will support the legislative requirements of the Trade Act of 2002.

Time Period for Implementing Advance Cargo Data Reporting

Comment: Consideration should be given to making the advance reporting provisions operational on a region-by-region ''roll out.'' There should also be a liberal ''grace period'' permitted prior to enforcement of the new regulations so that both Government and the trade would have sufficient time to adjust to the new security requirements without disorganization or disruption.

CBP Response: It is stressed that the differing effective dates of these regulations may be further delayed for the several modes, both inbound and outbound, as already provided variously in §§ 122.48a(e) (for inbound air cargo), 123.91(e) (for inbound rail cargo), 123.92(e) (for inbound truck cargo), and 192.14(e) (for outbound cargo, all modes). Only as to incoming vessel cargo is there a firm effective date of March 4, 2004, by which time all participating advance cargo data filers must be operational on the Vessel Automated Manifest System (Vessel AMS).

However, no matter when the various regulations in this final rule go into effect, CBP will adopt a phased-in enforcement process for these Trade Act Regulations similar to that which was utilized when the 24-Hour Rule was implemented. Depending on the circumstances, CBP may take an ''informed compliance'' approach during a short period following the effective date of the rule. In appropriate circumstances, this approach would consist of performing audits of the carriers' and NVOCCs' (Non Vessel Operating Common Carriers') submissions and advising their owners or operators of problem areas that could have been subject to enforcement action.

Following an initial 2-month period after issuance of the 24-Hour rule, CBP created an enforcement approach that focused first on egregious violations. The CBP experienced an enormous decrease in the instances of such problem submissions immediately before, and after, expiration of the initial period when the ''informed compliance'' approach was implemented.

Therefore, in implementing these Trade Act Regulations, CBP has demonstrated experience in implementing a phased-in enforcement strategy and expects to develop similar plans with respect to these new advance cargo reporting requirements.

Furthermore, as with the 24-hour rule, CBP intends to continue to work with the trade to achieve compliance with the requirements of these regulations. However, CBP does not believe that a region-by-region implementation of the regulations would be either advantageous or advisable under the circumstances.

Comment: Two commenters wanted a uniform advance notification enforcement date for all modes to include both outbound and inbound shipments.

CBP Response: The implementation dates for all modes will vary, due to the readiness and availability of the

automated systems that support each mode and the degree to which the necessary technology is available to particular modes of transportation. This fully comports with the mandate of section 343(a)(3)(D) and (E), as amended.

Bond Issues

Comment: A question was presented as to whether electronic filers of advance cargo data through the Automated Manifest System (AMS) would need to possess an international carrier bond.

CBP Response: Other than Automated Broker Interface (ABI) filers in the air environment (consisting of importers and brokers) (see § 122.48a(c)(2) in this final rule), electronic filers through AMS (whether Vessel, Air or Rail AMS) must possess an international carrier bond under 19 CFR 113.64. By contrast, an ABI filer of advance cargo data, that is an importer, would need to possess an amended basic importation and entry bond, as described in § 113.62(j)(2) in this final rule; and an ABI broker who files advance cargo data would be obligated under 19 U.S.C. 1641 and 19 CFR part 111 to do so in the manner and in the time period prescribed in § 122.48a in this final rule.

Comment: A Customs bond could be written as a single transaction bond or as a continuous bond. It was recommended that CBP provide in the regulations that any bond needed for reporting cargo information prior to arrival be a continuous bond.

CBP Response: The CBP does not agree with the commenter. The commenter suggests that the rule be amended to state that all bonds required in support of presentation of advanced manifest information must be continuous bonds. Continuous bonds are bonds taken out by principals that are in effect for a period of time (usually 1 year, with automatic renewal unless terminated) and insure all relevant transactions occurring in that period of time. In contrast, single transaction bonds are bonds that are taken out one at a time and are presented to insure only a single transaction or arrival. The rule only requires that a bond be posted. It does not matter whether that bond is continuous or single transaction and there is no need to provide for a bond type restriction.

Liability Concerns

Comment: Where the party presenting information to CBP had acquired this information from another, and the information was determined to be false, clarification was requested as to how this would play a role in the penalty/liquidated damage process.

CBP Response: Mindful of the requirements of section 343(a)(3)(B), as amended (19 U.S.C. 2071 note, section (a)(3)(B)), CBP will take the facts and circumstances of any such situation into account in determining whether a penalty/liquidated damages claim should be initiated and whether and/or to what extent such a claim should be mitigated. The CBP intends to issue mitigation guidelines in this matter.

Submission of Cargo Data in Advance of Arrival or Departure

Comment: Having to present cargo information in advance for both exports and imports would add severely to port congestion in the U.S., and thus raise the costs and burdens of both types of trade.

CBP Response: The CBP disagrees. The receipt of advance electronic information will reduce port congestion because CBP can make enforcement decisions before conveyances arrive in the United States. This has been true in the vessel environment for some time, and has been improved upon under the 24-hour rule because CBP can perform examinations overseas via the Container Security Initiative (CSI). Furthermore, CBP will use in implementing this final rule a phased-in compliance program, similar to that described above for the 24-Hour Rule, in order to make sure that technical violations do not unnecessarily disrupt the flow of goods across the U.S. border. Therefore, there is no compelling reason to conclude that congestion at U.S. ports will result.

Comment: Further explanation was sought as to the basis for the differences among the time-frame reporting requirements for inbound and outbound shipments in all modes of transportation.

CBP Response: Generally speaking, and as further discussed for each individual mode, *infra,* in determining the timing for transmittal of advance cargo data, CBP, as directed by the statute, took into account the differences existing among the different modes of transportation, both inbound and outbound, including differences in commercial practices, operational characteristics, and the technological capacity to collect and transmit information electronically; and, as the law also directed for each mode, CBP undertook to balance the likely impact on the flow of commerce with the impact on cargo safety and security.

Miscellaneous Issues

Comment: Concern was expressed about information security requirements associated with advance notifications for shipments of radioactive material.

CBP Response: Advance cargo information is transmitted to and received by CBP on a secure and encrypted data line. As for cargo arriving by vessel, manifest information for such cargo is not available for public disclosure until after the vessel has arrived; and, as previously indicated, in accordance with 19 U.S.C. 1431(c)(2)(A) & (B), such information may be exempted from disclosure in the interest of national defense pursuant to 5 U.S.C. 552(b)(1), or where the disclosure would pose a threat of personal injury or property damage.

Comment: In the future, CBP should allow the electronic submission of comments.

CBP Response: Requiring written comments in response to a notice of proposed rulemaking is a matter of agency policy that is beyond the scope of this particular rulemaking. However, it is observed that comments via e-mail were invited and accepted regarding the development of the proposed rulemaking in this case (68 FR at 43575).

Comment: A format for Frequently Asked Questions (FAQs) should be established for each mode of transportation on the CBP Web site, which should be regularly updated with new or revised questions.

CBP Response: CBP intends to post FAQs for each mode of transportation on the CBP Web site (*http://www.cbp.gov*), which will be updated as necessary.

Comment: One commenter offered to provide, at no cost to the Government, cargo inspections at the point of origin and then transmit the results of the inspections by way of a CBP-approved electronic data interchange system. The commenter requested only that CBP accept such inspected shipments as ''low risk'' and thus eligible for expedited clearance upon arrival.

CBP Response: In effect, CBP believes that the same results would be achievable by joining the C–TPAT program (The Customs-Trade Partnership Against Terrorism). As already explained, participation in C–TPAT is considered as a positive factor in targeting shipments to determine whether cargo needs to be held at the port of arrival for examination or receipt of further information.

Comment: Additional instruction was sought as to what terms would satisfy the requirement for a precise description for incoming cargo (§ 4.7a(c)(4)(vii); and proposed §§ 122.48a(d)(1)(ix) and (d)(2)(iii), 123.91(d)(5), and 123.92(d)(9)). In

particular, for automotive producers, it was stated that obtaining a complete and correct list of the Harmonized Tariff Schedule (HTS) numbers for all exports of automotive parts and components could be a daunting task. One shipment could contain many types of original equipment manufacturer (OEM) or replacement parts; it was instead urged that CBP accept a generic cargo description such as ''New Autoparts'' regardless of the mode of transportation involved.

CBP Response: CBP will issue an Acceptable and Non-Acceptable cargo description list as was done with the 24-Hour Rule for incoming vessel cargo. This list will be the same for all modes of transportation.

Generally speaking, CBP has defined a precise cargo description as a description precise enough for CBP to be able to identify the shapes, physical characteristics, and likely packaging of the manifested cargo so that CBP can discern any anomalies in the cargo when a container is run through imaging equipment. Also, the description must be precise enough to identify any goods which may emit radiation.

The requirement that a carrier/filer use cargo descriptions that would not be considered vague should not be overly burdensome. The CBP has undertaken continuous efforts prior to and since the promulgation of the 24-hour Advance Manifest Rule in the sea environment to educate all filers on cargo descriptions that would be considered vague as well as on issues raised by trade representatives. The cargo descriptions that are considered vague have been posted on the CBP Web site (Frequently Asked Questions) since March 2003. The descriptions were not designed to force carriers/filers to achieve entry level descriptions. In most cases, the descriptions require only one or two further qualification descriptors.

Comment: Participation in such an electronic data interchange as the Automated Manifest System (AMS) should be covered by regulations pursuant to the Administrative Procedure Act that provide uniform requirements for enrollment and acceptance into these electronic filing programs, and that govern the suspension, revocation or modification of participation in these programs.

CBP Response: Participation in the electronic systems described in this rulemaking was formerly voluntary as part of the National Customs Automation Program (NCAP) described in 19 U.S.C. 1411(a). As part of the Trade Act of 2002, Congress amended section 1411 to permit CBP to mandate use of the electronic systems of NCAP. To effectuate the requirement in section 343 of the Trade Act of 2002 for the electronic transmission of section 343 cargo information in compliance with Congress's timetable, CBP is mandating use of several of these existing NCAP electronic systems.

The criteria for establishing connection with these systems were set forth in the notices of the tests of these systems (*e.g.*, for the Vessel Automated Manifest System (Vessel AMS) program, see 61 FR 47782 (September 10, 1996), and 67 FR 77318 (December 17, 2002)); the eligibility criteria for these programs also appear on the CBP Web site: *http://www.cbp.gov/xp/cgov/import/operations_support/automated_systems/ams/*.

Because electronic filing is now mandatory, CBP will not prohibit or restrict use of the required systems by filers as it might under a voluntary test program. The CBP does reserve the right to take necessary technical steps to deny connections in the event of electronic attacks (*e.g.*, denial of service attacks), but otherwise access will be available. Therefore, no procedures regarding suspension or revocation of access to these systems are required. Instead, CBP will ensure compliance with mandatory electronic filing requirements through monitoring by account managers, penalty assessments or claims for liquidated damages, as appropriate to the circumstances.

Vessel Cargo Destined to the United States

Submission Time Frames

Comment: Seven commenters advocated that the pre-arrival and post-loading data submissions acceptable for the other modes should also be acceptable for maritime cargo. There should be no significant differences in risk between air and maritime cargoes. The 24-hour pre-loading requirement could disrupt ''Just In Time'' (JIT) delivery systems.

CBP Response: As explained in the 24-hour rule (67 FR at 66319) and as reiterated in the proposed rule in this case (68 FR at 43577), the 24-hour pre-lading requirement for vessel cargo, especially containerized vessel cargo, is tied inextricably to the Container Security Initiative (CSI), a core element of which is to pre-screen vessel cargo containers at the foreign port of departure before they are loaded onto the vessel for shipment to the United States. To enable such pre-screening to be done fully and successfully, it is essential that the related cargo data be transmitted to CBP at least 24 hours prior to lading the cargo aboard the vessel.

In relation to JIT deliveries, CBP requires the electronic transmission of cargo declaration information 24 hours in advance; CBP is not requiring that the cargo be ready for inspection or that the cargo be at the dock. However, CBP recognizes the 24-hour pre-lading reporting may occasion some changes in the practice of sometimes adding last minute loads to vessels, but only if such loads were not manifested 24 hours prior to their lading.

Exemption From Advance Filing

Bulk/Break Bulk Cargo

Comment: It was requested that consideration be given to exempting bulk cargoes from the requirement of electronically having to submit cargo declarations.

CBP Response: CBP has given bulk, and some break-bulk shipments, exemptions from the requirement to file 24-hours prior to loading, but these entities will still be required to file their cargo declarations electronically.

Comment: Section 4.7(b)(2), Customs Regulations (19 CFR 4.7(b)(2)), implied, erroneously, that only vessels exclusively carrying bulk or break bulk cargo could be exempted from having to report such cargo 24 hours prior to loading the cargo aboard the vessel in the foreign port.

CBP Response: The CBP agrees. Section 4.7(b)(2) will be revised to make it clear, in agreement with § 4.7(b)(4), that for vessels that carry both non-exempt cargo and exempt bulk/break bulk cargo, only the non-exempt cargo must be reported on the electronic cargo declaration 24 hours prior to loading such cargo in a foreign port.

Data Elements

Precise Cargo Description; 6-Digit HTS Number

Comment: Section 4.7a(c)(4)(vii) stated that either a precise cargo description or the 6-digit Harmonized Tariff Schedule (HTS) number for the cargo had to be provided. However, the Vessel AMS system in fact required a narrative cargo description and (if desired) an HTSUS 6-digit number for the cargo, or the transmitted bill of lading would be rejected.

CBP Response: Currently, AMS does require text in the description field of the electronic transmission, or AMS will reject the transmission, even though a 6-digit HTSUS number is also provided in the appropriate field of the transmission. The CBP intends shortly to effect programming changes to allow for either a precise cargo description or

the 6-digit HTSUS number; but until such time as these programming changes are adopted, AMS participants which provide the HTSUS number will also have to enter a cargo description in the description field of the electronic transmission. However, as an alternative to providing a precise cargo description in the description field of the transmission, the applicable 6-digit HTSUS number may instead be included in the description field to satisfy the current programming requirement that some text appear in this field.

Comment: In light of the recent final rule regarding corporate compliance activity (CBP Dec. 03–15, 68 FR 47455; August 11, 2003), the question arose as to whether the submission by the electronic filer of the 6-digit HTSUS number via AMS would fall within the purview of ''Customs business'' under 19 CFR part 111.

CBP Response: ''Customs business'' does not involve the mere electronic transmission of data received for transmission to CBP (19 CFR 111.1). Moreover, the 6-digit HTSUS number is intended exclusively for ensuring cargo safety and security, and not for determining merchandise entry or for any other commercial admissibility or enforcement purposes which fall within the scope of Customs business. An 8-digit HTSUS number is needed and is used for merchandise entry purposes.

The ''corporate compliance activity'' rule dealt with the conduct of ''Customs Business'' as established by statute (19 U.S.C. 1641). The activities covered under that rule all relate to the entry of merchandise, not its manifesting. Reporting commodity identification by use of 6-digit HTSUS numbers, rather than the more specific 8- or 10-digit designations, was included because there is international agreement and uniformity at the 6-digit level. Use of HTSUS designations is merely offered by CBP as an option to be used in place of a precise narrative description of cargo content.

Definition of Shipper; Consignee

Comment: A number of questions were raised with respect to the provision in proposed § 4.7a(c)(4)(viii) that, for consolidated shipments, the shipper listed on the house bill of lading be the owner and exporter of the goods from the foreign country. In sum, it was basically asserted that this would be inconsistent with the commercial practice of the transportation trade which essentially identified the shipper as the party with whom the carrier had a contractual relationship, and that it was improper for the U.S. Government to unilaterally change this practice. It was also said to be at odds with the prevailing requirement that the foreign vendor or manufacturer be listed as the shipper on a house bill.

CBP Response: In light of the above comments, CBP has closely reviewed what shipper information must be listed on a house bill of lading for a consolidated shipment. Cargo information collected under this rule is not intended for commercial purposes, but rather for purposes of ensuring cargo safety and security as part of an antiterrorism national security initiative (see 19 U.S.C. 2071 note, section (a)(3)(F)). Otherwise stated, it is essential that CBP receive house level information on the identity of the shipper that will enable an accurate national-security risk assessment concerning the related cargo. To this specific end, CBP will thus accept as the shipper on a house bill of lading the identity of the foreign vendor, supplier, manufacturer, or other similar party. Also, the shipper's address must be a foreign address. By contrast, CBP will not accept the carrier, NVOCC, freight forwarder or consolidator as valid house level information on the identity of the shipper.

Accordingly, proposed § 4.7a(c)(4)(viii), as well as proposed §§ 122.48a(d)(1)(x), 122.48a(d)(2)(vi), 123.91(d)(6) and 123.92(d)(11), are thus revised in this final rule.

Comment: Greater guidance was requested as to what would be acceptable in the Notify Party field of the electronic transmission (proposed § 4.7a(c)(4)(ix)). It was thought that if there was any other commercial party listed in the bill of lading, such party would be included in the Notify Party field; otherwise, this field would be left blank.

CBP Response: The CBP requires that if the cargo has not yet been sold or is shipped ''to order'', and there is no consignee information, then the Notify Party field must include the identity of a responsible party in the United States. Such a responsible party could include any other commercial party that is listed in the bill of lading for delivery or contact purposes.

Date and Time of Departure of Vessel From Foreign Port

Comment: With respect to proposed § 4.7a(c)(4)(xv) and (xvi), it was asserted that the information concerning the date and time that the vessel departed for the United States as reflected in the vessel log could not be provided 24 hours prior to foreign lading of the cargo aboard the vessel.

Also, a question arose concerning whether these data elements referred to the date and time of departure from the foreign port of loading with respect to which the 24-hour declaration was made, or the date and time of departure from the last foreign port before sailing to the United States.

CBP Response: The date and time of departure should capture the date and time that the vessel departs from the foreign port of loading with respect to which the 24-hour cargo declaration is made (see § 4.7(b)(2) in this final rule). However, CBP will not require the information as to the date and time of vessel departure to be transmitted 24 hours prior to the lading of the cargo at the foreign port. Instead, the time frame for reporting these two data elements will be either: (1) No later than 24 hours after departure from the foreign port of lading, for those vessels that will arrive in the United States more than 24 hours after sailing from that foreign port; or (2) no later than the time of presentation of a permit to unlade (Customs Form (CF) 3171, or electronic equivalent), for those vessels that will arrive less than 24 hours after sailing from the foreign port of lading. Proposed § 4.7a(c)(4)(xv) and (xvi) are revised in this final rule to include these additional provisions.

Also, the transmission of these date and time data elements may be handled as an amendment to the vessel header, which will eliminate the need for each bill of lading to be amended.

Vessel AMS Issues

Importer Participation in Vessel AMS

Comment: It was stated that the party most likely to have the information needed for targeting was the U.S. importer, while the incoming carrier would only be able to provide information which was received from the charterer of the vessel.

CBP Response: CBP finds that allowing importers to participate in advance electronic filing through Vessel AMS would at this time be neither advisable nor practicable, given the current design and functionality of the Vessel AMS system and the lack of consensus in the trade community as to whether importers should furnish sea cargo data to CBP.

Comment: A shipper should be allowed to file advance cargo data through AMS.

CBP Response: Again, given the prevailing operation of the Vessel AMS, CBP finds that allowing freight forwarders who are not NVOCCs, and other parties identified as ''consolidators,'' even though they may be NVOCCs (see 68 FR at 43577) to

participate in the Vessel AMS electronic data interchange system would at this time be neither advisable nor practicable.

Comment: It was stated that the Shipper field in Vessel AMS could not accommodate more than 3 or 4 lines of information. This could prove inadequate in the case of consolidated shipments where there could be multiple shippers.

CBP Response: This inability of the Shipper field in Vessel AMS to capture multiple shipper data is academic inasmuch as CBP requires that for each shipper/consignee relationship a separate bill of lading be issued. This mandate for a separate house bill of lading for each shipper/consignee relationship constitutes a critical component for automated targeting purposes in identifying high-risk shipments.

Comment: With respect to proposed § 4.7(b)(5), which provided that carriers, and participating NVOCCs, would need to become automated at all ports of entry where their cargo would initially arrive, it was asked whether it would be the Vessel AMS computer mainframe's problem to forward the carrier's transmission to the appropriate Customs port of entry.

CBP Response: Ocean carriers and NVOCCs currently operational on Vessel AMS, although not at all ports of entry, will now be required to become operational at all such ports. Any carrier or NVOCC that hereafter becomes automated on Vessel AMS will thereby be automated at all ports. Since the automation of electronic filers through Vessel AMS will per se encompass all ports of entry, proposed § 4.7(b)(5) is revised in this final rule by removing the phrase, ''where their cargo will initially arrive''. However, carriers must indicate in their respective electronic transmissions each port of arrival where their incoming cargo will be discharged.

Comment: Non Vessel Operating Common Carriers (NVOCCs) should be required to electronically present advance cargo information directly to CBP.

CBP Response: The CBP disagrees. As discussed in the proposed rule (68 FR at 43576–43577), certain segments of the trade in fact urged that advance cargo information filing by NVOCCs be eliminated due to operational problems with Vessel AMS, that resulted when NVOCCs, as opposed to the incoming carriers, filed cargo data directly with CBP. Nevertheless, in consideration of the competitive relationships that exist in the international freight forwarding field, CBP continues to believe that NVOCCs who wish to do so may become automated on Vessel AMS, but that they should not be compelled to do so.

Comment: It was observed that a large number of NVOCCs operational on Vessel AMS seemed to opt out of the system at various ports, for apparently no authorized reason. Vessel carriers were said to be unable to audit or police this.

CBP Response: Those NVOCCs who choose to become automated on Vessel AMS must be automated in all ports. While NVOCCs do have the ability to decertify in AMS, they would then be required to submit detailed information to carriers for transmission to CBP for all ports of discharge. If a question should arise as to whether or not an NVOCC is automated, the vessel carrier may contact its CBP client representative for verification.

Comment: It was asked whether there was a maximum reporting window for transmitting cargo data in advance through Vessel AMS.

CBP Response: Vessel AMS has the capacity to retain electronic transmission information up to a maximum of nine months prior to the cargo's Estimated Date of Arrival (EDA).

Confidentiality

Comment: It was unclear whether the shipper specific information would be publicly disclosed, and whether such information from both master and house bills of lading would be involved. It was remarked that disclosing this information would defeat the purpose of direct filing by NVOCCs.

CBP Response: Information collected pursuant to 19 U.S.C. 1431, including information from both master and house bills, is available for public disclosure in accordance with section 1431(c). However, under the authority of section 1431(c)(1)(A), information relating to the identity of a foreign shipper to an importer or consignee in the United States will not be disclosed if a claim for confidential treatment for such information is made by using the procedure prescribed in 19 CFR 103.31(d)(1).

Implementation Period for Rule

Comment: It was thought that 90 days was too short a period from the date of publication of the final rule within which a non-automated carrier would need to develop software and programming in Vessel AMS. A period of 120 days was requested.

CBP Response: The CBP believes that 90 days is an adequate and reasonable time frame within which to permit a non-automated vessel carrier to become automated on Vessel AMS. The CBP will continue to work with the trade to achieve compliance with these advance cargo reporting provisions.

In selecting 90 days following publication as an implementation period for mandatory vessel AMS participation, CBP sought to strike a proper balance between the needs of the affected public in adjusting to the new requirements, and meeting the needs of the United States in implementing anti-terrorism measures without undue delay. Ninety days strikes that balance.

Procedure for Amending Cargo Declarations

Comment: The proposed rule did not mention the procedures for amending electronic cargo declarations following their transmission. This would also apply for goods that were sold while in transit.

CBP Response: Complete and accurate information would need to be presented to CBP for cargo to be laden aboard the vessel no later than 24 hours prior to lading the cargo aboard the vessel at the foreign port. As for any changes in the cargo information already transmitted, the procedures for amending the cargo declaration including discrepancy reporting regarding vessels as well as all other modes will be the subject of a separate rulemaking. Prior to the promulgation of new rules concerning discrepancy reporting, the procedures for phased-in compliance as explained above will be employed to address changes that must be made to the transmitted cargo declaration. It should be recognized that each time a bill of lading is amended, it may be subject to increased targeting and at risk for examination.

Enforcement

Comment: Procedures should be outlined for cargo that arrived without pre-notification or with incomplete information.

CBP Response: In all modes of transportation discussed in this rulemaking, the carrier must notify CBP immediately upon arrival or as soon as it realizes that it did not submit the proper information. The carrier should then present or transmit the cargo declaration information. Upon arrival in the U.S. port, the cargo declaration will be placed on hold until CBP has had the opportunity to review the documentation, and conduct any necessary examinations. Appropriate penalties may also be issued. If CBP determines that this has become a common occurrence for a carrier, this could eventually lead to denial of a permit to unlade. Additionally, CBP will notify the United States Coast

Guard of a vessel with unmanifested cargo that is scheduled to arrive. If the arriving cargo is food, CBP and FDA are working closely together to ensure they coordinate policies and procedures for dealing with movement of the cargo.

Miscellaneous Matters

Comment: The view was expressed that the ocean carrier would be reluctant to accept an NVOCC's shipment due to liability concerns, and/or would react, to protect itself from CBP enforcement, by imposing extraordinary and erroneous evidentiary or indemnity obligations on the NVOCC.

CBP Response: The CBP is currently programming Vessel AMS to accept additional bill of lading types that will allow NVOCCs to submit commodity information to CBP that will protect proprietary information from the carrier, and that will enable the vessel carrier to submit master bills of lading to CBP pertaining to the transportation information for the cargo.

Comment: In proposed § 4.7(b)(1), it was stated that the original and one copy of the manifest must be ready for production on demand. It was asserted that the only original manifest carried on board the vessel upon arrival would be the dangerous goods manifest.

CBP Response: Under § 4.7(b)(1), there is no requirement that the original vessel cargo declaration be carried aboard the vessel in those cases where the cargo declaration has already been filed in advance electronically. The CBP decided not to enforce the paper cargo declaration (Customs Form (CF) 1302) rule for formal entrance if a carrier or NVOCC has successfully automated. However, where the cargo declaration has been filed in advance electronically, and a paper copy is not aboard the vessel, the carrier will be afforded a reasonable time within which to generate a paper cargo declaration, should a paper copy be requested by CBP. The CBP will periodically assess this policy to ensure that it is not having an adverse effect on operations.

Comment: The proposed rules, especially those related to ocean imports, did not address the status of shippers' associations as shippers and transportation intermediaries and apparently did not give them the right to file the required manifest information directly to CBP.

CBP Response: The CBP has determined that shippers associations are not licensed or registered with the Federal Maritime Commission (FMC). Moreover, such associations cannot be construed to be carriers of cargo in the same sense as ocean carriers or NVOCCS. Therefore, shippers associations will not be permitted to participate in Vessel AMS.

Air Cargo Destined to the United States

Time Frame Requirements for Transmitting Advance Cargo Data

Comment: Several commenters requested that the time frames in proposed § 122.48a(b) in which the electronic cargo information was transmitted be reduced and that exceptions for certain points of origin be included.

CBP Response: The CBP recognizes the business practices of the air cargo industry and the necessity of adequate time to properly analyze the electronic cargo information and to deploy inspectional resources when required. These issues were carefully considered when establishing the time frames specified in these regulations.

Specifically, CBP weighed the question of an appropriate time frame for air from many angles. To better gauge industry requirements, CBP conducted public meetings (one for each modality), and set up an email address to facilitate the submission of comments by carriers, importers, exporters, freight forwarders, customs brokers, other U.S. Government agencies, foreign governments, as well as local, national and international trade organizations, and private citizens, etc. It should be noted that this elective comment period was in addition to the formal comment period required for the Notice of Proposed Rule Making. The CBP also met intensively with the Treasury Advisory Committee on the Commercial Operations of the U.S. Customs Service (COAC), which resulted in additional unified recommendations for each modality. The CBP assessed internal operational considerations such as the speed at which the various electronic data interchanges are able to process information, the time required for CBP personnel to review the output and determine the appropriate action, and the time needed to deploy personnel to respond.

Comment: Further explanation was requested on whether the time frames for flights from nearby foreign areas in proposed § 122.48a(b)(1) included such flights to the territories of the United States, such as Guam and Puerto Rico.

CBP Response: The time frame for nearby flights would include such flights to Puerto Rico because it is part of the Customs territory of the United States. However, flights to Guam are not included in the advance cargo reporting requirements, as Guam is not part of the Customs territory. The CBP finds that a distinction in the time frames for advance filing based upon geographical considerations, as opposed to the duration of the flight, is more administratively feasible.

Air Freight Forwarder Issues

Comment: It was asked whether CBP would permit foreign indirect air carriers (non-U.S.-based freight forwarders that issue their house bills of lading for air freight shipments) to qualify as one of the authorized filers of information through the Air Automated Manifest System (Air AMS).

CBP Response: Other than the incoming air carrier, parties eligible to transmit inbound electronic air cargo information are enumerated in § 122.48a(c)(1) in this final rule. Any foreign indirect air carrier that is not one of the parties specified in § 122.48a(c)(1) would have to fully disclose and present the required data for the inbound air cargo to the incoming air carrier or other eligible electronic filer, as applicable, which would then present such data to CBP.

Comment: It was advocated that CBP require freight forwarders, Customs brokers and consolidators to participate in Air AMS.

CBP Response: The CBP disagrees. Such parties may elect to provide the data directly to CBP if they are one of the parties specified in § 122.48a(c)(1), or they may provide the data to the incoming air carrier which will transmit such data directly to CBP.

Comment: Two commenters wanted to know whether it was CBP's intention that freight forwarders filing advance cargo data obtain two bonds—an international carrier bond and a custodial bond.

CBP Response: A freight forwarder filing advance air cargo data would be required to have an international carrier's bond under § 122.48a(c)(2). In addition, if the freight forwarder or any other eligible party were responsible for supplying in-bond information and for transporting cargo in-bond under the provisions of part 18 of the Customs Regulations (19 CFR part 18), such party would also need a Customs custodial bond.

The international carrier bond is required of carriers arriving from foreign locations. That bond exists to guarantee performance with regard to (among other things) conveyance arrival, entry and clearance, cargo manifesting and disposition, and passenger and crew control. The conditions of the international carrier bond appear at 19 CFR 113.64. A custodial bond is required of any party that transports merchandise domestically, either between ports of entry or within a single

port of entry, before that merchandise has been entered for consumption with duties paid thereon and its admissibility into the commerce determined. The custodial bond conditions appear at 19 CFR 113.63. The custodian of the merchandise guarantees compliance with all regulations governing the receipt, carriage, safekeeping and disposition of merchandise transported or held.

Diversion/Fuel Stop Issues

Comment: It was asked whether the rule allowed for aircraft to stop for fueling at a U.S. location prior to arriving at its final destination. Four commenters requested that fuel stops be exempt from reporting requirements from the U.S. port of arrival to the port of destination.

CBP Response: Section 122.48a does not prohibit an aircraft from including a fuel stop in its itinerary; however, that stop may be the port of arrival in the United States for purposes of § 122.48a(b). Fuel stops will not be excluded from the advance reporting requirement because it is vital to security to target at the first port of arrival and, if necessary, to examine cargo at that location.

Comment: If an aircraft were diverted for reasons such as weather or equipment problems, it was requested that this not be considered part of the manifest reporting requirement if passengers and cargo were not to be discharged there.

CBP Response: The CBP understands that aircraft may be diverted due to weather and/or equipment problems. When this situation occurs, the airline must notify CBP at the designated first port of arrival (the diverted port) as soon as it realizes it is not going to initially reach the original port of arrival. The carrier would then need to re-transmit the electronic cargo information with corrections to reflect the new (diverted) arrival port.

Air AMS Testing/Problems

Comment: Outstanding operational programming issues should be completed prior to the implementation of the final rule.

CBP Response: The CBP is diligently working on an outstanding list of operational issues and will continue to correct these issues. Under § 122.48a(e)(2), the implementation date for advance air cargo reporting may be delayed if necessary modifications to the CBP-approved electronic data interchange system are not yet in place.

Comment: Qualified air freight forwarders electing to participate in advance electronic cargo reporting should be tested on the approved data interchange system prior to the implementation of the final rule.

CBP Response: Appropriate testing will be given to all parties who develop Air AMS communications with CBP. Those parties who elect to use a service provider will be tested via the service provider.

Comment: Programming should be provided between the Automated Broker Interface (ABI) and the Air AMS system so that data information could be shared (alternate filers could be brokers and forwarders).

CBP Response: Cargo selectivity information provided through ABI is distinct from the electronic cargo information required through Air AMS under § 122.48a. The data elements to satisfy compliance with this regulation must be provided through Air AMS; Air AMS is accessible to ABI filers.

Comment: The Air AMS system should be changed to preclude an inward air carrier from refusing to authorize (nominate) another eligible party as an agent who had elected to transmit consolidated cargo data directly to CBP; and the system should be programmed to notify such other party of its authorization (nomination) by the inward carrier.

CBP Response: The Air AMS system will independently accept information from each of the parties that supply data to satisfy the advance cargo reporting requirements of § 122.48a. In other words, the inward carrier will no longer need to authorize or nominate another eligible party in order to enable that party to supply house air waybill information to CBP. The identification of another eligible filer in the agent (''AGT'') line will be merely for the purpose of notifying CBP that this party will transmit the house air waybill information, which may be effected either prior to or after the carrier's transmission of the master air waybill record to CBP.

Comment: The Air AMS system should be changed to allow for the transmission of a notification that air cargo data had been received or that the air cargo manifest had been accepted with the date and time specified. This feature was said to be currently available in Vessel AMS.

CBP Response: The Air AMS transmits a Freight Error Report message if an air waybill record does not pass certain data acceptance edits. In addition, the Air AMS also provides a Freight Status Query feature that allows an Air AMS participant to query the status of an air waybill record. This feature is available to the Air AMS participant that transmitted the original message and to Air AMS participants that have been properly nominated by the carrier that transmits the master air waybill data.

Comment: One commenter was of the opinion that airlines did not want to be obligated to input house air waybill information on behalf of an air freight forwarder.

CBP Response: Under § 122.48a, unless another qualified party elects to participate in the Air AMS system, the relevant house air waybill information must be furnished to the incoming air carrier for presentation to CBP.

Comment: It was asked how a carrier would provide any required cargo data if the records were in the possession of a third party that was not one of the parties identified in proposed § 122.48a(c)(1).

CBP Response: Under § 122.48a(c)(4), any third party entity in possession of required data for inbound air cargo must fully disclose and present such data to the carrier for presentation to CBP.

In-Bond Issues

Comment: Participants in Air AMS should be permitted to create subsequent in-bond transactions to close out air manifests at both the master air waybill and house air waybill levels.

CBP Response: This is included in the regulation (see § 122.48a(a)(1) in this final rule). In-bond information may of course be included at both the master and house air waybill levels (see § 122.48a(d)(1)(xvi) and (d)(2)(viii) in this final rule).

Comment: It was thought that Air AMS could not handle in-bonds for one consolidated express shipment.

CBP Response: The Air AMS system is capable of processing in-bond information for all house air waybills under a consolidated master air waybill.

Comment: The Air AMS programming should be altered to allow for more than one in-bond warehouse per location.

CBP Response: Cargo covered by each master air waybill may be transferred to any warehouse location with a unique FIRMS (Facilities Information and Resources Management System) code within the limits of a port of entry.

Comment: The scope and timing of the carrier's transmission of any in-bond information should be clarified. Specifically, it was asked whether it would be necessary to allow transmission of this information after arrival of the cargo in the United States, and whether such information would be used for the movement of the subject cargo from the first port of arrival to the master bill destination location.

CBP Response: The data elements specified in § 122.48a(d)(1), including

any in-bond information in § 122.48a(d)(1)(xvi), if applicable, will be analyzed by CBP for the purposes of identifying high-risk cargo. Such data elements must be supplied within the respective advance time frames prescribed in § 122.48a(b).

Comment: In-bond information (from a party other than the incoming carrier) might not be known by origin or prior to its arrival in the United States. It was asked whether information related to the subsequent in-bond movement of the cargo could thereafter be transmitted to CBP prior to the in-bond movement being authorized.

CBP Response: The CBP recognizes that the in-bond destination for cargo covered by house air waybills may not be known prior to the arrival of the aircraft in the United States. If such information is provided outside of the required time frame prescribed in § 122.48a(b), it will be treated as a change to the original information.

Comment: It was asked whether CAFES (Customs Automated Forms Entry System) was compatible with Air AMS for use on in-bonds.

CBP Response: CAFES is not yet compatible with Air AMS for merchandise arriving via air.

Truck/Air Issues

Comment: The use of Air AMS should be allowed for goods transiting the border by truck in lieu of a truck manifest. It was advocated that Customs brokers at the border should be required to transmit data through Air AMS for cargo that originated as an air shipment and arrived in a contiguous foreign country, notwithstanding that the cargo would be crossing the border into the United States by truck.

CBP Response: The Air AMS system is the electronic cargo reporting data interchange for merchandise arriving via an aircraft. Merchandise arriving via another mode of transportation, including by truck, must be reported in the manner specified for such mode. Thus, if the merchandise crosses the U.S. border on a truck, such merchandise is not considered to be an air shipment, notwithstanding that such cargo may have arrived in the contiguous foreign country by air. As such, in the event that merchandise, which was previously reported to arrive via an aircraft, should change its mode of transportation prior to arrival in the United States, the previously transmitted information must be cancelled and then reported in the manner appropriate to the actual mode of transportation employed in bringing the merchandise into the United States.

Shipments by U.S. Postal Service; Letters and Documents Otherwise Shipped

Comment: A number of commenters believed that the advance cargo reporting rules should be applied to shipments through the United States Postal Service (USPS).

CBP Response: Paragraph K of section 343(a)(3) of the Trade Act of 2002 (19 U.S.C. 2071 note, section (a)(3)(K)), compels consultation with the Postmaster General in considering what type of electronic cargo information requirements should be imposed upon carriers of mail shipments through the USPS. The CBP still has this issue under consideration. Should a determination be made to extend the advance electronic cargo information mandate to USPS shipments, such postal shipments would be the subject of a separate rulemaking procedure. Current procedures regarding the processing of shipments for the USPS will remain in effect.

Comment: Shipments of letters and documents, including the material described in General Note 19(c), Harmonized Tariff Schedule of the United States (HTSUS), that were transported by air otherwise than through the USPS, should also be exempted from full advance cargo reporting requirements.

CBP Response: The CBP has decided to make the requirements for advance cargo information for letters and documents the subject of a separate publication in the **Federal Register**. Proposed § 122.48a(d)(3) concerning advance cargo information requirements for letters and documents is thus removed from this final rule.

Liability Issues

Comment: Should the shipper provide inaccurate information in the description, shipper or consignee fields, it was urged that the incoming carrier or other electronic filer presenting such information to CBP not be held liable.

CBP Response: Whether or not liability would be imposed on a carrier in such circumstances would be governed by section 343(a)(3)(B), as amended, and § 122.48a(c)(5) in this final rule. Section 122.48a(c)(5) provides that CBP will take into consideration how, in accord with ordinary commercial practices, the presenting party acquired the information submitted and whether and how that party is able to verify such information. Where the information is not reasonably verifiable, the party will be permitted to present such information based upon a reasonable belief as to its accuracy.

Comment: Three commenters wanted to know whether the carrier would be liable for the submission of house air waybill information where another party that elected to furnish this information to CBP did not do so.

CBP Response: The carrier will indicate in the master air waybill record if another party will be transmitting the house air waybill data. If such other party fails to comply with the advance cargo reporting provisions, this party, and not the incoming carrier, will be held liable.

Comment: One commenter inquired as to who would be responsible for submitting advance cargo data in the case of a chartered aircraft.

CBP Response: In the case of a time or voyage charter, the aircraft owner/operator is the party required to transmit the information. In the case of a bareboat charter, where the charterer in effect becomes the owner of the aircraft (the owner *pro hac vice*), the bareboat charterer would be responsible for reporting the cargo information to CBP.

Comment: A question was presented as to what kind of penalty would be imposed on airlines that failed to meet the advance time frame submission.

CBP Response: An incoming air carrier failing to meet the advance reporting time frame may be liable under 19 U.S.C. 1584 as well as under other pertinent penalty provisions (see § 122.161, Customs Regulations; 19 CFR 122.161). Should another party electing to file advance cargo information fail to do so, such party may be liable for liquidated damages pursuant to its Customs bond.

Comment: It was asked who would be responsible for transmitting cargo data to CBP where a number of freight forwarders co-loaded cargo.

CBP Response: Either the incoming carrier or one of the parties qualified to do so under § 122.48a(c)(1) will be responsible for supplying the information for all house air waybills under a single consolidated master air waybill.

Data Elements

Comment: A couple of commenters took exception to the requirement that the flight number for the incoming aircraft be reported 4 hours prior to arrival. The flight number could change. Also, it was unclear how the indirect air carrier would know the exact flight number.

CBP Response: Only the incoming carrier is responsible for the transmission of the flight number. The carrier should be aware of its flight

number at the time of its required transmission.

Comment: It was stated that the proposed data elements designated as conditional (''C'') were not currently captured and would require significant modifications to the freight reservations, reporting and tracking systems and that this would be at significant cost to the carrier.

CBP Response: These data elements are essential to effective cargo targeting. It is also observed that these data elements have previously been received from other air carriers through Air AMS.

Comment: Three commenters inquired as to whether the carrier would still have to provide house air waybill numbers, pieces, weight and description on its paper air cargo manifest.

CBP Response: Under proposed § 122.48(a), except as otherwise provided, a paper air cargo manifest need not be filed for any aircraft required to enter under § 122.41. In addition, proposed § 122.48(a) is further changed in this final rule to eliminate the requirement that a cargo manifest be retained aboard any aircraft required to enter under § 122.41; however, a copy of the air cargo manifest (Customs Form (CF) 7509) must otherwise be made available to CBP upon demand.

Comment: It was asked how a company would obtain a unique identifier (which would be transmitted by the carrier to indicate its separate transmission of a portion of the required data elements).

CBP Response: A Container Freight Station (CFS) and an Express Consignment Carrier Facility (ECCF) would be identified by its FIRMS (Facilities Information and Resources Management System) code. An air carrier would be identified by its IATA (International Air Transport Association) code. All other parties would be assigned a unique identifier by the Client Representative Branch of CBP's Office of Information and Technology (OIT) upon commencement of certification testing in Air AMS.

Comment: More information was requested as to the description that would be required on the master air waybill in the case of shipments of dangerous goods. It was noted that IATA requirements did not permit a characterization of ''consolidation'' to be indicated as a description on the master bill.

CBP Response: For the purposes of satisfying § 122.48a only, a cargo description of ''consolidation'' is sufficient at the master air waybill level. However, carriers may elect to provide additional information in the description field at the master bill level if they choose to do so.

Comment: Two commenters believed that current Air AMS programming did not allow for alpha-numeric characters of house air waybill numbers to be transmitted as printed on the paper house air waybill. They inquired as to how this would be handled.

CBP Response: Each party providing electronic cargo information must support alphanumeric characters for house air waybill records when alpha characters appear on the printed house air waybill. The CBP recognizes that some current Air AMS participants will need to undergo programming changes in order to support this feature.

Comment: One commenter noted that, quite often, the Importer of Record and the ''deliver to'' party (the ultimate consignee) were not the same party. The commenter wanted to know whether there would be a problem if the consignee were located somewhere other than the arrival and/or destination port.

CBP Response: The consignee need not be located at the arrival or destination port. Paragraphs (d)(1)(xi) and (d)(2)(vii) of proposed § 122.48a are revised in this final rule to so indicate.

Comment: One commenter urged that CBP allow disclaimers such as ''said to contain'' or ''shipper's load and count''.

CBP Response: The characterization, ''Said to contain'', is not an acceptable cargo description. The approved use of ''shipper's load and count'' is outlined in § 4.7a(c)(3)(ii), Customs Regulations (19 CFR 4.7a(c)(3)(ii)).

Comment: Three commenters did not agree with the requirement that the smallest external packaging unit be stated; a simple pallet count should be allowed.

CBP Response: The CBP disagrees. Such reporting is essential to ensure that no additional packages have been introduced into palletized cargo.

Comment: It was requested that the Automated Broker Interface (ABI) be made mandatory for all forwarders and brokers to transmit house data to CBP for air shipments.

CBP Response: The ABI is not the system by which electronic cargo information is to be collected under the provisions of § 122.48a.

Definitions

Comment: Under proposed § 122.48a(b)(1), one commenter wanted to know what was meant by the time of departure for the United States; and in proposed § 122.48a(b)(2), it was asked whether the time of arrival in the United States would be the scheduled or the actual time of arrival.

CBP Response: As expressly stated in § 122.48a(b)(1), the electronic cargo information must be received no later than the time of departure of the aircraft from foreign, which is the time that the wheels are up on the aircraft and it is en route directly to the United States (the trigger time is the time of departure of the aircraft for the United States). Proposed § 122.48a(b)(1) is thus further clarified in this final rule. And in § 122.48a(b)(2), the electronic cargo information must be received 4 hours prior to the actual arrival of the aircraft in the United States.

Comment: One commenter stated that gray areas still persisted as to the cargo covered by the regulation, and asked, in this respect, whether company material or aircraft parts for use by the airline would need to be reported.

CBP Response: As specified in the background discussion of the proposed rule (see 68 FR at 43580), merchandise brought in by an air carrier for its own use would be subject to the same advance cargo information filing requirements that would apply to other incoming cargo.

Comment: With reference to proposed § 122.48a(d)(1)(xii), the identity of the party who issued the ''consolidation identifier'' was requested.

CBP Response: The consolidation identifier is transmitted by the incoming air carrier to designate an air waybill record as a ''master'' air waybill.

Comment: In proposed § 122.48a(d)(1)(xvii), one commenter wanted to know what a ''local transfer facility'' was.

CBP Response: A local transfer facility is merely a Container Freight Station as identified by its FIRMS code or the warehouse of another air carrier as identified by its carrier code. Proposed § 122.48a(d)(1)(xvii) is revised in this final rule to include this additional explanatory material.

Air AMS Issues

Comment: It was asserted that mandatory participation in the Air Automated Manifest System (Air AMS) could not be required due to the fact that it was a voluntary program.

CBP Response: Section 343(a)(1) of the Trade Act of 2002, as amended (19 U.S.C. 2071 note, section (a)(1)), gives CBP the authority to require the advance reporting of cargo information through an electronic data interchange system; and Air AMS is such a system. Moreover, Air AMS was developed as a component of the National Customs Automation Program (NCAP) (19 U.S.C. 1411(a)); and, in section 338 of the Trade Act of 2002, Congress amended 19 U.S.C. 1411(b) to permit CBP to

require the electronic submission of information that CBP is obliged to collect.

Comment: One commenter asked when the Air AMS specifications and testing protocol would be made available to the trade.

CBP Response: The CBP will post the Air AMS specifications and testing protocols on its Web site as soon as possible. Such specifications and testing protocols will set forth the programming and operational details of the system.

Comment: Since a filer could be a party with a Container Freight Station (CFS) location or a Facilities and Information Resources Management System (FIRMS) code, two commenters inquired as to whether this implied that the advance cargo transmission would have to be made from a particular U.S. location.

CBP Response: The electronic cargo information may be sent from any location, provided that the electronic filer is one of the parties specified in § 122.48a(c)(1).

Comment: It was declared that carriers currently participating in Air AMS did not have uniform system requirements or uniform procedures at all ports of entry. The CBP should compel uniformity in system requirements and procedures at all ports.

CBP Response: The promulgation and implementation of these regulations and the enforcement of their provisions will increase uniformity of carrier participation in Air AMS. For instance, currently, there are several methods to process cargo information and they vary at each location. This is due to the lack of authority for CBP to require automation of cargo information. This regulation will provide that authority and therefore increase uniformity. The CBP believes that all cargo declarations will be processed the same at each location. However, variations may exist in the execution of the entry not in the manifest. Each port is a little different and therefore some variations will exist but not to the extent that is occurring on a daily basis.

Implementation of Advance Air Cargo Data Filing Requirements

Comment: Seven commenters wanted more time to obtain access to relevant Air AMS software and communications equipment in order to make their computer interface with the system operational. The CBP was requested to accommodate the interface schedules of the carriers in this regard. Three other commenters wanted a general delayed effective date of 180 days from the date the final rule was published. One commenter recommended that the rule be delayed until all ports were operational on the system and all necessary training had been completed. Another commenter believed that CBP was not properly staffed or trained in Air AMS to support its nationwide implementation. A further commenter suggested that CBP implement a phased-in approach, by carrier, origin and destination, and that a ''web portal'' be installed for use by carriers and other authorized filers unable to interface with the Air AMS system.

CBP Response: Section 343(a), as amended, was enacted on August 6, 2002, and clearly required that cargo data would need to be filed electronically. To this end, in the public meeting that was held for incoming air cargo on January 14, 2003, CBP stated that the accepted electronic interface would be the Air AMS system. Therefore, air carriers have had over one year to conduct proper research as to what type of software and computer interface options are available and what each has to offer. As such, CBP will only delay the general effective date of § 122.48a until March 4, 2004 for the specific reasons described in § 122.48a(e)(2).

Additionally, CBP has already identified all airports that require training in Air AMS and whether those air carriers that call on those airports are automated. By making use of this list and working with the air carriers concerned, CBP will coordinate with carriers that are ready to go online in airports that are not yet automated in order to ensure that the inspectors are properly trained, and that the air carrier has proper points of contact at that airport. However, CBP has determined that a web portal feature is not feasible at this time.

Furthermore, it is vital that the training for inspectors coincide as closely as possible with air carriers becoming automated in a port. If CBP trains the inspectors and there are no automated air carriers for several months, the training is not useful because the inspectors will not be utilizing their new skills. Therefore, the training must occur within a few weeks of an air carrier notifying CBP that it is going to become automated in a specific port.

Toward this end, CBP is striving to improve the Air AMS training that is available to the field inspectors. Currently, there are four Air AMS training classes that are held at the Federal Law Enforcement Training Center (FLETC) each year. In addition, CBP is developing a computer-based training course that will be required for each inspector at all airport locations.

System Irregularities; Paper Manifest Requirement

Comment: One commenter requested specific details regarding the technical support for any problems that might be experienced during data transmissions.

CBP Response: Requests for resolution of ordinary cargo transmission problems should be coordinated with CBP personnel at each port. In addition, each Air AMS participant has been/will be assigned a CBP client representative who is available to assist with more technical guidance.

Comment: Three commenters no longer wanted to keep a paper air cargo manifest on board the aircraft since CBP was mandating electronic cargo information. In addition, the requirement for keeping a paper General Declaration on board should be deleted since all the information was sent in advance of arrival through the Advance Passenger Information System (APIS).

CBP Response: As already noted, a paper air cargo manifest (Customs Form (CF) 7509) will no longer be required to be kept aboard the aircraft, but must otherwise be available for production upon demand. Proposed § 122.48(a) is changed in this final rule to reflect this. However, the General Declaration (CF 7507) will still be required as it contains data elements not otherwise collected through APIS or Air AMS.

Comment: Five commenters asked how an air carrier would comply with the advance cargo notification requirements without keeping a record of every single house air waybill in addition to the archived copy of each master air waybill.

CBP Response: Section 122.48a does not require the incoming air carrier to transmit or maintain records for house air waybill data when such data is transmitted by another electronic filer.

Comment: Seven commenters recommended that a CBP office be established at all airports to respond to various irregularities.

CBP Response: Each airport concerned will have a designated point of contact to address and resolve matters involving Air AMS.

In-Transit Issues

Comment: Four commenters suggested that in-transit cargo that remained on board the aircraft should be excluded from the proposed rule.

CBP Response: The CBP disagrees. Such cargo could pose a cargo safety or security risk to the same extent as other cargo that arrives in the United States.

Comment: It was believed that the proposed regulations did not clearly address whether air cargo that merely transited, and would not be discharged in, the United States was subject to compliance with the advance reporting time frames.

CBP Response: In accordance with § 122.48a(a)(1), cargo that transits the United States, whether or not it is unladen from the aircraft, is subject to the advance reporting requirements of the regulation. Technical requirements to report such information electronically will be specified in the Air AMS technical manual.

Comment: One commenter was concerned about who would be required to report required cargo data for in-transit cargo.

CBP Response: Such information must be provided either by the incoming air carrier or one of the other specified parties in § 122.48a(c)(1).

Hand-Carried Baggage

Comment: Five commenters advocated that hand-carried merchandise should be subject to the advance cargo reporting provisions.

CBP Response: Hand-carried merchandise is covered by the requirements for passenger baggage and is not considered cargo subject to advance reporting under § 122.48a.

Landing Rights

Comment: Five commenters suggested that CBP specify in proposed § 122.14(d) that denial of landing rights would occur only if a known security threat aboard a particular aircraft posed a higher threat to safety and security than an emergency diversion to alternative airports that could also refuse landing rights. Four other commenters believed that CBP should not deny landing rights or permission to unlade cargo based upon inaccurate information received from other parties.

CBP Response: The provision to deny landing rights is generally intended for those air carriers that fail, repeatedly and egregiously, to furnish timely and accurate cargo information in advance. In such a situation, CBP would have the authority to deny landing rights for that air carrier in the future. Assuredly, this provision would not be executed without careful deliberation and dialogue with the air carrier as to its lack of compliance.

In addition, pursuant to section 343(a)(3)(B), as amended, and § 122.48a(c)(5), as already noted, if the carrier electronically transmitting cargo information has received any of this information from another party, CBP, in deciding issues of liability, will take into account how, in accordance with ordinary commercial practices, the carrier acquired the transmitted information and whether the carrier was reasonably able to verify the information. Depending upon these circumstances, CBP reserves the authority to deny landing rights or permission to unlade if an air carrier fails to fulfill its responsibilities under these regulations.

Corrections to Cargo Information

Comment: Five commenters wanted clarification as to the procedure for making any changes to the cargo information already transmitted for a flight.

CBP Response: Complete and accurate information would need to be presented to CBP for cargo laden aboard the aircraft no later than the applicable time specified in § 122.48a(b). As for any changes in the cargo information already transmitted for a flight, the procedures for amending the cargo declaration including discrepancy reporting will be the subject of a separate rulemaking.

Comment: Two commenters inquired about who would be responsible in the case of a data discrepancy between a master air waybill and a house air waybill.

CBP Response: The party that transmits the information would be responsible for its correction. Communication between the air carrier and any other electronic filer for the incoming cargo should be maintained in order to avoid such discrepancies.

Comment: It was asked whether an electronic transmission to correct inaccurate data could be initiated from the port of destination when the initial electronic transmission occurred at the point of departure for the United States.

CBP Response: Any party supplying information will be able to correct such information, regardless of the station from which its transmission electronically originated.

Cargo Transfer

Comment: A question arose as to whether the deconsolidator's Facilities and Information Resources Management System (FIRMS) code or the carrier's identifier would be needed for incoming cargo that would be handled through a local transfer facility; and whether such information could be transmitted after arrival of the cargo.

CBP Response: A FIRMS code is the necessary data element for cargo that would be transferred to a deconsolidator or a Container Freight Station (CFS) within the limits of the port. Should the cargo be intended for transfer to another carrier's station within the port, the code of that carrier is required. Proposed § 122.48a(d)(1)(xvii), as already mentioned, is revised in this final rule to include this additional explanation. This information must be transmitted in advance of arrival together with the other required data in § 122.48a(d)(1) and (d)(2).

Split Shipments

Comment: Because shipments that were split by the incoming carrier would affect the transmission for that cargo by another electronic filer, the rules for the handling of split shipments in Air AMS should be further clarified.

CBP Response: When the incoming air carrier elects to split a master air waybill into multiple arrivals, the carrier will be required to transmit to CBP a number of additional data elements for each house air waybill covered by the master air waybill record. Specifically, the carrier will be required to transmit the house air waybill number, certain transportation and arrival information, the manifested and boarded quantities, and the manifested and boarded weights. As such, the informational requirements for split shipments described in proposed § 122.48a(d)(1)(xiii) are revised and included in this final rule as a new § 122.48a(d)(3) (proposed § 122.48a(d)(3) dealing with the summary manifesting of letters and documents, as previously noted, is deleted from this final rule and will be the subject of a separate **Federal Register** publication). Also, further technical specifications regarding the issue of split shipments will be provided in the Air AMS technical guidelines.

Changes in Business Practices

Comment: One commenter stated that it was an undue hardship to force companies onto Air AMS if another system were going to supersede it later on, and that companies would be forced to undergo the expense of conforming to new computer programming.

CBP Response: The CBP will rely, at least initially, upon the Air AMS, with appropriate future modifications, as the principal vehicle to achieve the goal of advance cargo data filing under section 343(a), as amended, in order that these regulations may be implemented at the earliest practicable time, as an urgent and critical national security imperative. However, it is assured that any new system developed within the framework of the Automated Commercial Environment (ACE) will be compatible with these implementing regulations. For this reason, the

regulations refer generically to a CBP-approved electronic data interchange system (rather than to Air AMS, specifically).

Comment: Companies would need to shift current workload that was done at destination ports to the ports of departure, and those ports were not properly staffed to handle the workload.

CBP Response: The CBP is fully aware that some changes in business practices may be necessary. For example, it has been a common practice for the industry to input cargo information while the aircraft is in-transit to its destination. This practice will need to change to require the information in a timely manner so as to meet the time frames identified by this final rule. The CBP has attempted to balance the concerns of the trade by affording a delayed effective date in the implementation of the advance air cargo reporting regulations as provided in § 122.48a(e), while, at the same time, recognizing the compelling national security need to move as deliberately as possible to protect cross-border commerce from the threat posed to cargo safety and security by international terrorism.

Comment: It was observed that for shipments with multiple intermediate foreign stops before final departure for the United States, freight forwarders needed the ability to transmit data elements to CBP at the time of departure from the departure station/location.

CBP Response: Those parties authorized to transmit house air waybill level information, as specified in § 122.48a(c)(1), will be able to do so prior to the transmission of the master air waybill information by the incoming air carrier.

General/Miscellaneous Issues

Comment: When an incoming air carrier has transmitted data to CBP for incoming cargo, one commenter inquired whether that carrier's ground handling agent, or other party, holding the goods following their arrival would also need to be automated in order to have access to the electronic freight status notifications concerning the cargo.

CBP Response: Participants in Air AMS, including the incoming air carrier, must be able to honor all electronic freight status notifications transmitted by CBP. Whether the carrier elects to employ a ground handling agent or not, the carrier is responsible for maintaining control of the cargo pending CBP disposition.

Comment: A question was raised as to how the carrier was to be advised that the house air waybill information had been transmitted to CBP.

CBP Response: The CBP does not anticipate transmitting a message to the carrier when the house air waybills are transmitted by another party. However, the failure to transmit house air waybill information for consolidated shipments, as prescribed in § 122.48a(d)(2), would preclude the release or transfer of any cargo covered by the consolidation. Thus, communication between the incoming carrier and any other electronic filer of house air waybill information, if applicable, would be essential.

In this latter connection, the Air Automated Manifest System (AAMS) has a feature known as the Freight Status Query (FSQ) message. The party that transmitted the message or another AAMS participant that has been authorized by the message originator may query the status of an air waybill record in AAMS. This feature may be invoked on a transactional basis to provide the AAMS participant with confirmation that an air waybill is on file along with details about the record.

However, to provide an automatic confirmation receipt message for every air waybill transmission would create substantial programming costs for CBP and AAMS participants. It would also substantially increase data storage and communications costs. The FSQ message provides the same information but need only be invoked on a case-by-case basis.

Comment: An issue was raised as to whether a party that was both an Automated Broker Interface (ABI) filer as well as a Container Freight Station/Deconsolidator and in possession of an international carrier bond could transmit cargo data at ports where the consolidation cargo remained under the custody of the air carrier.

CBP Response: A party authorized to transmit electronic cargo information, as provided in § 122.48a(c)(1) and (d)(2), will be able to do, even if the cargo remains in the custody of the incoming carrier.

Comment: One commenter wanted to know if there would be any amendment of requirements pertaining to international carrier bonds.

CBP Response: The changes to the international carrier bond requirements are set forth in § 113.64(a) and (c) in this final rule.

Comment: Additional explanation was sought concerning what procedures an air carrier would need to follow if cargo were targeted for inspection by CBP.

CBP Response: If it is found that a physical inspection of the cargo is necessary, CBP will electronically notify the carrier or other cargo custodian and make arrangements for its examination. In so doing, CBP would work with the carrier to ascertain an appropriate location to examine the potentially high-risk cargo.

Comment: Air cargo that would arrive in the United States on a permit to proceed from the port of arrival should be allowed to move to the port of unlading notwithstanding that a hold was placed on the air waybill covering the cargo due to insufficient data.

CBP Response: If CBP determines that a physical inspection is necessary or if additional information is required, the cargo will be held at the port of first arrival pending resolution of the matter.

Comment: Concern was expressed that CBP ABI/AMS client representatives would not be able to sufficiently handle the additional workload under the new regulations. It was suggested that a study be done to measure the current level of service to the trade and that such a study should be shared with the trade.

CBP Response: The CBP does not believe that a study of client representative workload is necessary to the implementation of this rule. In the unlikely event that such a contingency should arise, § 122.48a(e)(2), as previously observed, does provide that the effective date of the rule may be further delayed if more time is needed to complete the certification testing of new participants.

Rail Cargo Destined to the United States

Time Frame

Comment: Four commenters mentioned that cargo manifest information transmitted to CBP through the Rail Automated Manifest System (Rail AMS) could be made available two hours prior to arrival. However, information on the train sheet, sometimes called a consist (consisting of data such as the train's identification, locomotives' and cars' numbers and initials and the train's schedule) was not part of the advance cargo manifest data. This information would only be available when the final trans-border train was assembled, and in many cases, would only be available for transmission one hour prior to arrival at the border. One other commenter also advocated that the time period be reduced to one hour prior to arrival consistent with incoming truck traffic.

CBP Response: The CBP remains of the opinion that the 2-hour period for presenting rail cargo data prior to arrival effectively balances the impact on rail cargo safety and security with the likely impact on the flow of rail commerce into the United States. As such, this

time frame represents the minimum period during which CBP is confident that essential targeting can still be accomplished, without a concomitant undue disruption to rail business practices.

In addition, without proper consist information (which identifies the incoming train, and gives its locomotives' and cars' numbers and initials and the train's schedule), CBP would not have the complete information essential for targeting on the incoming cargo in connection with the particular train on which the cargo would arrive. The availability of information on both the cargo and the arriving conveyance as provided in the rail consist is vital in order to enable CBP to do its targeting effectively in the time required.

Required Data; Carrier Responsibility

Comment: Four commenters wanted it made clear that a railroad was required to provide the scheduled date and time of arrival to the best of its knowledge, and that a railroad should not be penalized or held responsible should that date and time prove inaccurate within some reasonable time frame.

CBP Response: The railroad carrier must provide the scheduled date and time of arrival to the best of its information, knowledge and belief at the time that this information is filed. However, carriers will be held responsible for failure to keep CBP informed of any changes in this information as it becomes available.

Comment: Rail carriers should not be held responsible for the accuracy of information supplied by others. The CBP should change the language in proposed § 123.91(c)(2) to state that where the rail carrier electronically presenting the cargo information received any of this information from another party, the rail carrier would not be held responsible for the inaccuracy of any information supplied by that other party.

CBP Response: The CBP disagrees. Section 123.91(c)(2) repeats, and CBP is bound by, the statutory standard against which the potential liability of a rail carrier would effectively be gauged in presenting inaccurate cargo data to CBP that had been acquired from another party.

Comment: It was important that Rail AMS be able to manage multiple shipment data. The CBP would need to coordinate implementation of this aspect of the process with all elements of the supply chain and with U.S. trading partners.

Specifically, the requirement that the rail carrier supply information from the house bill of lading was problematic. In most cases, railroads would only have the capability of receiving one bill of lading and that bill would generally be a master bill of lading. Also, if the railroad had a container holding several consolidated shipments with individual house bills associated with each shipment, even if the railroad had the capability of receiving the individual house bills, information from such bills could not be transmitted to CBP inasmuch as Rail AMS could only handle the transmission of one bill of lading in association with the cargo manifest data for that one shipment.

CBP Response: The CBP is currently reviewing Rail AMS programming requirements to release the edit that only allows one bill of lading per shipment, which will enable house bills of lading to be utilized in the rail environment. In addition to possible programming changes, CBP is reviewing the prospect of authorizing other parties to transmit information via Rail AMS. This would further facilitate the submission of the house bill of lading information that is required on all shipments.

Should CBP decide to allow another electronic filer to voluntarily present house bill information for a shipment through Rail AMS, a test program notice to this effect would first be published in the **Federal Register** pursuant to § 101.9(b) and (b)(1), Customs Regulations (19 CFR 101.9(b) and (b)(1)), inviting public comments on any aspect of the proposed test and informing interested members of the public of the basis for selecting participants, the eligibility criteria for participation in the test, and the effect of such participation on the responsibilities of incoming rail carriers for the transmission of required advance cargo data to CBP.

Comment: Proposed § 123.91(d)(4) stated that carriers would have to supply the numbers and quantities of the cargo laden, as contained in the carrier's bill of lading, either master or house, as applicable, which meant the quantity of the lowest external packaging unit. This information was contained in the house bill, not the master bill. For a container shipment, the railroads would only know the quantity expressed on the master bill, which might not be at the level of the lowest external packaging unit.

Similarly, proposed § 123.91(d)(6) and (d)(7) would require that the railroad carrier provide the complete name and address for the shipper and consignee respectively. Again, however, the master bill of lading possessed by the rail carrier could contain only the name of a freight forwarder instead of the actual shipper and consignee; if so, the rail carrier would not know the identity of the actual shipper and consignee.

CBP Response: House bill of lading information is required under this regulation; therefore, as already discussed, CBP is reviewing programming changes to Rail AMS that would enable the system to accept such information. Hence, when Rail AMS is programmed to capture house bill of lading information, and when the rail industry has been given additional time to make essential adjustments to its own programming for the transmission of such house bill data through Rail AMS, all the referenced data elements would, at such time, need to be presented to CBP, which would include information for the shipper and consignee, including the full name and address of each, as well as the numbers and quantities (of the lowest external packaging unit) of the cargo laden aboard the train. To this end, CBP will take these programming matters into account in establishing the effective date(s) for implementing the incoming rail cargo data regulation (see § 123.91(e) in this final rule).

Comment: One commenter suggested that it might be difficult or impossible for the rail carrier to obtain the necessary cargo information when the rail cargo had initially arrived in Canada or Mexico by vessel or air carrier from another foreign country. In such a case, unless the ocean or air carrier had first required the complete disclosure of all information at the port of loading in the other foreign country, and thereafter passed this information along to the rail carrier, there would be no way that the required information would be available to the railroad.

CBP Response: For cargo that is transferred in Canada or Mexico to a rail carrier for shipment to the United States, whether such cargo originated in Canada or Mexico or was first brought there by a vessel or air carrier from another foreign country, the rail carrier, as explained above, will be required to provide the requisite data elements for such cargo to CBP.

Line Release

Comment: The CBP should retain Line Release not only for the present as stated in the proposed rule, but for the long term, as it was declared to be critical for cross-border rail traffic.

CBP Response: The CBP fully recognizes the importance of Line Release for Rail AMS. In fact, CBP has recently made Line Release available, for rail shipments only, to ports that ordinarily would not have access to it,

as part of CBP's Rail AMS port automation efforts.

Automated Line Release in rail is what is known as the Border Release Advanced Screening and Selectivity program (BRASS) in the Truck environment. The difference is that the information is all electronic and supplied in advance of arrival.

Implementation Date(s) for Rule

Comment: Further guidance was sought as to the implementation date(s) for the proposed regulation.

CBP Response: Quite plainly, under § 123.91(e), rail carriers must commence the advance electronic transmission of required cargo information 90 days from the date that CBP publishes a notice in the **Federal Register** informing affected carriers that the data interchange system is in place and operational at the port of entry where the train would first arrive in the United States. As such, before the rule can become operational at any port, including any port(s) where Rail AMS is now operational, the initial publication of a **Federal Register** notice naming such port(s) would be a mandatory prerequisite. At present, there are 35 CBP ports that have rail crossings, 8 of which are not rail AMS. The CBP will require all ports that handle rail cargo to become automated.

Exemption for Cargo Transiting Contiguous Foreign Country

Comment: The proposed rule (§ 123.91(b)) would expressly exempt from advance electronic information filing requirements domestic cargo transported by train from one port to another in the United States by way of a foreign country. However, the proposed rule did not deal with whether such an exception applied when the shipment partly involved transportation by sea or air.

CBP Response: Only a land-based conveyance, such as rail or truck, would be involved with carrying goods on a continuous movement from one port to another in the United States by way of a contiguous foreign country, whether Canada or Mexico. This is the specific situation addressed in § 123.91(b); such a situation would simply not arise in the vessel or air mode. Proposed §§ 123.91(b) and 123.92(b)(1) (for trucks) are revised in this final rule to explicitly reference Canada and Mexico in this respect.

Truck Cargo Destined to the United States

Implementation Issues

Comment: As was done in the 24-hour rule, one commenter wanted a grace period between the implementation date of the final rule and its enforcement date (no penalties assessed for non-fraudulent violations).

CBP Response: Similar to that which was done in the context of the 24-hour rule (67 FR 66318), as previously detailed, *supra,* CBP will follow a phased-in enforcement/compliance program, after § 123.92 becomes effective at a specific port of arrival. As such, during the phased-in period, CBP would not customarily initiate enforcement actions such as assessing penalties for non-fraudulent violations of § 123.92. And, under § 123.92(e), the effective date for advance data filing for incoming truck cargo is itself initially delayed until 90 days from the date that CBP publishes a notice in the **Federal Register** informing affected carriers at the given port that the approved data interchange is operational there and that carriers must commence the filing of the required data.

Comment: Two commenters sought to delay the implementation of proposed § 123.92 until carriers, brokers, and importers had direct communication links electronically with CBP.

CBP Response: The CBP disagrees. The advance notification requirement is largely intended to collect advance cargo information via two outstanding methods—the Automated Broker Interface (ABI), or the fully electronic version of the Free And Secure Trade (FAST) System. Delaying the implementation of § 123.92 until all parties related to the reporting of the data for incoming cargo are fully electronically interfaced with CBP, such as through FAST, or the Automated Commercial Environment (ACE), once it is deployed, would be incompatible with the expeditious implementation of section 343(a), as amended, as a national security necessity.

Comment: It was suggested that CBP implement separate rules for emergency importations.

CBP Response: Emergency situations will be handled on a case-by-case basis, depending on the facts, in CBP's enforcement discretion.

Comment: It was recommended that an education enforcement contingency plan be devised to avoid possible chaotic situations at the border under the new rules.

CBP Response: Outreach and marketing efforts are currently being undertaken to reach out to both foreign and domestic trade participants to avoid such situations at the border.

Time Frame for Advance Filing

Comment: One commenter sought further explanation as to the actual start time for advance notification requirements, *i.e.*, at the time of transmission, or at the time CBP received the transmission.

CBP Response: As expressly set forth in § 123.92(a), CBP must receive the cargo data no later than 30 minutes or 1 hour prior to the carrier's arrival at a United States port of entry, or such lesser time as authorized, based upon the CBP-approved system employed in presenting the information. Also, this point was directly addressed in the background of the proposed rule (see 68 FR at 43586).

Comment: Twelve commenters recommended an abbreviated advance notification time line of 30 minutes for standard shipments and 15 minutes for Free And Secure Trade (FAST) shipments, specifically for trucks loaded within a designated border zone, to support the ''Just-in-Time'' (JIT) shipping industry.

CBP Response: This identical comment was broached in the proposed rule (68 FR at 43586; *Summary of Principal Comments,* item ''1.''). At that time, CBP concluded, and continues to firmly believe, that the 30-minute or 1-hour advance time frame, in relation to the particular automated system used, is the minimum period needed to perform a targeting analysis for cargo selectivity, and, if found warranted, to arrange for an inspection or examination of the cargo following its arrival. The effect on JIT inventory practices, given these relatively brief reporting periods, should be essentially nugatory.

Against this backdrop, it is submitted that BRASS (the Border Release Advanced Screening and Selectivity program) and CAFES (the Customs Automated Forms Entry System), where the filing period would be less, will only be employed exclusively as interim, transitional systems in the truck environment prior to the development and deployment of fully electronic replacements for these systems in the new truck manifest module scheduled for delivery under the Automated Commercial Environment (ACE); the employment of BRASS and CAFES under the circumstances is thus due in large measure to the conspicuous lack of electronic information systems prevalent in the trucking industry, especially along the Southern Border.

Comment: Six commenters asked that CBP implement the 15-minute advance electronic notification period currently used under the FAST voluntary test program.

CBP Response: The FAST program is designed to enhance security and safety in processing commercial importations

along the Northern and Southern borders, while also enhancing the economic prosperity of the U.S., Canada, and Mexico by aligning, to the maximum extent possible, their customs commercial programs. While the program will still, of course, function in this capacity, nevertheless, with reference to its relationship with section 343(a), as amended, FAST will also be used for purposes of ensuring cargo safety and security and preventing smuggling. As such, and for the reasons set forth above, CBP finds it advisable to extend the overall time frame for FAST transactions to a full 30 minutes prior to arrival as an additional security measure under the program.

Thus, shipments eligible for FAST must be reported at least 30 minutes before the arrival of the conveyance at the first port of entry. FAST shipments may be reported through one of two release mechanisms: Through the all-electronic transmission of conveyance, driver and shipment information, formerly known as the National Customs Automation Program (NCAP) prototype; or through the use of the Pre-Arrival Processing System (PAPS) version of cargo selectivity. All other truck shipments still not allowed release via BRASS, must utilize PAPS and submit the data one hour before arrival of the truck. For an additional extensive review of the FAST, PAPS, BRASS, and CAFES systems, see the proposed rule at 68 FR 43586–43587.

Comment: Seven commenters requested that CBP initiate an electronic confirmation/receipt system, that would notify the broker/carrier that information was received, thus starting the 30-minute/1-hour clock.

CBP Response: The CBP already has a system in place that notifies the ABI transmitter that the data was received. This information is only available to the ABI transmitter. At this time, any notification to the carrier of successful data transmission must come via the ABI filer. Additionally, it should be pointed out that this program has already been successfully used without the need for direct electronic confirmation from CBP.

Data Systems To Be Used; In-Bond Reporting

Free And Secure Trade System (FAST)

Comment: Four commenters wanted to know when FAST, which was only available at a limited number of Northern Border ports, would be extended to other ports, including those along the Southern Border. Four other commenters wanted the FAST program defined in the regulations as a method of acceptable cargo release.

CBP Response: A general notice published in the **Federal Register** (68 FR 55405) on September 25, 2003, announced the expansion of, and the eligibility requirements for, FAST along the Southern Border. The Southern and Northern border implementation schedule for FAST is also available on the CBP Web site (*http://www.cbp.gov*). This general notice also clearly defines FAST and its requirements.

Comment: Four commenters advocated that less-than-truckload (LTL) carriers be allowed to participate in FAST.

CBP Response: The current eligibility criteria for participation in the FAST program is set forth in the general notice that was published in the **Federal Register** (68 FR 55405) on September 25, 2003 (see 68 FR at 55406).

Pre-Arrival Processing System (PAPS)

Comment: It was suggested that CBP utilize the pre-file system, as was being done along the Southern Border.

CBP Response: The CBP contemplates mandating the implementation of the Pre-Arrival Processing System (PAPS) for all land border sites. The PAPS system, which uses the Automated Broker Interface (ABI), provides CBP with advance arrival information and includes carrier and importer information that is not included in the Southern Border Pre-file system. The PAPS system will basically also mesh with the advance truck manifest module when it is developed in ACE, while the Pre-file system would not.

Comment: The CBP should not deny the entry of PAPS shipments for failure to meet the required advance notification time. This could occur where Commercial Vehicle Processing Centers (CVPC) were not present.

CBP Response: In instances where CVPCs are not present, it is still the responsibility of the carrier or the importer/broker, as applicable, to ensure that the ABI transmitter receives the appropriate entry information via fax or by other means.

Should cargo information not be received within the allotted time frame, CBP may pursue any of the following options: (1) Denying a permit to unlade; (2) Delaying the release of the cargo until security screening is complete; and/or (3) Assessing a penalty/liquidated damages.

Comment: Three commenters sought the continued use of bar code labels until transponders were available.

CBP Response: The CBP will continue to support the use of bar codes to identify PAPS shipments, as an acceptable method for processing the entry and release of cargo.

Comment: Four commenters questioned what software would be called for and what cost and training investment would be needed. Four other commenters wanted the proposed rule to deal with alternative methods of advance electronic presentation of cargo for those parties without access to an approved data interchange.

CBP Response: All current ABI transmitters in the truck mode have access to the ABI transmission module, which requires no new additional modifications or software changes. New individual filers may have to make some changes to their existing software, either through in-house programming or via their software vendors. However, the ABI capabilities to be utilized have been available within ABI for many years. It is the carrier's, shipper's or other trade partner's responsibility to ensure that the ABI transmitter receives the appropriate entry information via fax or by other means.

A party seeking to file cargo information with CBP electronically, who does not have an approved data interchange, may employ either the services of an automated Customs broker, or a service provider or an ABI service bureau for this purpose (see § 143.1(a) and (c), Customs Regulations; 19 CFR 143.1(a) and (c)).

Border Release Advanced Screening And Selectivity (BRASS)

Comment: Two commenters desired that CBP expand system capabilities to include advance manifest procedures for BRASS and in-bond shipments and include instructions for a Monthly Manifest.

CBP Response: The BRASS system, which is largely paper-based, will be employed, on an interim basis, for reporting data for incoming cargo. However, additional requirements may be implemented for BRASS to ensure that BRASS transactions achieve the basic objectives of cargo safety and security pursuant to section 343(a), as amended.

As additional interim measures, CBP will continue to employ CAFES or ABI in-bond reporting systems where available. The CBP also intends to continue support for what is known as Monthly Manifest (which applies to automotive products), until the periodic summary reporting that Monthly Manifest supports is available electronically. The Monthly Manifest program, and instructions for this program, however, fall outside the scope of this document.

Comment: Five commenters sought additional explanation concerning the use of BRASS as a cargo reporting system under proposed § 123.92.

CBP Response: As a strictly interim, transitional procedure, CBP intends to allow the continuation of BRASS for trucks, but anticipates instituting some additional measures that would otherwise modify BRASS to enhance the security of BRASS transactions. To this end, CBP will take those measures deemed necessary to safeguard the integrity of the BRASS program, which could include program requirements such as FAST Driver registration and participation in the Customs-Trade Partnership Against Terrorism (C–TPAT). However, with the incorporation of a fully electronic version of BRASS planned in the new truck manifest module in ACE, CBP does not propose making any changes to the method in which the current paper-based BRASS operates.

Comment: One commenter advocated that CBP restrict the use of BRASS to C–TPAT approved importers.

CBP Response: The CBP will consider adding this type of security enhancement to the BRASS system. However, for the present, CBP will use C–TPAT membership in targeting incoming cargo for examination, including cargo that is subject to reporting through the BRASS system.

In-Bond Systems; Bar Codes

Comment: Five commenters desired further guidance under the proposed rule concerning in-bond entries for immediate transportation to another port of entry, and the use of the 2–D bar code label under in-bond provisions.

CBP Response: As explained in the proposed rule (68 FR at 43587), CBP will continue to employ CAFES or ABI in-bond reporting systems where available. The CAFES system handles in-bond shipments utilizing 2–D bar codes that are printed on the Customs Form (CF) 7512 in-bond entry document. Because the use of bar codes is required for CAFES, BRASS, PAPS, and other functions, CBP will continue to support the use of such bar codes in accordance with these systems.

Required Data Elements

Comment: Two commenters pointed out that proposed § 123.92(c)(2) allowed for dual party presentation of the required data, but did not indicate which data elements were required from the carrier, importer or broker.

CBP Response: Where there is dual-party presentation of the data elements listed for incoming cargo in § 123.92(d), the parties to the transaction should decide which data elements each will submit. It is, of course, presumed that if an importer or its broker elected to file advance cargo information with CBP, such data would typically encompass any required commodity and other related information that it possessed with respect to the cargo, as such information would likely be better known to the importer or its broker; and, for the same reason, the carrier would present the required data pertaining to the carriage of the cargo (see 68 FR at 43587). However, CBP will not parse the data elements in § 123.92(d), and rigidly mandate their respective assignment between the carrier and importer or broker.

Comment: In proposed § 123.92(d)(2), one commenter desired the elimination of the Standard Carrier Alpha (SCAC) code, because carriers along the U.S.-Mexican border did not have SCAC codes.

CBP Response: The CBP disagrees. The ability to identify the carrier is critical to target and assess the risk posed by shipments crossing the border. In this regard, the SCAC code is a unique four-letter code used to identify transportation companies; this unique carrier identifier supports the electronic data interchange for all motor carriers. A carrier may obtain a SCAC code by contacting the National Motor Freight Traffic Association, Inc., 2200 Mill Rd., Alexandria, VA 22314–4654.

Comment: One commenter mentioned that the proposed rule did not deal with a possible variation between the scheduled date of arrival and the actual date of arrival, and whether a difference in these times would result in a breach of the importer's entry bond.

CBP Response: In § 123.92(d)(6), the specific information required is the scheduled date and time of the carrier's arrival at the first port of entry in the United States. However, should there be a delay in the carrier's arrival following its data transmission, this may raise targeting concerns and prompt further inquiry/inspection. In any event, notwithstanding the scheduled arrival of the truck, the presentation of the required cargo data is related to the carrier's actual time of arrival in § 123.92(a).

Comment: Four commenters wanted the data elements for inbound truck cargo aligned with those data elements that would be required under the Automated Commercial Environment (ACE) once it is developed.

CBP Response: As the ACE is under development and its precise features have not as yet been determined, this comment falls outside the scope of this document.

Exemptions

Comment: The proposed rule should exempt informal entries from advance data reporting.

CBP Response: Section 123.92(b)(2) does exempt informal entries from the advance cargo information notification provisions.

Comment: All radioactive materials entering the United States should be subject to prior notification, even if the shipment only transited a contiguous foreign country while en route from one port to another in the United States.

CBP Response: Upon arrival in the United States, all shipments, including those merely in-transit through a contiguous foreign country, will be scanned for radiation in primary truck lanes, and in-transit manifests, if applicable, must be tendered at that time.

Examination/Inspection; Penalties/ Liquidated Damages; Refusal of Admission

Comment: One commenter suggested processing trucks away from the border, prior to reaching the bridge, especially for Detroit and Buffalo.

CBP Response: The concept of examining and processing trucks prior to their entry into the United States is currently being explored with Canada. It is a complex and sensitive issue involving matters of national sovereignty and the authority to enforce laws outside the United States.

Comment: One commenter inquired as to whether it would be acceptable for a carrier to arrive physically and wait in a holding area while the driver/carrier coordinated with the broker to ensure that proper advance information had been provided.

CBP Response: Because secondary examination areas are limited in space, CBP will not allow the shipment to be staged at a designated waiting area in the port of arrival either while the entry documentation is being processed or while the carrier consults with a broker to determine if the information has been presented in the manner prescribed.

Comment: Thirteen commenters expressed alarm over the prospect that the admission of cargo to the United States could be refused if the advance notice was not received.

CBP Response: Once implemented at a port, the advance cargo reporting provisions would be obligatory for all required cargo. For any inward carrier for which advance electronic commodity and transportation information was not presented to CBP, as otherwise required in the regulations, the transporting carrier, depending on

the specific circumstances involved, could be refused permission to unlade until all security screening and necessary examination was initiated and concluded, in addition to being subject to applicable statutory penalties. In the alternative, the carrier could be refused admission to the United States depending, once again, upon the particular circumstances involved.

Type of Carrier; Carriage of Instruments of International Traffic

Comment: Two commenters sought the creation of procedures for the movement of instruments of international traffic, including the movement of empty containers aboard trucks.

CBP Response: With the exception of FAST, CBP will not require any advance notification if the shipment consists solely of empty articles (pallets, tanks, cores, containers, and the like) that have been designated as instruments of international traffic (IITs). However, if the IITs are commingled with other commercial cargo, CBP will, of course, require the requisite arrival notification for such commercial cargo via the authorized CBP-approved electronic data interchange system; and any empty IITs carried aboard the conveyance must be identified as such and listed on the carrier's paper manifest.

Comment: Three commenters questioned whether there was a distinction between an inward truck carrier as opposed to a drayage carrier. Also, they wanted to know whether there would be any differences in treatment between carriers on the Northern and Southern Borders.

CBP Response: The CBP defines a drayage carrier as one that only moves cargo locally (such as a cartman who only moves cargo within the limits of a port), as opposed to an incoming truck carrier which is understood to be engaged in the international movement of cargo coming from Canada or Mexico. Also, as previously assured, until the development of the truck manifest module in ACE, CBP will employ existing data systems on both the Northern and Southern Borders to receive and evaluate cargo information for incoming truck shipments.

Cargo Departing From the United States; All Modes

Time Frames for Transmitting Required Data for Outbound Cargo

Comment: One commenter wanted to know whether there could be a pre-departure report for cargo that did not have an export license.

CBP Response: There may be pre-departure reporting for shipments without an export license. General export reporting requirements may be found in the Bureau of Census Regulations (15 CFR 30.1–30.2).

Comment: The proposed twenty-four hour advance notification for outgoing vessel cargo in proposed § 192.14(b)(1)(i) would considerably add to transit time, with adverse impact especially upon perishable goods.

CBP Response: Since the responsibility rests with the USPPI, and not the ocean carrier, to provide the advance data to CBP, there should be no undue burden placed upon the carrier. The Option 4 post-departure filing program will remain and will be available to exporters of perishables that meet requirements for volume, low-risk commodity, and compliance with export regulations.

Comment: The phrase, ''no later than 24 hours prior to the departure of the vessel'', in proposed § 192.14(b)(1)(i), should be further explained.

CBP Response: For greater clarity, this phrase in § 192.14(b)(1)(i) is changed to read: ''no later than 24 hours prior to departure from the U.S. port where the vessel cargo is to be laden''.

Comment: In proposed § 192.14(b)(1)(ii), one commenter suggested a longer time frame for submitting air cargo data, while two commenters wanted the proposed 2-hour advance time frame reduced.

CBP Response: The CBP finds that the 2-hour advance time frame in § 192.14(b)(1)(ii) is necessary for CBP targeting purposes, and should not unduly disrupt the flow of outbound air commerce. The CBP will continue to work with the express consignment industry to explore interim use of the External Transaction Number (XTN) by those companies that are able to provide CBP access to existing automated export manifest systems with targeting capabilities.

However, for further clarification, § 192.14(b)(1)(ii) is amended in this final rule to state that for air cargo, including cargo being transported by Air Express Couriers, the USPPI or its authorized agent must transmit and verify system acceptance of export air cargo information no later than 2 hours prior to the scheduled departure time of the aircraft from the last U.S. port.

Comment: Two commenters recommended that information be submitted prior to the export shipment being delivered to the outgoing carrier, but no less that 2 hours prior to departure of the flight for foreign. The concern was expressed that an air carrier would be penalized for shipments which were tendered for movement before the electronic information filing through the Automated Export System (AES) had been completed.

CBP Response: The USPPI or its authorized agent must have the Internal Transaction Number (ITN) available to provide to the carrier when the cargo is tendered for export. The ITN verifies that the cargo data filing has already been completed. Carriers are only responsible for collecting the proof of electronic filing (ITN) for annotation on the carrier's outward manifest, waybill, or other export documentation covering the cargo to be shipped.

Comment: Three commenters proposed that data be submitted for outbound Shippers Export Declaration (SED) shipments at the time of departure for air cargo and upon arrival at the border for truck cargo.

CBP Response: This would not be permissible. The CBP simply cannot perform its necessary targeting and selectivity responsibilities if the information is received at the time of departure or arrival at the border.

Comment: It was stated that the 4-hour notification for rail as initially proposed by CBP would directly impact operations and result in delayed shipments. On this ground, it was recommended that the time frame for reporting outbound rail cargo be consistent with the 2-hour pre-arrival time frame for incoming rail cargo.

Also, it was stated that U.S. Principal Parties in Interest (USPPIs) who would be obligated to transmit the required cargo information at least 4 hours prior to the engine being attached to the train generally had little knowledge of rail operations. Therefore, it was urged that a mechanism should be put in place whereby a problem container could be held at a Canadian port until reporting issues were resolved.

CBP Response: The CBP will adopt the recommendation for outbound rail that was put forth by COAC (the Treasury Advisory Committee on the Commercial Operations of the U.S. Customs Service). Thus, export cargo information must be transmitted no later than two hours prior to the arrival of the train at the border, thereby creating symmetry with the advance time frame for inbound rail cargo coming from Canada or Mexico.

The CBP observes that this two-hour time frame is established as a minimum guideline. All parties involved in export transactions are encouraged to file export cargo information as far in advance as is practicable to reduce the need for CBP to delay the export of cargo because of the need for screening, examinations, and the resolution of incomplete or incorrect records. It

should be recognized that CBP will continue to exercise its authority to remove a container from an outbound train at the time of border crossing. Further, in the event that a shipment crosses into Canada without proper reporting and is determined to be high-risk after CBP has utilized all targeting tools and information at its disposal, CBP will work with the carrier to have the container redelivered to the port of export.

Exemptions From Pre-Departure Reporting

Comment: One commenter sought information about the export exemption list; and whether there was any reason to standardize the format of the citation which the USPPI furnished to the outbound carrier. Exemptions for low value shipments and shipments to Canada should remain the same.

CBP Response: The Bureau of Census already publishes export reporting exemptions in its regulations (see 15 CFR 30.50–30.58). Exemptions for low value shipments and shipments to Canada do remain the same. Also, the citation format is already standardized and available to the trade in Census Foreign Trade Statistics Regulations (FTSR) Letter 168, Amendment 2, a copy of which may be obtained from the Bureau of Census. Additionally, it is understood that information required to be submitted under Bureau of Census regulations for exports made through the U.S. Postal Service (USPS) will not be subject to being reported within the advance filing time frames of § 192.14(b) in this final rule.

Comment: Two commenters inquired about the reporting status of shipments to U.S. territories and Puerto Rico.

CBP Response: The reporting requirements for shipments to U.S. territories and to Puerto Rico also remain unchanged. Such requirements are outlined in the Bureau of Census Regulations (see 15 CFR 30.1).

Internal Transaction Number (ITN)/ External Transaction Number (XTN)

Comment: One commenter—The U.S. Department of Defense—wanted to be excepted from the requirement to obtain an Internal Transaction Number (ITN) for export shipments, preferring instead to continue using the External Transaction Number for this purpose. This was said to be necessary to achieve an interface between DoD shipper systems and the AES.

CBP Response: The CBP will review the ITN requirement for non-licensed DoD shipments. However, it is emphasized that for those DoD shipments which are subject to the Department of State's International Traffic in Arms Regulations (ITAR), the requirement of an ITN, to be reported within the advance time frames stipulated by State, will be mandatory. Proposed § 192.14(b)(2) is amended in this final rule to add a specific cross reference to State's ITAR Regulations (22 CFR parts 120–130) that contain the advance notification provisions for exports of items on the U.S. Munitions List.

Comment: Specifications of the format and electronic transmission requirements for the ITN should be provided, especially for airlines.

CBP Response: Many carriers already annotate the XTN/ITN, Option 4 statement, or other exemption on the manifest. Carriers should refer to FTSR Letter 168, Amendment 2, for the proper formats. This FTSR Letter may be obtained from the Bureau of Census.

Comment: Since carriers could not accept cargo from the shipper/exporter until an electronic filing number or exemption code had been annotated on the export documentation at the time of freight acceptance, it would then follow that freight acceptance times would have to be restricted to 2 hours out from the flight.

CBP Response: Carriers should currently not be accepting cargo without a paper SED, XTN/ITN, Option 4 or reporting exemption statement (15 CFR 30.50–30.58). Hence, the carrier's responsibility under these regulations should not perceptibly change from the proper procedure it should be following at present. It is actually the USPPI or its agent who will have to plan ahead and accomplish transmission and acceptance of the data earlier, so that the ITN will be available when the cargo is tendered to the exporting carrier.

Comment: The ITN requirement should be revised to allow export shipments to proceed once the USPPI/ Agent has received the ITN/AES confirmation message; and the same policy should apply for export shipments that qualified for exemptions to the pre-departure electronic filing requirements.

CBP Response: If the USPPI/Agent is already waiting for the ITN message to be returned, the step of noting it on the export documents would be a fairly minor exercise. Also, export exemptions follow a standard format and are listed in 15 CFR 30.50–30.58 and FTSR Letter 168, Amendment 2, *supra.* The ITN is provided via a return message from AES. Carriers are required to obtain, and, therefore, USPPIs or their agents must provide to the carrier, an AES proof of filing citation, low-risk exporter citation (currently the Option 4 citation), or an exemption statement under current Census Bureau regulations. This procedure will remain the same under section 343(a) of the Trade Act of 2002, as amended.

Comment: It was not at all clear how a driver, who was out picking up freight on various shippers' loading docks, would have access to the ITN.

CBP Response: The USPPI/Agent should have the ITN already annotated on the export documentation that would be presented to the driver. All the driver would have to do is simply verify that the shipping documents include an ITN, Option 4, or other exemption statement.

Comment: Two commenters were of the opinion that the performance of AES in the past in timely returning ITN confirmation numbers had led to the trade's preference for the XTN numbers.

CBP Response: The AES development team is required to set performance standards for system performance. One of the 2003 performance measures requires system ''through-put'' (the time it takes for data to reach the AES, be processed and put back out for return to the filer) to be routinely less than 1 minute.

Comment: One commenter asked whether there would be any merit in adding the time that the ITN was obtained by the USPPI, so that the carrier would know when the 24 hours had expired (in the case of outbound vessel cargo).

CBP Response: The current ITN format is sufficient. It is the responsibility of the USPPI or its agent to make sure the advance filing window is met.

Comment: The AESDirect system could only return the ITN via email, which would not be timely enough for express business. Three commenters believed that since the AES redesign was not scheduled for completion until mid-2004, and AESDirect sent the ITN via email, the ITN should not be required. One commenter requested that the XTN be used instead.

CBP Response: The CBP wants to especially emphasize that the annotation of the ITN number on any export documentation will not be mandated or enforced until the implementation of the redesign of the AES Commodity Module, which, as noted, is not anticipated to be completed until mid-2004. The redesign of the AES Commodity Module will make the ITN stable when records are updated.

The CBP, after consulting with the Bureau of Census, has informally estimated that its AESDirect system returns the ITN via email within 5–15 minutes. While this response period

may have some impact on business practices, it should prove to be a return time that is, on balance, reasonably prompt and commercially acceptable. The preference for the XTN number is understandable, but since the XTN is generated by the USPPI or its agent and may be annotated on the export documentation without the shipment data having been transmitted to AES, this number is, and has repeatedly been, subject to abuse, which will make its continued use, as a general proposition, wholly unacceptable.

Comment: Under the proposed regulations, the exporter could present either the ITN number, the Option 4 filing number, or an exemption statement. It was asked whether this would also comply with the statute concerning the documentation of outbound waterborne cargo (19 U.S.C. 1431a). The CBP should clarify that under Option 4 filing and for exporters that were otherwise exempt from pre-departure filing, there would also be no requirement to provide separate shipping documents to the vessel carrier under 19 U.S.C. 1431a.

CBP Response: Issues relating to section 343(b) of the Trade Act of 2002, as amended (codified at 19 U.S.C.1431a), fall outside the scope of this rulemaking. As made clear in the proposed rule (68 FR at 43592), section 343(b), requiring proper documentation for all cargo to be exported by vessel, will be the subject of a separate publication in the **Federal Register.** To the extent legally and operationally permissible, however, the administrative implementation of the requirements of section 343(b) will be synchronized and dovetailed with these regulations under section 343(a).

Comment: One commenter asked how the carrier would know whether the AES filer was the USPPI or its agent.

CBP Response: All the carriers need to do is ensure that the proper AES proof of filing citation (including the ITN), the low-risk exporter citation, or an exemption statement is on the shipping documents that they receive with the cargo. The carrier is not required to check the validity of the ITN or the identity of the party presenting it.

Option 4 Filing (Post Departure)

Comment: The CBP and Census should grandfather existing Option 4 holders into the ''new'' Option 4 to be jointly constructed by the two agencies.

CBP Response: The CBP cannot guarantee that current Option 4 USPPIs will retain the privilege under program requirements that have yet to be finalized. The current Option 4 was conceived prior to September 11, 2001, and it is the goal of the Bureau of Census and CBP to ensure cargo safety and seaport security while at the same time fostering the continued smooth flow of commerce. The new Option 4 will emphasize volume, repetitive low-risk commodities and compliance.

Comment: The CBP should take into account those exporters who repeatedly shipped the same low-risk commodities to related parties.

CBP Response: The CBP does take such exporters into consideration. Current Option 4 is intended for repetitive exports of low-risk commodities by compliant USPPIs. The CBP will explore with the Bureau of Census the possibility of using related parties as a requirement or factor to determine Option 4 eligibility.

Comment: Two commenters sought assurance that any revisions to Option 4 filing would not reduce the ability for legitimate, low-risk exporters (such as exporters of agricultural commodities) to qualify for such filing if they were otherwise in compliance, even though they did not meet minimum export volume requirements. Another commenter wanted the program expanded to additional companies that faced new lead time requirements.

CBP Response: The CBP and the Bureau of Census are in the early phase of redesigning the program. While export volume will be a significant factor, there may be an appeals procedure wherein a compliant low-volume exporter can demonstrate a legitimate need for Option 4 filing under the redesigned system.

Comment: Two commenters strongly urged the continuation of Option 4 filing for C–TPAT (The Customs-Trade Partnership Against Terrorism) members with low-risk commodity exports. Also, it was thought that such exemptions (as Option 4) and programs for exports should match those provided for imports.

CBP Response: Current Option 4 filing is available to compliant exporters of low-risk commodities, regardless of C–TPAT status. The CBP does not anticipate that this will change.

Automated Export System (AES)/ Technical Issues

Comment: Under the planned redesign of AES to be developed by mid-2004, air carriers would be able to send transportation data directly to CBP. Two commenters sought guidance on how the CBP electronic data interchange would be interfaced with the airlines' systems.

CBP Response: The system enhancement projected for completion in mid-2004 is the AES Commodity Redesign which will improve the ability of the AES to process automated Shipper's Export Declaration (SED) information. These enhancements will not enable AES to accept electronic manifest information directly from air, rail, or truck carriers, nor will the new regulations require the exporting carriers to submit such manifest data via the AES. The vessel manifest module in AES will remain optional.

Comment: Three commenters questioned how CBP would notify the carrier of high-risk cargo that was targeted for inspection/examination. It was recommended that a predetermined time should be set following which a carrier could confidently assume that no further hold status would be issued for the cargo.

CBP Response: The AES commodity module is not capable of sending electronic hold messages to carriers, so the current methods of communication by fax and/or phone will need to continue. The CBP cannot set a time frame after which a carrier could assume no further holds. Given the current design and functionality of the system, commodity records are transmitted to AES on a transaction-by-transaction basis rather than as part of a manifest, where the end of the transmission is marked. Thus, not knowing which AES commodity transaction is the last for a particular conveyance makes it impossible for CBP to provide an absolute, finite time after which no further holds will occur.

Comment: The proposed outbound cargo reporting provisions should be changed so that motor carriers would not have to transmit specific data elements to AES.

CBP Response: Carriers are not responsible for transmitting the information required by section 343(a) of the Trade Act of 2002, as amended. Section 192.14(c)(4), as proposed and as appearing in this final rule, details carrier responsibility which, as already explained, is largely limited to collecting AES proof of filing citations (ITN), Option 4 exemptions, and regular reporting exemptions (see 15 CFR 30.50–30.58). Likewise, the transmission of all automated SED commodity data (which already includes data relating to the transportation of the cargo) by the USPPI/Agent is covered in § 192.14(c)(1) and (c)(2) in this final rule.

Comment: Two commenters were of the view that the data elements for the estimated date of exportation and the port of exportation (proposed § 192.14(c)(2)(v) and (c)(2)(vi)) would cause potential difficulty for the motor

industry which did not operate on strict routes and schedules.

CBP Response: The 6 transportation data elements in § 192.14(c)(2), including the estimated date of exportation and the port of exportation, are data elements that are at present mandatory for AES participants under current 15 CFR 30.63. The trade should already be reporting them. To be consistent with 15 CFR 30.63, the term, ''mode of transportation'', where appearing in proposed § 192.14(c)(2)(i), is changed in this final rule to ''method of transportation.''

Comment: The USPPI should provide only the intended port of exportation because the actual port of exportation might not be known to the USPPI.

CBP Response: The USPPI or its authorized agent must report the port of exportation as known when the USPPI or its agent tenders the cargo to the outbound carrier. Should the carrier export the cargo from a different port, and the carrier so informs the USPPI or agent, the port of exportation must be corrected by the filer in AES. Proposed § 192.14(c)(2)(vi) is revised in this final rule to clarify this issue.

Comment: One commenter wanted a more specific estimate of the expected completion and implementation date for the AES commodity module and whether it was on target for completion.

CBP Response: The target date for the redesign of the AES commodity module remains mid-2004.

Comment: The automated systems in place should be able to accommodate the required manifest reporting sufficiently for legitimate trade to continue to flow smoothly. Also, there should be a generous and realistic grace period.

CBP Response: The CBP supports the use of AES systems that are already heavily in use and widely available to USPPIs; and with Internet connections, new users can be brought into the system fairly easily and inexpensively. Moreover, outbound implementation of these regulations is contingent upon the completion of the AES Commodity Redesign and implementation by the Bureau of Census of mandatory AES for all export shipments which currently require a Shipper's Export Declaration (SED) (see § 192.14(e) in this final rule).

Comments on Economic Analysis

General

Comment: Several commenters stated that the proposed rule is a significant regulatory action. It was contended that CBP did not completely appreciate the magnitude of the impact of the proposed requirements. Importers, exporters, brokers, carriers, forwarders, consolidators and many others will be required to modify their business practices. Before implementation and enforcement begins, it is strongly believed that further economic impact analysis is warranted.

Several commenters stated that the preliminary economic analysis understated the true impact on the affected enterprises. In addition, some questioned that the preliminary analysis conclusion only addressed the impact on small entities, making it insufficient to make a proper determination of impact on the U.S. economy as a whole. Others expressed their belief that the real effect of the proposed rule would be far greater than the $100 million threshold, making the proposal a significant regulatory action.

It was said to be hard to believe that the transportation and trade industry would not have a similar cost increase [to the $4–$6 USPS estimate]. This increased cost exceeded the $100 million impact threshold. Already industry was seeing increases in transportation and operational costs associated with new security measures. The economic analysis presented seriously underestimated the true cost to industry.

It was believed that CBP failed to recognize the majority of other carriers [non-express], mostly non AMS, and other smaller carriers where the cost impact would be greater; these carriers would incur significant costs to redesign their systems. Moreover, the costs to consolidators, indirect air carriers, shippers and brokers were not factored in at all.

It was also asserted that the impact study had been too limited to support the conclusion that the cost was acceptable.

Finally, it was contended that the proposed rule stated that the effect of the rule on the economy would be slight to negligible. Yet, the study did not define negligible. The proposed rules would increase the cost of transportation for all goods imported into the U.S. other than by USPS. A significant portion, and perhaps all of these increased costs would be reflected in the increased costs of imported goods.

CBP Response: After further analysis of the proposed rule, CBP agrees that the rule is a significant regulatory action under Executive Order 12866, and that the cost of the rule will exceed $100 million. Accordingly, CBP has conducted a regulatory impact analysis (RIA) of the rule, which is available at the following Web site, *http://www.cbp.gov.*

The CBP's economic analysis for the final rule has estimated the cost to all affected sectors unless it was determined that the costs would be insignificant or that the costs would be passed to a different sector (*e.g.*, from brokers to importers).

Air

Comment: New automation systems and interfaces should be developed to gather the additional data elements required, at considerable costs. Additional labor costs will be incurred for systems administration, data entry, and subsequent carrier activities as a result of any targeted shipments.

It is estimated that the express industry will incur development and implementation costs in excess of $25 million. Additional labor costs for delivery of the data and subsequent required actions for targeted shipments for the express industry will exceed $15 million annually.

There are issues of additional handling for late shipments that must be held for the next day, lost revenues for transit shipments that will no longer be shipped on U.S. carriers, additional inventory to be carried by importers as defense against supply outages or factory shutdowns; labor reductions, and similar related actions.

CBP Response: The CBP's economic analysis for the final rule has estimated the cost of service degradation caused by delays using a logistics cost calculator for a range of delay times. The analysis always includes estimates for additional programming. The CBP has no basis on which to estimate the percentage of cargo (by weight or value) currently being transshipped through the U.S. that might be diverted through non-U.S. airports. The CBP recognizes that targeted shipments may require additional steps for air carriers, but has no basis for estimating the number of shipments that will be targeted or the degree to which the targeting will result in additional costs. For inbound shipments, the targeted shipment will be examined on arrival, which should impose a limited burden on the air carrier.

Comment: Many carriers are evaluating options for AAMS. The costs indicated by CBP for transmission fees are low compared to average costs by AAMS vendors. In addition, the cost of purchasing software is above any amounts identified by CBP.

CBP Response: The costs used in the final economic analysis are based on estimates provided by vendors. These costs vary by vendor and by the complexity of the software and its integration into the user's system. The

analysis assumes that larger carriers will develop their own software integration packages and that existing users of AMS will modify their internal systems to provide the more detailed cargo information. Only carriers that enter fewer than 500 air bills per month incur minimum costs.

Comment: Labor costs do not appear to include employee benefits, which would increase the labor rate by 30%.

CBP Response: Labor rates used in the final economic analysis are loaded with fringe benefits and overhead.

Comment: The ''wheels up'' requirement will result in a significant increase in staffing to meet deadlines. Air carriers will see a shift from air to truck. The rule will result in a revenue loss of premium services.

CBP Response: The final economic analysis estimates the costs of delays for a range of times. These costs include personnel costs. Although it is possible that some short-haul shipments will shift to truck, most shipments from Canada and northern Mexico destined for locations beyond the immediate border will probably still be shipped by air because of the considerable time-savings. Shipments from other parts of Latin America north of the equator and the Caribbean are likely to continue being sent by air.

Comment: Significant costs will be associated with changes in operating schedules. A high percentage of express volume is provided late in the day, close to cut-off time. New requirements which force an earlier cut-off time would be a binding constraint.

CBP Response: The final economic analysis estimates costs for both delays and service degradation resulting from the new requirements.

Comment: Further skewing the results is the fact that no costs are included for training personnel, restructuring operational systems to allow time to receive and submit information, or handling rejected shipments. The proposed scheme would directly negatively impact the key elements of the air cargo business—speed and reliability—and would severely jeopardize the needs of the global shipping community. These costs are not captured in the study.

CBP Response: The final economic analysis estimates costs for both delays and service degradation. Rule familiarization costs were estimated based on U.S. wage rates for all modes, but represent a very small part of total costs.

Comment: Business will be lost in the transit sector. Shipments transiting the U.S. would be diverted to competitors that do not transit the U.S. The costs of compliance will have an asymmetric impact, placing us at a competitive disadvantage.

CBP Response: The CBP has no basis on which to estimate the percentage of cargo (by weight or value) currently being transshipped through the U.S. that might be diverted through non-U.S. airports.

Comment: ''Just in time'' (JIT) shippers will also be affected by an earlier cut-off time. Earlier shipping or delayed arrival of shipments create higher costs for seller and buyer. Shippers close to the border may switch shipping modes; warehousing costs may increase; inventory and associated carrying costs will rise.

The statement in the proposed rule that JIT considerations are eliminated is simply not true. The CBP has failed to acknowledge the carrier requirements for handling and manifest preparation. Current post-departure manifesting allows manifesting on a different later schedule than sorting and loading. To complete a manifest at wheels up, the carrier will be forced to cut off receipt of shipments several hours earlier, especially for shorter flights, delaying shipments by a day or diverting them to another mode.

Removing even one or two hours available shipping time could remove 20–30% of volume for a specific market. Air carriers (express and conventional) carry time-sensitive parts and supplies every day. The CBP's claim of no impact to JIT fails to acknowledge operational realities of transportation handling requirements, at least for air shipments.

The proposal will require earlier deadlines for shippers. Shippers of perishable commodities such as flowers, produce, and fish will increase their losses from damaged and spoiled product. The cost-benefit analysis overlooks this fact.

CBP Response: The CBP's economic analysis for the final rule has estimated the cost of delays and service degradation caused by delays using a logistics cost calculator for a range of delay times and cargo mix (perishables, non perishables).

Comment: There is an additional cost for educating customers about the requirements of the rule.

CBP Response: The cost of educating shippers is not possible to estimate. The majority of shipments by value or weight are likely from companies that ship on a regular basis. They will incur one-time costs to understand the new requirements. There will always be new shippers entering the system who will need to learn what is needed.

Comment: The estimate of 2.41 million air waybills per month for express carriers is grossly understated. Some carriers use summary manifesting, under which multiple consignments of letters or documents are manifested as one record. One entry may cover hundreds of individual consignments. It is important that each waybill be counted, rather than entries, as the individual shipment record will require screening. The CBP is urged to review these numbers, and validate their accuracy. Understatement will severely affect the calculated capacity and system performance of the Automated Targeting System (ATS).

The number of express air bills counted may only be those requiring formal entry, which represent about 15 to 25 percent of the total shipment count. The real annual number of express bills is closer to 25 million rather than 3.27 million. The economic analysis for USPS resulted in a cost of $4–$6 per package.

The number of other air cargo waybills were likely master air bills; no accounting was made for house bills. One may reasonably increase master bills by a factor of 10 for a total air bill count, closer to 8 million instead of 800,000. That leaves about 7 million new transactions to be entered into the automated system for regular air cargo shipments. For the express group, their volume of air bills may be a very narrow slice of what will now be required.

The question is presented as to how CBP reconciles its claim that there is virtually no cost to carriers when CBP estimates an annual cost to USPS of at least $120 million. While automation does exist in the carrier community, the staggering increase in the number of transactions that will require reporting has a significant cost. Most of the forwarder and airline expense associated with air AMS will be new expense. Using the USPS estimate, the required reporting of potentially 32 million transactions in AMS meets the $100 million threshold.

The assumption that USPS will not absorb these costs or pass them directly to users implies that USPS may have a competitively advantaged position.

CBP Response: The final economic analysis includes cost estimates for entering new information into Air AMS using a range of scenarios to reflect variations in the number of additional bills that will be entered. These cost estimates may be overstated because they are based on U.S. and Canadian wages; many shipments will be arriving from countries where wages are much lower.

Comment: The assumption that all large express carriers have AAMS capability at present and need only flip

a switch to immediately begin transmitting the required data is patently incorrect and ignores a multitude of operational realities of physical shipment handling, sorting, loading, weight and balance calculations, and coordinating with manifesting. Manifest preparation entails multiple automated systems that are not currently interfaced with AAMS. The simple hard fact is that large express carriers are heavily impacted through significant operational changes, earlier cut-off times, and development of new software.

CBP Response: The final economic analysis estimates costs for operational changes and earlier cut-off times. Because the two major express carriers do not use AMS for express consignments, but allow CBP to access their proprietary systems for data, CBP is uncertain that they will incur new costs for automated systems. Nonetheless, the final economic analysis includes costs for 4,000 hours of programming per AMS carrier to cover any new interfaces that are needed.

Comment: Numerous carriers arriving in the U.S. have limited or no electronic messaging capabilities in their origin locations. It would be beneficial for CBP to reevaluate the economic impact created by implementing the proposed rule. If carriers cannot currently comply or will require significant investment in systems and manpower to comply in the time allotted, JIT shipping will be in jeopardy.

CBP Response: The final economic analysis estimates costs for acquiring or developing the software needed to file electronically.

Comment: Not all affected parties were considered during the analysis. Foreign flag carriers and shippers were not part of the analysis. This rule has worldwide implications. A similar regulation has been proposed in Canada and is likely to appear in other countries. The rule will significantly impact the global trade community.

CBP Response: Executive Order 12866 requires a focus on the U.S. economy, thus enumerating all possible impacts to global trade may be beyond the scope of the analysis. To the extent that foreign entities, however, participate in the U.S. economy and impacts to foreign entities affect the U.S. economy, the Executive Order does apply to foreign entities. To that end, the accompanying regulatory impact analysis to this final rule does estimate the impact on foreign entities, although in many cases it is difficult to separate the impact on foreign entities from the overall estimate. On the other hand, the Regulatory Flexibility Act does not apply to small foreign entities.

Comment: Forwarder and air carriers are obliged to have a huge investment to develop or modify their Electronic Data Interchange (EDI) system; they will also have a large operating cost day to day. They are afraid they will not be able to bear this huge cost.

CBP Response: The RIA estimates costs for implementing AMS. These costs are likely to vary considerably based on the level of imports being handled by a carrier or forwarder. The CBP notes that forwarders are not required to file information; they have the option to provide the information to the carrier.

Comment: The requirement for hard copy filing in the event of EDI failure is time-consuming and very costly.

CBP Response: The CBP assumes that carriers can easily e-mail or fax a hard copy to their agents at the destination airport should this be necessary.

Truck

Comment: One commenter stated that the economic analysis is inadequate and unscientific. They assert that the proposed rule is a significant regulatory action. They assert that the combined annual impact of the air and truck rules on their company would be $695,000.

CBP Response: These comments are very general. Without knowing how the impact on their company was estimated, CBP cannot comment on the estimate. The CBP agrees that the rule is a significant action.

Comment: Several commenters stated that the ''economic assumptions'' used by CBP did not include additional labor and equipment needed to do the ''same quantity of work in a shorter time.''

CBP Response: These comments are not specific enough to permit direct response. The commenters do not offer any support for the assertion that time available to do required work has been reduced.

Comment: Some commenters refer to inaccuracies in the economic analysis, but do not specify them. They recommend that CBP conduct a comprehensive economic analysis.

CBP Response: The CBP has completed an economic analysis of the rule.

Comment: One commenter asserts that the rule will have a significant impact because many small truckers do not have the technology to use PAPS. The commenter also states that fewer than ten percent of Mexican trucking firms have automated systems in place.

CBP Response: The CBP agrees that the rule will have a significant economic impact. In order to use Selectivity PAPS, a trucking firm will have to obtain a SCAC number and bar-code strips. These costs are included in the RIA prepared by CBP. While many Mexican carriers may not have automated systems, U.S. customs brokers now make electronic pre-filings based on information supplied by Mexican brokers. This is true for all shipments except those coming through under BRASS. The RIA includes the cost to U.S. brokers for preparing the pre-entry filing for shipments now using BRASS.

Comment: The CBP is planning, in due course, full implementation of ACE. Therefore, the costs of adapting to ACE should be treated as costs of the rule.

CBP Response: The CBP's plans for implementation of ACE are not driven by the Trade Act and would be implemented whether or not the rule is implemented. Therefore, the costs of adaptation to ACE may not be attributed properly to the rule. Costs of adapting to Selectivity PAPS are included in the RIA.

Vessel

Comment: It is incumbent on CBP to provide a more meaningful and realistic analysis of the impact of the rules on small businesses before it promulgates a final rule and commences mandatory implementation and enforcement.

CBP Response: The Regulatory Flexibility Act, which establishes the ''significant impact to a substantial number of small entities'' test, applies to small U.S. businesses. The CBP's Regulatory Impact Analysis (RIA) for the final rule has estimated the impact of the rule on small businesses.

Comment: There is no analysis of the effects that the proposed rule will have on NVOCCs, air forwarders, and surface forwarders. In most, if not all instances, NVOCCs and other forwarders will be required to make substantial investments in software, employ additional personnel and enter into contractual arrangements with data service centers.

The regulatory flexibility analysis (RFA) should be broadened to consider both the dollar costs on forwarders and any operational consequences of the proposed rules.

CBP Response: The CBP estimates that 650 Non-Vessel Operating Common Carriers (NVOCC) are already automated. The CBP believes that the proposed requirements will not have a significant impact on a substantial number of NVOCCs. Those that choose not to automate, can instead use the services of an authorized service provider, a qualified port authority, or provide the shipment information to the

carrier. Therefore, in the final economic analysis, CBP has not estimated the costs of the proposed rule on NVOCCs.

Comment: Although a large percentage of manifests presently submitted to Customs are submitted electronically, this does not mean that a large percentage of the organizations presently submitting manifests are presently doing so via AMS or are capable of doing so.

One company stated that it submits approximately 100 single page manifests for vessels that import over 5 million tons of bulk commodities in a year. Due to this insignificant number of manifests, which cover a large amount of cargo, the company stated that it is not equipped to submit cargo manifests electronically and to do so would represent a substantial financial penalty.

At the present time pre-arrival manifests are submitted by fax at basically no cost even though they are sent to several branches of the Federal government. An investigation into obtaining a ''provider'' via whom manifests could be submitted electronically had indicated a set up cost of $1,000 and a monthly minimum for one SCAC code of $200.

Therefore, strong disagreement was noted with the initial analysis that the proposed rule would not have a significant economic impact upon a substantial number of small entities.

CBP Response: Virtually all shipping companies that are owned by U.S. citizens or are U.S. flagged are currently filing manifests electronically. The CBP has been able to identify only 24 shipping companies that carry cargo into U.S. ports from the Caribbean that do not use AMS. The CBP does not believe that any of these companies are U.S. owned nor are any of the ships U.S. flag. Consequently, the proposed rule on vessels is not expected to have any economic impact on U.S. companies.

Comment: It is estimated that 25 million bills of lading are issued annually for container cargo from Japan to the United States. Shipping companies are charged a $25 fee for transforming and inputting a shipper's cargo data to the AMS. This means that the cost of trade between Japan and the United States will increase $625 million per year through the introduction of the 24-hour rule. Contrary to the CBP's claim that much of the trade already uses electronic transmission systems and therefore would not incur significant compliance costs, this fact indicates that substantial costs would be imposed on the trade when the requirements of advance electronic cargo information are implemented.

CBP Response: The CBP believes that virtually all shipping companies that are owned by U.S. citizens or are U.S. flagged are currently filing manifests electronically. Further, even if none of the non-U.S. trade participants were automated, the estimated annual cost of trade of $625 million would represent less than one percent of a total value of U.S. imports from Japan (this calculation is based on the 2001 import values; Source: Bureau of Transportation Statistics).

Summary of Significant Changes

As referenced in the Discussion of Comments, supra, this final rule document makes three significant changes from the proposed rule. These changes consist of: (1) Removing the provision concerning advance cargo data for air shipments listed as letters and documents and making it the subject of a separate **Federal Register** publication (proposed § 122.48a(d)(3) as such is removed from this final rule); (2) requiring certain additional data elements from the incoming air carrier in the case of split shipments (a new § 122.48a(d)(3) is thus added in this final rule); and (3) decreasing the rail outbound time frame from ''4 hours prior to the attachment of the locomotive before going foreign'' to ''2 hours prior to arrival at the border'' (§ 192.14(b)(1)(iv)).

Adoption of Proposal

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, CBP has concluded that the proposed regulations with the modifications discussed above should be adopted as a final rule.

Additional Changes

For greater editorial accuracy, the reference in proposed § 113.64(a) and (c) to ''§ 122.48a(c)(2)'' is changed in this final rule to ''§ 122.48a(c)(1)(ii)–(c)(1)(iv)''. Also, proposed § 122.48a(a)(2) is revised in this final rule to distinguish between Diplomatic Pouches and Diplomatic Cargo, the latter of which is subject to the full advance cargo data reporting requirements of § 122.48a. In addition, proposed § 123.8 is amended consistent with § 122.38(g) in this final rule. Lastly, proposed §§ 123.91(a) and 123.92(a) are changed to make clear that cargo data must be received within the relevant time frame before the subject cargo reaches the first port of arrival in the United States.

Transportation Security Administration—Cargo Security Programs

It is also stressed that these final regulations to implement section 343(a), as amended, may, in the foreseeable future, be subject to modification as necessary to accommodate a cargo security program that may be developed by the Transportation Security Administration (TSA) in accordance with the Aviation and Transportation Security Act (Pub. L. 107–71, 115 Stat. 597; November 19, 2001 (49 U.S.C. 114(d), (f)(10); 44901(a), (f)).

Regulatory Analyses

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), CBP must determine whether a regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal government 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.

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

The CBP has determined that the rule will have an annual effect on the economy of more than $100 million and is, therefore, an economically significant regulatory action. Accordingly, it has prepared a regulatory impact analysis for the rule, which is available on the CBP Web site, *http://www.cbp.gov.*

Costs

The analysis examined each of the modes and identified changes that are likely to impose new costs on U.S. carriers. Because virtually all vessels and railroads are already filing electronically, costs were estimated for these sectors to be insignificant. Exports to Canada by truck are generally exempted from regulation. For exports by air, shippers complete the shipper's export declaration prior to presenting the shipment to a carrier; therefore, the

new time requirements for filing will be met.

Truck

The analysis estimated costs and cost savings for inbound trucks from Canada, and inbound and outbound trucks to Mexico. Although the rule will impose costs on trucks that are not currently filing electronically, the analysis estimates that these costs are offset by the savings that will result from faster movement across the border. Overall, the analysis estimates that the rule will impose new costs of $91 million on trucking, which will be offset by savings of $142 million.

Air

The analysis indicates that the rule will impose substantial costs on the 39 U.S. air carriers currently certificated for foreign operations as well as more than 100 foreign carriers that fly cargo into the U.S. These costs arise from three factors: the need to implement electronic filing systems and improve existing systems; delays and service degradation that will result from the requirement to file information at wheels up from airports north of the equator in the western hemisphere; and the requirement to file detailed information on all cargo including documents. Because passenger-carrying carriers cannot easily delay operations to complete cargo information, the analysis assumed that these carriers would limit cargo and reduce revenues rather than delay flights. Comments on the proposed rule cited other changes that could result from the rule and impose costs: diversion of air cargo to trucks, diversion of in-transit cargo to other carriers who do not fly through the U.S., and targeting of shipments, delaying unloading of the aircraft. Because CBP has no basis for estimating the degree to which diversion or targeting may occur, the analysis did not quantify costs for these impacts. The analysis examined four options for air:

(1) The proposed rule, which required information on all cargo including documents;

(2) An option that required information on all cargo except documents that weigh less than one pound (16 ounces);

(3) An option that required information on all cargo except documents; and,

(4) An option originally recommended by the Treasury Advisory Committee on the Commercial Operations of the U.S. Customs Service (COAC), but modified by CBP, that would require no detailed information on documents and filing an hour before arrival for flights into the U.S. from airports north of the equator in the western hemisphere.

The options allow an examination of the impact of varying requirements on cargo and filing times. The CBP has elected option three above because the proposal to cover advance electronic cargo information on letters and documents will be the subject of a separate **Federal Register** publication. However, the RIA for this final rule document will cover the other publication as well. As noted, the RIA is available on the CBP Web site, *http://www.cbp.gov.*

Because of the considerable uncertainty that exists about the impacts on delays and service degradation as well as about the number of air bills that will need to be filed under the rule, the analysis examined each of these impacts across a range of scenarios from low impacts (*e.g.*, 30 minute delays, 10 percent loss of revenues, twice as many air bills) to high impacts (2 hour delays, 40 percent loss of revenue, 8 times as many air bills). The analysis indicated that the total annualized cost to the air carriers could range from $345 million for the low impact COAC option to $4.7 billion for the high impact proposed rule option. Table 1 presents the costs for the four options, annualized over five years (7 percent discount rate).

TABLE 1.—ANNUALIZED TOTAL COST TO AIR CARRIERS [MILLIONS]

	Low	Medium	High
All Documents ..	$2,914	$3,652	$4,736
Large Documents	930	2,177	3,770
No Documents ..	422	1,160	2,244
COAC Option	345	994	1,889

As can be seen from Table 1, the degree to which detailed information is required for documents drives the cost of the rule. Overall, the requirement for filing house bill rather than master bill information electronically imposes the greatest cost. The costs of delays and service degradation, although significant to a few carriers, are limited because only about 25 percent of inbound air cargo on U.S. carriers and 10 percent of inbound cargo on foreign carriers is Canada, the Caribbean, and Latin America north of the equator.

Benefits

Examination of the benefits was largely qualitative because the most significant benefits are essentially unquantifiable. The most important benefit of the rule will be the improvement in national security, an issue that is difficult to measure in monetary terms. However, there are some additional benefits expected that were quantified. Most of the incremental quantifiable benefits are expected from changes taking place at the northern border crossings for inbound truck traffic. The rule is expected to streamline the process for checking inbound trucks at Canadian border crossings, leading to benefits from time savings due to reduced congestion that are in addition to the time savings realized by trucks that change their border-crossing procedures under the rules. The analysis estimated the value of the time savings at $18 million. Additionally, reduced congestion would lead to less truck idling (or moving at very slow speeds) and consequent reductions in air pollution and fuel costs. The fuel savings were estimated at $4 million. Because of the lack of data on how congestion reductions for commercial traffic can affect non-commercial traffic at the border (*e.g.*, cars), the analysis did not quantify this benefit. Finally, trucks leaving the country through the Mexican border are expected to provide some qualitative benefits through improvements in data collection.

Summary

Combining the costs, cost savings, and monetized benefits, the analysis estimates that the rules produce net savings to the trucking sector of $78 million, and net costs to U.S. air carriers of $345 million to $4.7 billion.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 *et seq.*), Federal agencies must evaluate the impact of rules on small entities and consider less burdensome alternatives. As discussed in the previous section, CBP has conducted a cost benefit analysis on this rule. As part of that analysis, CBP evaluated the impact on small entities. The CBP has determined that this rule could have a significant economic impact on a substantial number of small air carriers. Companies in the other modes are unlikely to incur substantial costs to comply and may benefit from the rule.

For air, the lowest cost option would impose costs in excess of one percent of operating revenues for 7 of the 19 small carriers. The high cost options would impose significant costs on 12 of the 19 small carriers; four of the carriers could have costs in excess of 10 percent of their operating revenues. Seven of the 19 carriers operated at a loss in 2002.

Despite the uncertainty that exists in estimating costs, it is, therefore, likely that the rule would create a significant economic impact on small air carriers. Because most of these costs are driven by the cost of electronic data entry, which is mandated by statute, mitigating the impacts is difficult. Many of the small entities may address this issue by having the shipper or consolidator submit the information to CBP.

A copy of the small business analysis for this rule, which is chapter 6 of the regulatory impact analysis, is available on the CBP Web site, *http://www.cbp.gov.*

Paperwork Reduction Act

The collection of information in this final rule document was submitted for review and has been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under OMB control number 1651–0001 (Transportation Manifest (Cargo Declaration)). An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

The collection of information in this document is contained in §§ 4.7a(c)(4), 122.48a, 123.91, 123.92, and 192.14. Under these sections, the information would be required and used to determine the safety and security conditions under which cargo to be brought into or sent from the United States was maintained prior to its arrival or departure. The likely respondents and/or recordkeepers are air, truck, rail and vessel carriers, Non Vessel Operating Common Carriers (NVOCCs), freight forwarders, deconsolidators, express consignment facilities, importers, exporters, and Customs brokers. The estimated average annual burden associated with this information collection is 52.3 hours per respondent or recordkeeper.

Comments on the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

Part 178, Customs Regulations (19 CFR part 178), containing the list of approved information collections, is revised as appropriate to reflect the approved information collections covered by this final rule.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA; 2 U.S.C. 1501 *et seq.*) requires cost-benefit and other analyses before any rulemaking if the rule would include a ''Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year''. The current inflation-adjusted statutory threshold is $113 million.

This rule will not have a significant effect on state, local or tribal governments within the scope of the UMRA. However, CBP has determined that this final rule is significant under UMRA because it anticipates that the rule will result in an aggregate expenditure by the private sector of $113,000,000 or more in any one year.

Consequently, CBP has conducted the required economic impact analyses as noted in the above section, ''EXECUTIVE ORDER 12866''. The other requirements under UMRA include assessing the rule's effects on:

- Future costs
- Particular regions, communities, or industrial sectors
- National productivity
- Economic growth
- Full employment
- Job creation
- Exports

The regulatory impact analysis, discussed in the ''EXECUTIVE ORDER 12866'' section, covered many of these issues in greater detail. To summarize, the regulations will impose costs into the future; most costs are presented in the impact analysis on an annual basis. The regulations will impact many different regions, communities, and sectors; but with the exception of air carriers the impact will be disbursed and will not be concentrated geographically. In addition, these regulatory impacts, although large in absolute terms, generally do not rise to the level where they could cause any sort of macro effects on productivity, growth, employment, or jobs.

With regard to the impacts on trade, although most of the information required for advance manifest notification and SED (Shippers Export Declaration) notification is already supplied to CBP, this new notice requirement may cause a reduction of imports of certain products into the U.S. and exports out of the U.S. Some entities may choose to stop exporting products from the U.S. (or importing products to the U.S.) if the additional costs of complying increase the price of the products to the point where they cannot compete with lower-priced products produced within domestic markets. On the other hand, there are products for which substitutes are not available. In these cases, and in cases where demand for the product greatly exceeds domestic supply, importers may pay an increased price for the product. The CBP believes, however, that the ''per shipment'' cost of these requirements is quite small and therefore this rulemaking will not have a significant impact on the relative competitiveness of foreign versus domestically produced products either within or outside of the U.S.

When a rule would result in expenditures greater than $113 million, UMRA requires outreach to the regulated community and discussion of proposals. The CBP conducted extensive discussions with the regulated community prior to the development of the rule. In January 2003 CBP held separate meetings with each of the transportation modes to solicit information and comments. The CBP also accepted comments from members of the regulated community as it developed its proposed rule and held numerous meetings with the COAC committees, which submitted recommendations. Finally, CBP received more than 100 comments on the proposed rule, which were considered in the development of the final rule.

For a more detailed analysis, please refer to the regulatory impact analysis prepared for this rule, which is available on the CBP Web site, *http://www.cbp.gov.*

CBP Issuance of Rule Under DHS Authority; 19 CFR 0.2(a)

When the Trade Act of 2002 was enacted (Pub. L. 107–210; August 6, 2002), the Customs Service existed as part of the Department of the Treasury. Thereafter, the Homeland Security Act of 2002 was enacted (Public Law 107–296; November 25, 2002), which created

the Department of Homeland Security (DHS). Section 403 of the Homeland Security Act (the Act) transferred to the newly created Department the functions, personnel, assets, and liabilities of the Customs Service, including the functions of the Secretary of the Treasury relating thereto. Customs, later renamed as CBP, thereby became a component of DHS. Furthermore, the Department of the Treasury recently issued an order (Treasury Order 100–16, dated May 15, 2003) delegating to DHS certain Customs revenue functions that were otherwise retained by the Treasury Department under sections 412 and 415 of the Act. In accordance with the Homeland Security Act and this transfer and delegation of functions, certain matters, such as this rule which is designed to ensure cargo safety and security rather than revenue assessment, now fall solely within the jurisdiction of DHS. Therefore, this regulation is being issued by CBP under the authority of DHS in accordance with 19 CFR 0.2(a) (see CBP Dec. 03–24, 68 FR 51868, August 28, 2003).

Coordination of Final Rule With Congress

Pursuant to section 343(a)(3)(L) (19 U.S.C. 2071 note, section (a)(3)(L)), the required report regarding this final rule document has been timely made to the committees on finance and commerce, science, and transportation of the Senate and the committees on ways and means and transportation and infrastructure of the House of Representatives.

List of Subjects

19 CFR Part 4

Administrative practice and procedure, Arrival, Cargo vessels, Common carriers, Customs duties and inspection, Declarations, Entry, Exports, Foreign commerce and trade statistics, Freight, Imports, Inspection, Maritime carriers, Merchandise, Penalties, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR Part 103

Administrative practice and procedure, Computer technology, Confidential business information, Electronic filing, Freedom of information, Reporting and recordkeeping requirements.

19 CFR Part 113

Air carriers, Bonds, Common carriers, Customs duties and inspection, Exports, Foreign commerce and trade statistics, Freight, Imports, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 122

Administrative practice and procedure, Advance notice of arrival, Advance notice requirements, Air cargo, Air cargo manifest, Air carriers, Aircraft, Air transportation, Commercial aircraft, Customs duties and inspection, Entry procedure, Foreign commerce and trade statistics, Freight, Imports, Penalties, Reporting and recordkeeping requirements, Security measures.

19 CFR Part 123

Administrative practice and procedure, Aircraft, Canada, Common carriers, Customs duties and inspection, Entry of merchandise, Freight, Imports, International traffic, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Vehicles, Vessels.

19 CFR Part 178

Administrative practice and procedure, Collections of information, Exports, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

19 CFR Part 192

Administrative practice and procedure, Aircraft, Customs duties and inspection, Exports, Foreign trade statistics, Law enforcement, Motor vehicles, Reporting and recordkeeping procedures, Vehicles, Vessels.

Amendments to the Regulations

■ Parts 4, 103, 113, 122, 123, 178, and 192, Customs Regulations (19 CFR parts 4, 103, 113, 122, 123, 178, and 192), are amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

■ 1. The general authority citation for part 4 is revised, and the relevant specific authority citations continue, to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. App. 3, 91;

* * * * *

Section 4.5 also issued under 19 U.S.C. 1441;

Section 4.7 also issued under 19 U.S.C. 1581(a); 46 U.S.C. App. 883a, 883b;

* * * * *

Section 4.61 also issued under 46 U.S.C. App. 883;

* * * * *

■ 2. Amend § 4.5(a) by:

■ a. Removing the references to the numerical terms ''(1)'' and ''(2)'' appearing in the first sentence; and

■ b. Adding two new sentences after the first sentence to read as follows:

§ 4.5 Government vessels.

(a) * * * In addition, any vessel chartered by, and transporting only cargo that is the property of, the U.S. Department of Defense (DoD) will be treated as a Government vessel for the purpose of being exempt from entry, where the DoD-chartered vessel is manned entirely by the civilian crew of the vessel carrier under contract to DoD. Notwithstanding § 4.60(b)(3) of this part, such DoD-chartered vessel is not exempt from vessel clearance requirements. * * *

* * * * *

■ 3. Amend § 4.7 by:

■ a. Revising the first sentence of paragraph (b)(1);

■ b. Revising paragraph (b)(2);

■ c. Removing the words, ''if automated'', where appearing in paragraph (b)(3)(i);

■ d. Adding a new paragraph (b)(3)(iii); and

■ e. Adding a new paragraph (b)(5).

The revisions and additions read as follows:

§ 4.7 Inward foreign manifest; production on demand; contents and form; advance filing of cargo declaration.

* * * * *

(b)(1) With the exception of any Cargo Declaration that has been filed in advance as prescribed in paragraph (b)(2) of this section, the original and one copy of the manifest must be ready for production on demand. * * *

(2) Subject to the effective date provided in paragraph (b)(5) of this section, and with the exception of any bulk or authorized break bulk cargo as prescribed in paragraph (b)(4) of this section, Customs and Border Protection (CBP) must receive from the incoming carrier, for any vessel covered under paragraph (a) of this section, the CBP-approved electronic equivalent of the vessel's Cargo Declaration (Customs Form 1302), 24 hours before the cargo is laden aboard the vessel at the foreign port (see § 4.30(n)(1)). The current approved system for presenting electronic cargo declaration information to CBP is the Vessel Automated Manifest System (AMS).

(3)(i) * * *

(iii) Where the party electronically presenting to CBP the cargo information required in § 4.7a(c)(4) receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party

to electronically present the information on the basis of what the party reasonably believes to be true.

* * * * *

(5) Within 90 days of December 5, 2003, all ocean carriers, and NVOCCs electing to participate, must be automated on the Vessel AMS system at all ports of entry in the United States.

* * * * *

■ 4. Amend § 4.7a by:

■ a. Revising paragraphs (c)(4)(viii) and (c)(4)(ix);

■ b. Removing the word ''and'' after paragraph (c)(4)(xiii);

■ c. Removing the period after paragraph (c)(4)(xiv), and adding, in its place, a semicolon; and

■ d. Adding new paragraphs (c)(4)(xv) and (c)(4)(xvi).

■ Revised paragraphs (c)(4)(viii) and (c)(4)(ix) and new paragraphs (c)(4)(xv) and (c)(4)(xvi) read as follows:

§ 4.7a Inward manifest; information required; alternative forms.

* * * * *

(c) *Cargo Declaration.* * * *

(4) * * *

(viii) The shipper's complete name and address, or identification number, from all bills of lading. (At the master bill level, for consolidated shipments, the identity of the Non Vessel Operating Common Carrier (NVOCC), freight forwarder, container station or other carrier is sufficient; for non-consolidated shipments, and for each house bill in a consolidated shipment, the identity of the foreign vendor, supplier, manufacturer, or other similar party is acceptable (and the address of the foreign vendor, etc., must be a foreign address); by contrast, the identity of the carrier, NVOCC, freight forwarder or consolidator is not acceptable; the identification number will be a unique number assigned by CBP upon the implementation of the Automated Commercial Environment);

(ix) The complete name and address of the consignee, or identification number, from all bills of lading. (For consolidated shipments, at the master bill level, the NVOCC, freight forwarder, container station or other carrier may be listed as the consignee. For non-consolidated shipments, and for each house bill in a consolidated shipment, the consignee is the party to whom the cargo will be delivered in the United States, with the exception of ''FROB'' (foreign cargo remaining on board). However, in the case of cargo shipped ''to order of [a named party],'' the carrier must report this named ''to order'' party as the consignee; and, if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party's identity and contact information (address) in the ''Notify Party'' field of the advance electronic data transmission to CBP, to the extent that the CBP-approved electronic data interchange system is capable of receiving this data. The identification number will be a unique number assigned by CBP upon implementation of the Automated Commercial Environment);

* * * * *

(xv) Date of departure from foreign, as reflected in the vessel log (this element relates to the departure of the vessel from the foreign port with respect to which the advance cargo declaration is filed (see § 4.7(b)(2)); the time frame for reporting this data element will be either:

(A) No later than 24 hours after departure from the foreign port of lading, for those vessels that will arrive in the United States more than 24 hours after sailing from that foreign port; or

(B) No later than the presentation of the permit to unlade (Customs Form (CF) 3171, or electronic equivalent), for those vessels that will arrive less than 24 hours after sailing from the foreign port of lading); and

(xvi) Time of departure from foreign, as reflected in the vessel log (see § 4.7a(c)(4)(xv) for the applicable foreign port and the time frame within which this data element must be reported to CBP).

* * * * *

■ 5. Amend § 4.61 by adding a new paragraph (c)(24) to read as follows:

§ 4.61 Requirements for clearance.

* * * * *

(c) *Verification of compliance.*

* * * * *

(24) Electronic receipt of required vessel cargo information (see § 192.14(c) of this chapter).

* * * * *

PART 103—AVAILABILITY OF INFORMATION

■ 1. The general authority citation for part 103 continues, and a specific authority citation is added for § 103.31a in appropriate numerical order, to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701;

* * * * *

Section 103.31a also issued under 19 U.S.C. 2071 note;

* * * * *

■ 2. Amend subpart C of part 103 by adding a new § 103.31a to read as follows:

§ 103.31a Advance electronic information for air, truck, and rail cargo.

Advance cargo information that is electronically presented to Customs and Border Protection (CBP) for inbound or outbound air, rail, or truck cargo in accordance with § 122.48a, 123.91, 123.92, or 192.14 of this chapter, is per se exempt from disclosure under § 103.12(d), unless CBP receives a specific request for such records pursuant to § 103.5, and the owner of the information expressly agrees in writing to its release.

PART 113—CUSTOMS BONDS

■ 1. The authority citation for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

■ 2. Amend § 113.62 by:

■ a. Revising the heading of paragraph (j), and redesignating its current text as paragraph (j)(1);

■ b. Adding a new paragraph (j)(2); and

■ c. Amending paragraph (l)(1) by adding the citation, ''(j)(2),'', after the citation, ''(i),''.

The revision and addition to paragraph (j) read as follows:

§ 113.62 Basic importation and entry bond conditions.

* * * * *

(j) *Agreement to comply with electronic entry and/or advance cargo information filing requirements.*

(1) * * *

(2) If the principal elects to provide advance inward air or truck cargo information to Customs and Border Protection (CBP) electronically, the principal agrees to provide such cargo information to CBP in the manner and in the time period required, respectively, under § 122.48a or 123.92 of this chapter. If the principal defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each regulation violated.

* * * * *

■ 3. Amend § 113.64 by revising the first sentence of paragraph (a); and by revising paragraph (c) to read as follows:

§ 113.64 International carrier bond conditions.

(a) *Agreement to Pay Penalties, Duties, Taxes, and Other Charges.* If any vessel, vehicle, or aircraft, or any master, owner, or person in charge of a vessel, vehicle or aircraft, slot charterer, or any non-vessel operating common

carrier as defined in § 4.7(b)(3)(ii) of this chapter or other party as specified in § 122.48a(c)(1)(ii)–(c)(1)(iv) of this chapter, incurs a penalty, duty, tax or other charge provided by law or regulation, the obligors (principal and surety, jointly and severally) agree to pay the sum upon demand by Customs and Border Protection (CBP). * * *

* * * * *

(c) *Non-vessel operating common carrier (NVOCC); other party.* If a slot charterer, non-vessel operating common carrier (NVOCC) as defined in § 4.7(b)(3)(ii) of this chapter, or other party specified in § 122.48a(c)(1)(ii)–(c)(1)(iv) of this chapter, elects to provide advance cargo information to CBP electronically, the NVOCC or other party, as a principal under this bond, in addition to compliance with the other provisions of this bond, also agrees to provide such cargo information to CBP in the manner and in the time period required under those respective sections. If the NVOCC or other party, as principal, defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each regulation violated.

* * * * *

PART 122—AIR COMMERCE REGULATIONS

■ 1. The general authority citation for part 122 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

* * * * *

■ 2. Amend § 122.12 by revising the heading of paragraph (c) and adding a sentence at the end of paragraph (c) to read as follows:

§ 122.12 Operation of international airports.

* * * * *

(c) *FAA rules; denial of permission to land.* * * * In addition, except in the case of an emergency or forced landing (see § 122.35), permission to land at an international airport may be denied if advance electronic information for incoming foreign cargo aboard the aircraft has not been received as provided in § 122.48a.

* * * * *

■ 3. Amend § 122.14 by:

■ a. Redesignating paragraphs (d)(4) and (d)(5) as paragraphs (d)(5) and (d)(6), respectively;

■ b. Adding a new paragraph (d)(4); and

■ c. Revising newly redesignated paragraph (d)(5).

The addition and revision read as follows:

§ 122.14 Landing rights airport.

* * * * *

(d) *Denial or withdrawal of landing rights.* * * *

(4) Advance cargo information has not been received as provided in § 122.48a;

(5) Other reasonable grounds exist to believe that Federal rules and regulations pertaining to safety, including cargo safety and security, and Customs, or other inspectional activities have not been followed; or

* * * * *

■ 4. Amend § 122.33 by:

■ a. Revising paragraph (a), introductory text; and

■ b. Revising paragraph (a)(1).

The revisions read as follows:

§ 122.33 Place of first landing.

(a) The first landing of an aircraft entering the United States from a foreign area will be:

(1) At a designated international airport (see § 122.13), provided that permission to land has not been denied pursuant to § 122.12(c);

* * * * *

■ 5. Amend § 122.38 by:

■ a. Adding a sentence at the end of paragraph (c); and

■ b. Adding a new paragraph (g).

The additions read as follows:

§ 122.38 Permit and special license to unlade and lade.

* * * * *

(c) *Term permit or special license.* * * * In addition, a term permit or special license to unlade or lade already issued will not be applicable to any inbound or outbound flight, with respect to which Customs and Border Protection (CBP) has not received the advance electronic cargo information required, respectively, under § 122.48a or 192.14(b)(1)(ii) of this chapter (see paragraph (g) of this section).

* * * * *

(g) *Advance receipt of electronic cargo information.* The CBP will not issue a permit to unlade or lade cargo upon arrival or departure of an aircraft, and a term permit or special license already issued will not be applicable to any inbound or outbound flight, with respect to which CBP has not received the advance electronic cargo information required, respectively, under § 122.48a or 192.14 of this chapter. In cases in which CBP does not receive complete cargo information in the time and manner and in the electronic format required by § 122.48a or 192.14 of this chapter, as applicable, CBP may delay issuance of a permit or special license to unlade or lade cargo, and a term permit or special license to unlade or lade already issued may not apply, until all required information is received. The CBP may also decline to issue a permit or special license to unlade or lade, and a term permit or special license already issued may not apply, with respect to the specific cargo for which advance information is not timely received electronically, as specified in § 122.48a or 192.14(b)(1)(ii) of this chapter.

■ 6. Amend § 122.41 by:

■ a. Revising its introductory text;

■ b. Removing the word ''and'' following paragraph (a), and redesignating paragraph (b) as paragraph (c); and

■ c. Adding a new paragraph (b).

The revision and addition read as follows:

§ 122.41 Aircraft required to enter.

All aircraft coming into the United States from a foreign area must make entry under this subpart except:

* * * * *

(b) Aircraft chartered by, and transporting only cargo that is the property of, the U.S. Department of Defense (DoD), where the DoD-chartered aircraft is manned entirely by the civilian crew of the air carrier under contract to DoD; and

* * * * *

■ 7. Amend § 122.48 by revising paragraph (a) to read as follows:

§ 122.48 Air cargo manifest.

(a) *When required.* Except as provided in paragraphs (d) and (e) of this section, an air cargo manifest need not be filed or retained aboard the aircraft for any aircraft required to enter under § 122.41. However, an air cargo manifest for all cargo on board must otherwise be available for production upon demand. The general declaration must be filed as provided in § 122.43.

* * * * *

■ 8. Amend subpart E of part 122 by adding a new § 122.48a to read as follows:

§ 122.48a Electronic information for air cargo required in advance of arrival.

(a) *General requirement.* Pursuant to section 343(a), Trade Act of 2002, as amended (19 U.S.C. 2071 note), and subject to paragraph (e) of this section, for any inbound aircraft required to enter under § 122.41, that will have commercial cargo aboard, Customs and Border Protection (CBP) must electronically receive from the inbound air carrier and, if applicable, an approved party as specified in

paragraph (c)(1) of this section, certain information concerning the incoming cargo, as enumerated, respectively, in paragraphs (d)(1) and (d)(2) of this section. The CBP must receive such information no later than the time frame prescribed in paragraph (b) of this section. The advance electronic transmission of the required cargo information to CBP must be effected through a CBP-approved electronic data interchange system.

(1) *Cargo remaining aboard aircraft; cargo to be entered under bond.* Air cargo arriving from and departing for a foreign country on the same through flight and cargo that is unladen from the arriving aircraft and entered, in bond, for exportation, or for transportation and exportation (see subpart J of this part), are subject to the advance electronic information filing requirement under paragraph (a) of this section.

(2) *Diplomatic Pouches and Diplomatic Cargo.* When goods comprising a diplomatic or consular bag (including cargo shipments, containers, and the like identified as Diplomatic Pouch) that belong to the United States or to a foreign government are shipped under an air waybill, such cargo is subject to the advance reporting requirements, but the description of the shipment as Diplomatic Pouch will be sufficient detail for description. Shipments identified as Diplomatic Cargo, such as office supplies or unaccompanied household goods, are subject to the advance reporting requirements of paragraph (a) of this section.

(b) *Time frame for presenting data.* (1) *Nearby foreign areas.* In the case of aircraft under paragraph (a) of this section that depart for the United States from any foreign port or place in North America, including locations in Mexico, Central America, South America (from north of the Equator only), the Caribbean, and Bermuda, CBP must receive the required cargo information no later than the time of the departure of the aircraft for the United States (the trigger time is no later than the time that wheels are up on the aircraft, and the aircraft is en route directly to the United States).

(2) *Other foreign areas.* In the case of aircraft under paragraph (a) of this section that depart for the United States from any foreign area other than that specified in paragraph (b)(1) of this section, CBP must receive the required cargo information no later than 4 hours prior to the arrival of the aircraft in the United States.

(c) *Party electing to file advance electronic cargo data.* (1) *Other filer.* In addition to incoming air carriers for whom participation is mandatory, one of the following parties meeting the qualifications of paragraph (c)(2) of this section, may elect to transmit to CBP the electronic data for incoming cargo that is listed in paragraph (d)(2) of this section:

(i) An Automated Broker Interface (ABI) filer (importer or its Customs broker) as identified by its ABI filer code;

(ii) A Container Freight Station/deconsolidator as identified by its FIRMS (Facilities Information and Resources Management System) code;

(iii) An Express Consignment Carrier Facility as identified by its FIRMS code; or,

(iv) An air carrier as identified by its carrier IATA (International Air Transport Association) code, that arranged to have the incoming air carrier transport the cargo to the United States.

(2) *Eligibility.* To be qualified to file cargo information electronically, a party identified in paragraph (c)(1) of this section must establish the communication protocol required by CBP for properly presenting cargo information through the approved data interchange system. Also, other than a broker or an importer (see § 113.62(j)(2) of this chapter), the party must possess a Customs international carrier bond containing all the necessary provisions of § 113.64 of this chapter.

(3) *Nonparticipation by other party.* If another party as specified in paragraph (c)(1) of this section does not participate in advance electronic cargo information filing, the party that arranges for and/or delivers the cargo shipment to the incoming carrier must fully disclose and present to the carrier the cargo information listed in paragraph (d)(2) of this section; and the incoming carrier, on behalf of the party, must present this information electronically to CBP under paragraph (a) of this section.

(4) *Required information in possession of third party.* Any other entity in possession of required cargo data that is not the incoming air carrier or a party described in paragraph (c)(1) of this section must fully disclose and present the required data for the inbound air cargo to either the air carrier or other electronic filer, as applicable, which must present such data to CBP.

(5) *Party receiving information believed to be accurate.* Where the party electronically presenting the cargo information required in paragraph (d) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present the information on the basis of what that party reasonably believes to be true.

(d) *Non-consolidated/consolidated shipments.* For non-consolidated shipments, the incoming air carrier must transmit to CBP all of the information for the air waybill record, as enumerated in paragraph (d)(1) of this section. For consolidated shipments: the incoming air carrier must transmit to CBP the information listed in paragraph (d)(1) of this section that is applicable to the master air waybill; and the air carrier must transmit cargo information for all associated house air waybills as enumerated in paragraph (d)(2) of this section, unless another party as described in paragraph (c)(1) of this section electronically transmits this information directly to CBP.

(1) *Cargo information from air carrier.* The incoming air carrier must present to CBP the following data elements for inbound air cargo (an ''M'' next to any listed data element indicates that the data element is mandatory in all cases; a ''C'' next to the listed data element indicates that the data element is conditional and must be transmitted to CBP only if the particular information pertains to the inbound cargo):

(i) Air waybill number (M) (The air waybill number is the International Air Transport Association (IATA) standard 11-digit number);

(ii) Trip/flight number (M);

(iii) Carrier/ICAO (International Civil Aviation Organization) code (M) (The approved electronic data interchange system supports both 3- and 2-character ICAO codes, provided that the final digit of the 2-character code is not a numeric value);

(iv) Airport of arrival (M) (The 3-alpha character ICAO code corresponding to the first airport of arrival in the Customs territory of the United States (for example, Chicago O'Hare = ORD; Los Angeles International Airport = LAX));

(v) Airport of origin (M) (The 3-alpha character ICAO code corresponding to the airport from which a shipment began its transportation by air to the United States (for example, if a shipment began its transportation from Hong Kong (HKG), and it transits through Narita, Japan (NRT), en route to the United States, the airport of origin is HKG, not NRT));

(vi) Scheduled date of arrival (M);

(vii) Total quantity based on the smallest external packing unit (M) (for

example, 2 pallets containing 50 pieces each would be considered as 100, not 2);

(viii) Total weight (M) (may be expressed in either pounds or kilograms);

(ix) Precise cargo description (M) (for consolidated shipments, the word ''Consolidation'' is a sufficient description for the master air waybill record; for non-consolidated shipments, a precise cargo description or the 6-digit Harmonized Tariff Schedule (HTS) number must be provided (generic descriptions, specifically those such as ''FAK'' (''freight of all kinds''), ''general cargo'', and ''STC'' (''said to contain'') are not acceptable));

(x) Shipper name and address (M) (for consolidated shipments, the identity of the consolidator, express consignment or other carrier, is sufficient for the master air waybill record; for non-consolidated shipments, the name of the foreign vendor, supplier, manufacturer, or other similar party is acceptable (and the address of the foreign vendor, etc., must be a foreign address); by contrast, the identity of a carrier, freight forwarder or consolidator is not acceptable);

(xi) Consignee name and address (M) (for consolidated shipments, the identity of the container station, express consignment or other carrier is sufficient for the master air waybill record; for non-consolidated shipments, the name and address of the party to whom the cargo will be delivered is required, with the exception of ''FROB'' (Foreign Cargo Remaining On Board); this party need not be located at the arrival or destination port);

(xii) Consolidation identifier (C);

(xiii) Split shipment indicator (C) (see paragraph (d)(3) of this section for the specific data elements that must be presented to CBP in the case of a split shipment);

(xiv) Permit to proceed information (C) (this element includes the permit-to-proceed destination airport (the 3-alpha character ICAO code corresponding to the permit-to-proceed destination airport); and the scheduled date of arrival at the permit-to-proceed destination airport);

(xv) Identifier of other party which is to submit additional air waybill information (C);

(xvi) In-bond information (C) (this data element includes the destination airport; the international/domestic identifier (the in-bond type indicator); the in-bond control number, if there is one (C); and the onward carrier identifier, if applicable (C)); and

(xvii) Local transfer facility (C) (this facility is a Container Freight Station as identified by its FIRMS code, or the warehouse of another air carrier as identified by its carrier code).

(2) *Cargo information from carrier or other filer.* The incoming air carrier must present the following additional information to CBP for the incoming cargo, unless another party as specified in paragraph (c)(1) of this section elects to present this information directly to CBP. Information for all house air waybills under a single master air waybill consolidation must be presented electronically to CBP by the same party. (An ''M'' next to any listed data element indicates that the data element is mandatory in all cases; a ''C'' next to any listed data element indicates that the data element is conditional and must be transmitted to CBP only if the particular information pertains to the inbound cargo):

(i) The master air waybill number and the associated house air waybill number (M) (the house air waybill number may be up to 12 alphanumeric characters (each alphanumeric character that is indicated on the paper house air waybill document must be included in the electronic transmission; alpha characters may not be eliminated));

(ii) Foreign airport of origin (M) (The 3-alpha character ICAO code corresponding to the airport from which a shipment began its transportation by air to the United States (for example, if a shipment began its transportation from Hong Kong (HKG), and it transits through Narita, Japan (NRT), en route to the United States, the airport of origin is HKG, not NRT));

(iii) Cargo description (M) (a precise description of the cargo or the 6-digit Harmonized Tariff Schedule (HTS) number must be provided);

(iv) Total quantity based on the smallest external packing unit (M) (for example, 2 pallets containing 50 pieces each would be considered as 100, not 2);

(v) Total weight of cargo (M) (may be expressed in either pounds or kilograms);

(vi) Shipper name and address (M) (the name of the foreign vendor, supplier, manufacturer, or other similar party is acceptable (and the address of the foreign vendor, etc., must be a foreign address); by contrast, the identity of a carrier, freight forwarder or consolidator is not acceptable);

(vii) Consignee name and address (M) (the name and address of the party to whom the cargo will be delivered in the United States, with the exception of ''FROB'' (Foreign Cargo Remaining On Board); this party need not be located at the arrival or destination port); and

(viii) In-bond information (C) (this data element includes the destination airport; the international/domestic identifier (the in-bond type indicator); the in-bond control number, if there is one (C); and the onward carrier identifier, if applicable (C)).

(3) *Additional cargo information from air carrier; split shipment.* When the incoming air carrier elects to transport cargo covered under a single consolidated air waybill on more than one aircraft as a split shipment (see § 141.57 of this chapter), the carrier must report the following additional information for each house air waybill covered under the consolidation (An ''M'' next to any listed data element indicates that the data element is mandatory in all cases; a ''C'' next to any listed data element indicates that the data element is conditional and must be transmitted to CBP only if the particular information pertains to the inbound cargo):

(i) The master and house air waybill number (M) (The master air waybill number is the IATA standard 11-digit number; the house air waybill number may be up to 12 alphanumeric characters (each alphanumeric number that is indicated on the paper house air waybill must be included in the electronic transmission; alpha characters may not be eliminated));

(ii) The trip/flight number (M);

(iii) The carrier/ICAO code (M) (The approved electronic data interchange system supports both 3- and 2-character ICAO codes, provided that the final digit of the 2-character code is not a numeric value);

(iv) The airport of arrival (M) (The 3-alpha character ICAO code corresponding to the first airport of arrival in the Customs territory of the United States (for example, Chicago O'Hare = ORD; Los Angeles International Airport = LAX));

(v) The airport of origin (M) (The 3-alpha character ICAO code corresponding to the airport from which a shipment began its transportation by air to the United States (for example, if a shipment began its transportation from Hong Kong (HKG), and it transits through Narita, Japan (NRT), en route to the United States, the airport of origin is HKG, not NRT));

(vi) Scheduled date of arrival (M);

(vii) The total quantity of the cargo covered by the house air waybill based on the smallest external packing unit (M) (For example, 2 pallets containing 50 pieces each would be considered as 100, not 2);

(viii) The total weight of the cargo covered by the house air waybill (M) (May be expressed in either pounds or kilograms);

(ix) Description (M) (This description should mirror the precise level of cargo

description information that is furnished to the incoming carrier by the other electronic filer, if applicable (see paragraph (c)(1) of this section));

(x) Permit-to-proceed information (C) (This element includes the permit-to-proceed destination airport (the 3-alpha character ICAO code corresponding to the permit-to-proceed destination airport); and the scheduled date of arrival at the permit-to-proceed destination airport);

(xi) Boarded quantity (C) (The quantity of the cargo covered by the house air waybill (see paragraph (d)(3)(vii) of this section) that is included in the incoming portion of the split shipment); and

(xii) Boarded weight (C) (The weight of the cargo covered by the house air waybill (see paragraph (d)(3)(viii) of this section) that is included in the incoming portion of the split shipment).

(e) *Compliance date of this section.* (1) *General.* Subject to paragraph (e)(2) of this section, all affected air carriers, and other parties as specified in paragraph (c)(1) of this section that elect to participate in advance automated cargo information filing, must comply with the requirements of this section on and after March 4, 2004.

(2) *Delay in compliance date of section.* The CBP may delay the general compliance date set forth in paragraph (e)(1) of this section in the event that any necessary modifications to the approved electronic data interchange system are not yet in place. Also, CBP may delay the general compliance date of this section at a given port until CBP has afforded any necessary training to CBP personnel at that port. In addition, CBP may delay implementation if further time is required to complete certification testing of new participants. Any such delay would be the subject of an announcement in the **Federal Register.**

■ 9. Amend subpart G of part 122 by adding a new § 122.66 to read as follows:

§ 122.66 Clearance or permission to depart denied.

If advance electronic air cargo information is not received as provided in § 192.14 of this chapter, Customs and Border Protection may deny clearance or permission for the aircraft to depart from the United States.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

■ 1. The general authority citation for part 123 is revised, and the relevant specific sectional authority citation continue, to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624, 2071 note.

* * * * *

Section 123.8 also issued under 19 U.S.C. 1450–1454, 1459;

* * * * *

■ 2. Amend § 123.8 by:

■ a. Adding two sentences after the second sentence in paragraph (a); and

■ b. Adding a sentence at the end of paragraph (d).

The additions read as follows:

§ 123.8 Permit or special license to unlade or lade a vessel or vehicle.

(a) *Permission to unlade or lade.* * * * Permission to unlade or lade a truck will be denied for any cargo with respect to which advance electronic information has not been received as provided in § 123.92 or 192.14 of this chapter, as applicable. In cases in which CBP does not receive complete cargo information in the time and manner and in the electronic format required by § 123.92 or 192.14 of this chapter, as applicable, CBP may delay issuance of a permit or special license to unlade or lade a truck. * * *

* * * * *

(d) *Term permit or special license.* * * * A term permit or special license to unlade or lade a truck already issued will not be applicable as to any cargo with respect to which advance electronic information has not been received as provided in § 123.92 or 192.14 of this chapter, as applicable.

■ 3. Amend part 123 by adding a new subpart J to read as follows:

Subpart J—Advance Information for Cargo Arriving by Rail or Truck

Sec.
123.91 Electronic information for rail cargo required in advance of arrival.
123.92 Electronic information for truck cargo required in advance of arrival.

Subpart J—Advance Information for Cargo Arriving by Rail or Truck

§ 123.91 Electronic information for rail cargo required in advance of arrival.

(a) *General requirement.* Pursuant to section 343(a), Trade Act of 2002, as amended (19 U.S.C. 2071 note), and subject to paragraph (e) of this section, for any train requiring a train sheet under § 123.6, that will have commercial cargo aboard, Customs and Border Protection (CBP) must electronically receive from the rail carrier certain information concerning the incoming cargo, as enumerated in paragraph (d) of this section, no later than 2 hours prior to the cargo reaching the first port of arrival in the United States. Specifically, to effect the advance electronic transmission of the required rail cargo information to CBP, the rail carrier must use a CBP-approved electronic data interchange system.

(1) *Through cargo in transit to a foreign country.* Cargo arriving by train for transportation in transit across the United States from one foreign country to another; and cargo arriving by train for transportation through the United States from point to point in the same foreign country are subject to the advance electronic information filing requirement for incoming cargo under paragraph (a) of this section.

(2) *Cargo under bond.* Cargo that is to be unladed from the arriving train and entered, in bond, for exportation, or for transportation and exportation, in another vehicle or conveyance is also subject to the advance electronic information filing requirement under paragraph (a) of this section.

(b) *Exception; cargo in transit from point to point in the United States.* Domestic cargo transported by train to one port from another in the United States by way of Canada or Mexico is not subject to the advance electronic information filing requirement for incoming cargo under paragraph (a) of this section.

(c) *Incoming rail carrier.* (1) *Receipt of data; acceptance of cargo.* As a pre-requisite to accepting the cargo, the carrier must receive, from the foreign shipper and owner of the cargo or from a freight forwarder, as applicable, any necessary cargo shipment information, as listed in paragraph (d) of this section, for electronic transmission to CBP.

(2) *Accuracy of information received by rail carrier.* Where the rail carrier electronically presenting the cargo information required in paragraph (d) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the rail carrier acquired such information, and whether and how the carrier is able to verify this information. Where the rail carrier is not reasonably able to verify such information, CBP will permit the carrier to electronically present the information on the basis of what the carrier reasonably believes to be true.

(d) *Cargo information required.* The rail carrier must electronically transmit to CBP the following information for all required incoming cargo that will arrive in the United States by train:

(1) The rail carrier identification SCAC code (the unique Standard Carrier Alpha Code assigned for each carrier by the National Motor Freight Traffic

Association; see § 4.7a(c)(2)(iii) of this chapter);

(2) The carrier-assigned conveyance name, equipment number and trip number;

(3) The scheduled date and time of arrival of the train at the first port of entry in the United States;

(4) The numbers and quantities of the cargo laden aboard the train as contained in the carrier's bill of lading, either master or house, as applicable (this means the quantity of the lowest external packaging unit; containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons);

(5) A precise cargo description (or the Harmonized Tariff Schedule (HTS) number(s) to the 6-digit level under which the cargo is classified if that information is received from the shipper) and weight of the cargo; or, for a sealed container, the shipper's declared description and weight of the cargo (generic descriptions, specifically those such as ''FAK'' (''freight of all kinds''), ''general cargo,'' and ''STC'' (''said to contain'') are not acceptable);

(6) The shipper's complete name and address, or identification number, from the bill(s) of lading (for each house bill in a consolidated shipment, the identity of the foreign vendor, supplier, manufacturer, or other similar party is acceptable (and the address of the foreign vendor, etc., must be a foreign address); by contrast, the identity of the carrier, freight forwarder, consolidator, or broker, is not acceptable; the identification number will be a unique number to be assigned by CBP upon the implementation of the Automated Commercial Environment);

(7) The complete name and address of the consignee, or identification number, from the bill(s) of lading (The consignee is the party to whom the cargo will be delivered in the United States. However, in the case of cargo shipped ''to order of [a named party],'' the carrier must identify this named ''to order'' party as the consignee; and, if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party's identity and contact information (address) in the ''Notify Party'' field of the advance electronic data transmission to CBP, to the extent that the CBP-approved electronic data interchange system is capable of receiving this data. The identification number will be a unique number assigned by CBP upon implementation of the Automated Commercial Environment);

(8) The place where the rail carrier takes possession of the cargo shipment;

(9) Internationally recognized hazardous material code when such materials are being shipped by rail;

(10) Container numbers (for containerized shipments) or the rail car numbers; and

(11) The seal numbers for all seals affixed to containers and/or rail cars to the extent that CBP's data system can accept this information (for example, if a container has more than two seals, and only two seal numbers can be accepted through the system per container, the carrier's electronic presentation of two of these seal numbers for the container would be considered as constituting full compliance with this data element).

(e) *Date for compliance with this section.* Rail carriers must commence the advance electronic transmission to CBP of the required cargo information, 90 days from the date that CBP publishes notice in the **Federal Register** informing affected carriers that the approved electronic data interchange system is in place and operational at the port of entry where the train will first arrive in the United States.

§ 123.92 Electronic information for truck cargo required in advance of arrival.

(a) *General requirement.* Pursuant to section 343(a) of the Trade Act of 2002, as amended (19 U.S.C. 2071 note), and subject to paragraph (e) of this section, for any truck required to report its arrival under § 123.1(b), that will have commercial cargo aboard, Customs and Border Protection (CBP) must electronically receive from the party described in paragraph (c) of this section certain information concerning the cargo, as enumerated in paragraph (d) of this section. The CBP must receive such cargo information by means of a CBP-approved electronic data interchange system no later than either 30 minutes or 1 hour prior to the carrier's reaching the first port of arrival in the United States, or such lesser time as authorized, based upon the CBP-approved system employed to present the information.

(1) *Through cargo in transit to a foreign country.* Cargo arriving by truck in transit through the United States from one foreign country to another (§ 123.31(a)); and cargo arriving by truck for transportation through the United States from one point to another in the same foreign country (§ 123.31(b); § 123.42) are subject to the advance electronic information filing requirement in paragraph (a) of this section.

(2) *Cargo entered under bond.* Cargo that is to be unladed from the arriving truck and entered, in bond, for exportation, or for transportation and exportation, in another vehicle or conveyance are also subject to the advance electronic information filing requirement in paragraph (a) of this section.

(b) *Exceptions from advance reporting requirements.*

(1) *Cargo in transit from point to point in the United States.* Domestic cargo transported by truck and arriving at one port from another in the United States after transiting Canada or Mexico (§ 123.21; § 123.41) is exempt from the advance electronic filing requirement for incoming cargo under paragraph (a) of this section.

(2) *Certain informal entries.* The following merchandise is exempt from the advance cargo information reporting requirements under paragraph (a) of this section, to the extent that such merchandise qualifies for informal entry pursuant to part 143, subpart C, of this chapter:

(i) Merchandise which may be informally entered on Customs Form (CF) 368 or 368A (cash collection or receipt);

(ii) Merchandise unconditionally or conditionally free, not exceeding $2,000 in value, eligible for entry on CF 7523; and

(iii) Products of the United States being returned, for which entry is prescribed on CF 3311.

(c) *Carrier; and importer or broker.* (1) *Single party presentation.* Except as provided in paragraph (c)(2) of this section, the incoming truck carrier must present all required information to CBP in the time and manner prescribed in paragraph (a) of this section.

(2) *Dual party presentation.* The United States importer, or its Customs broker, may elect to present to CBP a portion of the required information that it possesses in relation to the cargo. Where the broker, or the importer (see § 113.62(j)(2) of this chapter), elects to submit such data, the carrier is responsible for presenting to CBP the remainder of the information specified in paragraph (d) of this section.

(3) *Party receiving information believed to be accurate.* Where the party electronically presenting the cargo information required in paragraph (d) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party

to electronically present the information on the basis of what the party reasonably believes to be true.

(d) *Cargo information required.* The following commodity and transportation information, as applicable, must be electronically transmitted to and received by CBP for all required incoming cargo arriving in the United States by truck, to the extent that the particular CBP-approved electronic data interchange system employed can accept this information:

(1) Conveyance number, and (if applicable) equipment number (the number of the conveyance is its Vehicle Identification Number (VIN) or its license plate number and state of issuance; the equipment number, if applicable, refers to the identification number of any trailing equipment or container attached to the power unit);

(2) Carrier identification (this is the truck carrier identification SCAC code (the unique Standard Carrier Alpha Code) assigned for each carrier by the National Motor Freight Traffic Association; see § 4.7a(c)(2)(iii) of this chapter);

(3) Trip number and, if applicable, the transportation reference number for each shipment (the transportation reference number is the freight bill number, or Pro Number, if such a number has been generated by the carrier);

(4) Container number(s) (for any containerized shipment) (if different from the equipment number), and the seal numbers for all seals affixed to the equipment or container(s);

(5) The foreign location where the truck carrier takes possession of the cargo destined for the United States;

(6) The scheduled date and time of arrival of the truck at the first port of entry in the United States;

(7) The numbers and quantities for the cargo laden aboard the truck as contained in the bill(s) of lading (this means the quantity of the lowest external packaging unit; containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons);

(8) The weight of the cargo, or, for a sealed container, the shipper's declared weight of the cargo;

(9) A precise description of the cargo or the Harmonized Tariff Schedule (HTS) numbers to the 6-digit level under which the cargo will be classified (generic descriptions, specifically those such as FAK (''freight of all kinds''), ''general cargo,'' and ''STC'' (''said to contain'') are not acceptable);

(10) Internationally recognized hazardous material code when such cargo is being shipped by truck;

(11) The shipper's complete name and address, or identification number, from the bill(s) of lading (for each house bill in a consolidated shipment, the identity of the foreign vendor, supplier, manufacturer, or other similar party is acceptable (and the address of the foreign vendor, etc., must be a foreign address); by contrast, the identity of the carrier, freight forwarder, consolidator, or broker, is not acceptable; the identification number will be a unique number to be assigned by CBP upon the implementation of the Automated Commercial Environment); and

(12) The complete name and address of the consignee, or identification number, from the bill(s) of lading (the consignee is the party to whom the cargo will be delivered in the United States, with the exception of ''FROB'' (Foreign Cargo Remaining On Board); the identification number will be a unique number assigned by CBP upon implementation of the Automated Commercial Environment).

(e) *Date for compliance with this section.* The incoming truck carrier and, if electing to do so, the United States importer, or its Customs broker, must present the necessary cargo data to CBP at the particular port of entry where the truck will arrive in the United States on and after 90 days from the date that CBP has published a notice in the **Federal Register** informing affected carriers that:

(1) The approved data interchange is in place and fully operational at that port; and

(2) The carrier must commence the presentation of the required cargo information through the approved system.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

■ 1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

■ 2. Section 178.2 is amended as follows:

■ a. In the listing for § 4.7a(c)(4), by removing the number ''1515–0001'' under the heading ''OMB Control No.'', and adding, in its place, the number ''1651–0001''; and

■ b. By adding new listings for §§ 122.48a, 123.91, 123.92 and 192.14 in appropriate numerical sequence according to the section number under the columns indicated.

The listings for §§ 4.7a(c)(4), 122.48a, 123.91, 123.92, and 192.14 read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB Control No.
* * * * * * *		
§ 4.7a(c)(4)	Transportation manifest (cargo declaration)	1651–0001
* * * * * * *		
§ 122.48a	Transportation manifest (cargo declaration)	1651–0001
* * * * * * *		
§ 123.91	Transportation manifest (cargo declaration)	1651–0001
* * * * * * *		
§ 123.92	Transportation manifest (cargo declaration)	1651–0001
* * * * * * *		
§ 192.14	Transportation manifest (cargo declaration)	1651–0001

PART 192—EXPORT CONTROL

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

Authority: 19 U.S.C. 66, 1624, 1646c. Subpart A also issued under 19 U.S.C. 1627a, 1646a, 1646b; subpart B also issued under 13 U.S.C. 303; 19 U.S.C. 2071 note; 46 U.S.C. 91.

■ 2. Amend subpart B of part 192 by adding a new § 192.14 to read as follows:

§ 192.14 Electronic information for outward cargo required in advance of departure.

(a) *General requirement.* Pursuant to section 343(a), Trade Act of 2002, as amended (19 U.S.C. 2071 note), and subject to paragraph (e) of this section, for any commercial cargo that is to be transported out of the United States by vessel, aircraft, rail, or truck, unless exempted under paragraph (d) of this section, the United States Principal Party in Interest (USPPI), or its authorized agent, must electronically transmit for receipt by Customs and Border Protection (CBP), no later than the time period specified in paragraph (b) of this section, certain cargo information, as enumerated in paragraph (c) of this section. Specifically, to effect the advance electronic transmission of the required cargo information to CBP, the USPPI or its authorized agent must use a CBP-approved electronic data interchange system (currently, the Automated Export System (AES)).

(b) *Presentation of data.* (1) *Time for presenting data.* USPPIs or their authorized agents must electronically transmit and verify system acceptance of required cargo information for outbound cargo no later than the time period specified as follows (see paragraph (b)(3) of this section):

(i) For vessel cargo, the USPPI or its authorized agent must transmit and verify system acceptance of export vessel cargo information no later than 24 hours prior to departure from the U.S. port where the vessel cargo is to be laden;

(ii) For air cargo, including cargo being transported by Air Express Couriers, the USPPI or its authorized agent must transmit and verify system acceptance of export air cargo information no later than 2 hours prior to the scheduled departure time of the aircraft from the last U.S. port;

(iii) For truck cargo, including cargo departing by Express Consignment Courier, the USPPI or its authorized agent must transmit and verify system acceptance of export truck cargo information no later than 1 hour prior to the arrival of the truck at the border; and

(iv) For rail cargo, the USPPI or its authorized agent must transmit and verify system acceptance of export rail cargo information no later than two hours prior to the arrival of the train at the border.

(2) *Applicability of time frames.* The time periods in paragraph (b)(1) of this section for reporting required export cargo information to CBP for outward vessel, air, truck, or rail cargo only apply to shipments without an export license, that require full pre-departure reporting of shipment data, in order to comply with the advance cargo information filing requirements under section 343(a), as amended. Paragraph (e) of this section details dates for compliance with the time frames provided in paragraph (b)(1) of this section. Requirements placed on exports controlled by other Government agencies will remain in force unless changed by the agency having the regulatory authority to do so. The CBP will also continue to require 72-hour advance notice for used vehicle exports pursuant to § 192.2(c)(1) and (c)(2)(i) of this part. USPPIs or their authorized agents should refer to the relevant titles of the Code of Federal Regulations (CFR) for pre-filing requirements of other Government agencies. In particular, for the advance reporting requirements for exports of U.S. Munitions List items, see the U.S. Department of State's International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130).

(3) *System verification of data acceptance.* Once the USPPI or its authorized agent has transmitted the data required under paragraphs (c)(1) and (c)(2) of this section, and the CBP-approved electronic system has received and accepted this data, the system will generate and transmit to the USPPI or its authorized agent (whichever is the filer in AES) a confirmation number (this number is known as the Internal Transaction Number (ITN)), which verifies that the data has been accepted as transmitted for the outgoing shipment.

(c) *Information required.* (1) *Currently collected commodity data.* The export cargo information to be collected from USPPIs or their authorized agents for outbound cargo is already contained in the Bureau of Census electronic Shipper's Export Declaration (SED) that the USPPI or its authorized agent currently presents to CBP through the approved electronic system. The AES Commodity Module already captures the requisite export data, so no new data elements for export cargo are required under this section. The export cargo data elements that are required to be reported electronically through the approved system are also found in § 30.63 of the Bureau of Census Regulations (15 CFR 30.63).

(2) *Transportation data.* Reporting of the following transportation information is currently mandatory for AES participants under 15 CFR 30.63 for the vessel, air, truck, and rail modes (see also paragraph (c)(3) of this section):

(i) Method of transportation (the method of transportation is defined as that by which the goods are exported or shipped (vessel, air, rail, or truck));

(ii) Carrier identification (for vessel, rail and truck shipments, the unique carrier identifier is the 4-character Standard Carrier Alpha Code (SCAC); for aircraft, the carrier identifier is the 2- or 3-character International Air Transport Association (IATA) code);

(iii) Conveyance name (the conveyance name is the name of the carrier; for sea carriers, this is the name of the vessel; for others, the carrier name);

(iv) Country of ultimate destination (this is the country as known to the USPPI or its authorized agent at the time of exportation, where the cargo is to be consumed or further processed or manufactured; this country would be identified by the 2-character International Standards Organization (ISO) code for the country of ultimate destination);

(v) Estimated date of exportation (the USPPI or its authorized agent must report the date the cargo is scheduled to leave the United States for all modes of transportation; if the actual date is not known, the USPPI or its authorized agent must report the best estimate as to the time of departure); and

(vi) Port of exportation (the port where the outbound cargo departs from the United States is designated by its unique code, as set forth in Annex C, Harmonized Tariff Schedule of the United States (HTSUS); the USPPI or its authorized agent must report the port of exportation as known when the USPPI or its agent tenders the cargo to the outbound carrier; should the carrier export the cargo from a different port and the carrier so informs the USPPI or agent, the port of exportation must be corrected by the filer in AES.).

(3) *Proof of electronic filing; exemption from filing.* The USPPI, or its authorized agent, must furnish to the outbound carrier a proof of electronic filing citation (the ITN), low-risk exporter citation (currently, the Option 4 filing citation), or exemption statement, for annotation on the carrier's outward manifest, waybill, or other export documentation covering the cargo to be shipped. The proof of

electronic filing citation, low-risk exporter citation, or exemption statement, will conform to the approved data formats found in the Bureau of Census Foreign Trade Statistics Regulations (FTSR) (15 CFR part 30) and FTSR Letter 168, Amendment 2 (this Letter may be obtained from the Census Bureau).

(4) *Carrier responsibility*. (i) *Loading of cargo*. The carrier may not load cargo without first receiving from the USPPI or its authorized agent either the related electronic filing citation as prescribed under paragraph (c)(3) of this section, or an appropriate exemption statement for the cargo as specified in paragraph (d) of this section.

(ii) *High-risk cargo*. For cargo that CBP has identified as potentially high-risk, the carrier, after being duly notified by CBP, will be responsible for delivering the cargo for inspection/examination. If the cargo identified as high risk has already departed, CBP may demand that the export carrier redeliver the cargo in accordance with the terms of its international carrier bond (see § 113.64(g)(2) of this chapter).

(5) *USPPI receipt of information believed to be accurate*. Where the USPPI or its authorized agent electronically presenting the cargo information required in paragraphs (c)(1) and (c)(2) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the USPPI or its authorized agent acquired this information, and whether and how the USPPI or authorized agent is able to verify this information. Where the USPPI or authorized agent is not reasonably able to verify any information received, CBP will permit this party to electronically present the information on the basis of what it reasonably believes to be true.

(d) *Exemptions from reporting; Census exemptions applicable*. The USPPI or authorized agent must furnish to the outbound carrier an appropriate exemption state-ment (low-risk exporter or other exemption) for any export shipment laden that is not subject to pre-departure electronic information filing under this section. The exemption statement will conform to the proper format approved by the Bureau of Census. Any exemptions from reporting requirements for export cargo are enumerated in §§ 30.50 through 30.58 of the Bureau of Census Regulations (15 CFR 30.50 through 30.58). These exemptions are equally applicable under this section.

(e) *Date for compliance*. The requirements of this section, including the pre-departure time frames for reporting export cargo information for required shipments, and the requirement of the ITN, will be implemented concurrent with the completion of the redesign of the AES commodity module and the effective date of mandatory filing regulations that will be issued by the Department of Commerce pursuant to the Security Assistance Act (Pub. L. 107–228). This date will be announced in the **Federal Register**.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

Approved: November 17, 2003.

Tom Ridge,

Secretary, Department of Homeland Security.

[FR Doc. 03–29798 Filed 12–4–03; 8:45 am]

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Federal Register

Friday,
December 5, 2003

Part III

Department of the Interior

Bureau of Indian Affairs

Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of the current list of 562 tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes. This notice is published pursuant to section 104 of the Act of November 2, 1994 (Pub. L. 103–454; 108 Stat. 4791, 4792).

FOR FURTHER INFORMATION CONTACT: Daisy West, Bureau of Indian Affairs, Division of Tribal Government Services, MS–320-MIB, 1849 C Street, NW., Washington, DC 20240. Telephone number: (202) 513–7641.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Published below is a list of federally acknowledged tribes in the contiguous 48 states and in Alaska. The list is updated from the notice published on July 12, 2002 (67 FR 46328).

Several tribes have made changes to their tribal name. To aid in identifying tribal name changes, the tribe's former name is included with the new tribal name. We will continue to list the tribe's former name for several years before dropping the former name from the list. We have also made several corrections. To aid in identifying corrections, the tribe's previously listed name is included with the tribal name.

The listed entities are acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes. We have continued the practice of listing the Alaska Native entities separately solely for the purpose of facilitating identification of them and reference to them given the large number of complex Native names.

Dated: November 21, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

Indian Tribal Entities Within the Contiguous 48 States Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona
Alabama-Coushatta Tribes of Texas
Alabama-Quassarte Tribal Town, Oklahoma
Alturas Indian Rancheria, California
Apache Tribe of Oklahoma
Arapahoe Tribe of the Wind River Reservation, Wyoming
Aroostook Band of Micmac Indians of Maine
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
Augustine Band of Cahuilla Mission Indians of the Augustine Reservation, California
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Bay Mills Indian Community, Michigan
Bear River Band of the Rohnerville Rancheria, California
Berry Creek Rancheria of Maidu Indians of California
Big Lagoon Rancheria, California
Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California
Big Sandy Rancheria of Mono Indians of California
Big Valley Band of Pomo Indians of the Big Valley Rancheria, California
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Blue Lake Rancheria, California
Bridgeport Paiute Indian Colony of California
Buena Vista Rancheria of Me-Wuk Indians of California
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon
Cabazon Band of Mission Indians, California (previously listed as the Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation)
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
Caddo Nation of Oklahoma (formerly the Caddo Indian Tribe of Oklahoma)
Cahuilla Band of Mission Indians of the Cahuilla Reservation, California
Cahto Indian Tribe of the Laytonville Rancheria, California
California Valley Miwok Tribe, California (formerly the Sheep Ranch Rancheria of Me-Wuk Indians of California)
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
Capitan Grande Band of Diegueno Mission Indians of California:
Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California
Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California
Catawba Indian Nation (aka Catawba Tribe of South Carolina)
Cayuga Nation of New York
Cedarville Rancheria, California
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
Cherokee Nation, Oklahoma
Cheyenne-Arapaho Tribes of Oklahoma
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Chickasaw Nation, Oklahoma
Chicken Ranch Rancheria of Me-Wuk Indians of California
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Chitimacha Tribe of Louisiana
Choctaw Nation of Oklahoma
Citizen Potawatomi Nation, Oklahoma
Cloverdale Rancheria of Pomo Indians of California
Cocopah Tribe of Arizona
Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho
Cold Springs Rancheria of Mono Indians of California
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Comanche Nation, Oklahoma (formerly the Comanche Indian Tribe)
Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana
Confederated Tribes of the Chehalis Reservation, Washington
Confederated Tribes of the Colville Reservation, Washington
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon
Confederated Tribes of the Goshute Reservation, Nevada and Utah
Confederated Tribes of the Grand Ronde Community of Oregon
Confederated Tribes of the Siletz Reservation, Oregon
Confederated Tribes of the Umatilla Reservation, Oregon
Confederated Tribes of the Warm Springs Reservation of Oregon
Confederated Tribes and Bands of the Yakama Nation, Washington (formerly

the Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation)
Coquille Tribe of Oregon
Cortina Indian Rancheria of Wintun Indians of California
Coushatta Tribe of Louisiana
Cow Creek Band of Umpqua Indians of Oregon
Cowlitz Indian Tribe, Washington
Coyote Valley Band of Pomo Indians of California
Crow Tribe of Montana
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Death Valley Timbi-Sha Shoshone Band of California
Delaware Nation, Oklahoma (formerly the Delaware Tribe of Western Oklahoma)
Delaware Tribe of Indians, Oklahoma
Dry Creek Rancheria of Pomo Indians of California
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Eastern Band of Cherokee Indians of North Carolina
Eastern Shawnee Tribe of Oklahoma
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
Elk Valley Rancheria, California
Ely Shoshone Tribe of Nevada
Enterprise Rancheria of Maidu Indians of California
Ewiiaapaayp Band of Kumeyaay Indians, California (formerly the Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation)
Federated Indians of Graton Rancheria, California (formerly the Graton Rancheria)
Flandreau Santee Sioux Tribe of South Dakota
Forest County Potawatomi Community, Wisconsin
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Fort Bidwell Indian Community of the Fort Bidwell Reservation of California
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon
Fort McDowell Yavapai Nation, Arizona (formerly the Fort McDowell Mohave-Apache Community of the Fort McDowell Indian Reservation)
Fort Mojave Indian Tribe of Arizona, California & Nevada
Fort Sill Apache Tribe of Oklahoma
Gila River Indian Community of the Gila River Indian Reservation, Arizona
Grand Traverse Band of Ottawa and Chippewa Indians, Michigan
Greenville Rancheria of Maidu Indians of California
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
Guidiville Rancheria of California
Hannahville Indian Community, Michigan
Havasupai Tribe of the Havasupai Reservation, Arizona
Ho-Chunk Nation of Wisconsin (formerly the Wisconsin Winnebago Tribe)
Hoh Indian Tribe of the Hoh Indian Reservation, Washington
Hoopa Valley Tribe, California
Hopi Tribe of Arizona
Hopland Band of Pomo Indians of the Hopland Rancheria, California
Houlton Band of Maliseet Indians of Maine
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona
Huron Potawatomi, Inc., Michigan
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
Ione Band of Miwok Indians of California
Iowa Tribe of Kansas and Nebraska
Iowa Tribe of Oklahoma
Jackson Rancheria of Me-Wuk Indians of California
Jamestown S'Klallam Tribe of Washington
Jamul Indian Village of California
Jena Band of Choctaw Indians, Louisiana
Jicarilla Apache Nation, New Mexico (formerly the Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation)
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
Kalispel Indian Community of the Kalispel Reservation, Washington
Karuk Tribe of California
Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
Kaw Nation, Oklahoma
Keweenaw Bay Indian Community, Michigan
Kialegee Tribal Town, Oklahoma
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
Kickapoo Tribe of Oklahoma
Kickapoo Traditional Tribe of Texas
Kiowa Indian Tribe of Oklahoma
Klamath Indian Tribe of Oregon
Kootenai Tribe of Idaho
La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
Little River Band of Ottawa Indians, Michigan
Little Traverse Bay Bands of Odawa Indians, Michigan
Lower Lake Rancheria, California
Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation, California (formerly the Los Coyotes Band of Cahuilla Mission Indians of the Los Coyotes Reservation)
Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington
Lower Sioux Indian Community in the State of Minnesota
Lummi Tribe of the Lummi Reservation, Washington
Lytton Rancheria of California
Makah Indian Tribe of the Makah Indian Reservation, Washington
Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
Mashantucket Pequot Tribe of Connecticut
Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan
Mechoopda Indian Tribe of Chico Rancheria, California
Menominee Indian Tribe of Wisconsin
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Miami Tribe of Oklahoma
Miccosukee Tribe of Indians of Florida
Middletown Rancheria of Pomo Indians of California
Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)
Mississippi Band of Choctaw Indians, Mississippi
Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
Modoc Tribe of Oklahoma
Mohegan Indian Tribe of Connecticut
Mooretown Rancheria of Maidu Indians of California
Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California

Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington
Muscogee (Creek) Nation, Oklahoma
Narragansett Indian Tribe of Rhode Island
Navajo Nation, Arizona, New Mexico & Utah
Nez Perce Tribe of Idaho
Nisqually Indian Tribe of the Nisqually Reservation, Washington
Nooksack Indian Tribe of Washington
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Northfork Rancheria of Mono Indians of California
Northwestern Band of Shoshoni Nation of Utah (Washakie)
Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Omaha Tribe of Nebraska
Oneida Nation of New York
Oneida Tribe of Indians of Wisconsin
Onondaga Nation of New York
Osage Tribe, Oklahoma
Ottawa Tribe of Oklahoma
Otoe-Missouria Tribe of Indians, Oklahoma
Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)
Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California
Pala Band of Luiseno Mission Indians of the Pala Reservation, California
Pascua Yaqui Tribe of Arizona
Paskenta Band of Nomlaki Indians of California
Passamaquoddy Tribe of Maine
Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California
Pawnee Nation of Oklahoma
Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
Penobscot Tribe of Maine
Peoria Tribe of Indians of Oklahoma
Picayune Rancheria of Chukchansi Indians of California
Pinoleville Rancheria of Pomo Indians of California
Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias)
Poarch Band of Creek Indians of Alabama
Pokagon Band of Potawatomi Indians, Michigan and Indiana
Ponca Tribe of Indians of Oklahoma
Ponca Tribe of Nebraska
Port Gamble Indian Community of the Port Gamble Reservation, Washington
Potter Valley Rancheria of Pomo Indians of California
Prairie Band of Potawatomi Nation, Kansas (formerly the Prairie Band of Potawatomi Indians)
Prairie Island Indian Community in the State of Minnesota
Pueblo of Acoma, New Mexico
Pueblo of Cochiti, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Laguna, New Mexico
Pueblo of Nambe, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of Pojoaque, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Juan, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Sandia, New Mexico
Pueblo of Santa Ana, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Santo Domingo, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Tesuque, New Mexico
Pueblo of Zia, New Mexico
Puyallup Tribe of the Puyallup Reservation, Washington
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
Quapaw Tribe of Indians, Oklahoma
Quartz Valley Indian Community of the Quartz Valley Reservation of California
Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona
Quileute Tribe of the Quileute Reservation, Washington
Quinault Tribe of the Quinault Reservation, Washington
Ramona Band or Village of Cahuilla Mission Indians of California
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Red Lake Band of Chippewa Indians, Minnesota
Redding Rancheria, California
Redwood Valley Rancheria of Pomo Indians of California
Reno-Sparks Indian Colony, Nevada
Resighini Rancheria, California (formerly the Coast Indian Community of Yurok Indians of the Resighini Rancheria)
Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
Robinson Rancheria of Pomo Indians of California
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Round Valley Indian Tribes of the Round Valley Reservation, California (formerly the Covelo Indian Community)
Rumsey Indian Rancheria of Wintun Indians of California
Sac & Fox Tribe of the Mississippi in Iowa
Sac & Fox Nation of Missouri in Kansas and Nebraska
Sac & Fox Nation, Oklahoma
Saginaw Chippewa Indian Tribe of Michigan
St. Croix Chippewa Indians of Wisconsin
St. Regis Band of Mohawk Indians of New York
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
Samish Indian Tribe, Washington
San Carlos Apache Tribe of the San Carlos Reservation, Arizona
San Juan Southern Paiute Tribe of Arizona
San Manual Band of Serrano Mission Indians of the San Manual Reservation, California
San Pasqual Band of Diegueno Mission Indians of California
Santa Rosa Indian Community of the Santa Rosa Rancheria, California
Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California
Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California
Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California
Santee Sioux Nation, Nebraska (formerly the Santee Sioux Tribe of the Santee Reservation of Nebraska)
Sauk-Suiattle Indian Tribe of Washington
Sault Ste. Marie Tribe of Chippewa Indians of Michigan
Scotts Valley Band of Pomo Indians of California
Seminole Nation of Oklahoma
Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations
Seneca Nation of New York
Seneca-Cayuga Tribe of Oklahoma
Shakopee Mdewakanton Sioux Community of Minnesota
Shawnee Tribe, Oklahoma
Sherwood Valley Rancheria of Pomo Indians of California
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington
Shoshone Tribe of the Wind River Reservation, Wyoming
Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota (formerly the Sisseton-Wahpeton

Sioux Tribe of the Lake Traverse Reservation)
Skokomish Indian Tribe of the Skokomish Reservation, Washington
Skull Valley Band of Goshute Indians of Utah
Smith River Rancheria, California
Snoqualmie Tribe, Washington
Soboba Band of Luiseno Indians, California (formerly the Soboba Band of Luiseno Mission Indians of the Soboba Reservation)
Sokaogon Chippewa Community, Wisconsin
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
Spirit Lake Tribe, North Dakota
Spokane Tribe of the Spokane Reservation, Washington
Squaxin Island Tribe of the Squaxin Island Reservation, Washington
Standing Rock Sioux Tribe of North & South Dakota
Stockbridge Munsee Community, Wisconsin
Stillaguamish Tribe of Washington
Summit Lake Paiute Tribe of Nevada
Suquamish Indian Tribe of the Port Madison Reservation, Washington
Susanville Indian Rancheria, California
Swinomish Indians of the Swinomish Reservation, Washington
Sycuan Band of Diegueno Mission Indians of California
Table Bluff Reservation—Wiyot Tribe, California
Table Mountain Rancheria of California
Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band)
Thlopthlocco Tribal Town, Oklahoma
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Tohono O'odham Nation of Arizona
Tonawanda Band of Seneca Indians of New York
Tonkawa Tribe of Indians of Oklahoma
Tonto Apache Tribe of Arizona
Torres-Martinez Band of Cahuilla Mission Indians of California
Tule River Indian Tribe of the Tule River Reservation, California
Tulalip Tribes of the Tulalip Reservation, Washington
Tunica-Biloxi Indian Tribe of Louisiana
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
Turtle Mountain Band of Chippewa Indians of North Dakota
Tuscarora Nation of New York
Twenty-Nine Palms Band of Mission Indians of California
United Auburn Indian Community of the Auburn Rancheria of California
United Keetoowah Band of Cherokee Indians in Oklahoma
Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California
Upper Sioux Community, Minnesota
Upper Skagit Indian Tribe of Washington
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
Walker River Paiute Tribe of the Walker River Reservation, Nevada
Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches)
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma
Winnebago Tribe of Nebraska
Winnemucca Indian Colony of Nevada
Wyandotte Nation, Oklahoma (formerly the Wyandotte Tribe of Oklahoma)
Yankton Sioux Tribe of South Dakota
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona
Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona
Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
Yomba Shoshone Tribe of the Yomba Reservation, Nevada
Ysleta Del Sur Pueblo of Texas
Yurok Tribe of the Yurok Reservation, California
Zuni Tribe of the Zuni Reservation, New Mexico

Native Entities Within the State of Alaska Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Native Village of Afognak (formerly the Village of Afognak)
Agdaagux Tribe of King Cove
Native Village of Akhiok
Akiachak Native Community
Akiak Native Community
Native Village of Akutan
Village of Alakanuk
Alatna Village
Native Village of Aleknagik
Algaaciq Native Village (St. Mary's)
Allakaket Village
Native Village of Ambler
Village of Anaktuvuk Pass
Yupiit of Andreafski
Angoon Community Association
Village of Aniak
Anvik Village
Arctic Village (See Native Village of Venetie Tribal Government)
Asa'carsarmiut Tribe (formerly the Native Village of Mountain Village)
Native Village of Atka
Village of Atmautluak
Atqasuk Village (Atkasook)
Native Village of Barrow Inupiat Traditional Government
Beaver Village
Native Village of Belkofski
Village of Bill Moore's Slough
Birch Creek Tribe
Native Village of Brevig Mission
Native Village of Buckland
Native Village of Cantwell
Native Village of Chanega (aka Chenega)
Chalkyitsik Village
Cheesh-Na Tribe (formerly the Native Village of Chistochina)
Village of Chefornak
Chevak Native Village
Chickaloon Native Village
Native Village of Chignik
Native Village of Chignik Lagoon
Chignik Lake Village
Chilkat Indian Village (Klukwan)
Chilkoot Indian Association (Haines)
Chinik Eskimo Community (Golovin)
Native Village of Chitina
Native Village of Chuathbaluk (Russian Mission, Kuskokwim)
Chuloonawick Native Village
Circle Native Community
Village of Clarks Point
Native Village of Council
Craig Community Association
Village of Crooked Creek
Curyung Tribal Council (formerly the Native Village of Dillingham)
Native Village of Deering
Native Village of Diomede (aka Inalik)
Village of Dot Lake
Douglas Indian Association
Native Village of Eagle
Native Village of Eek
Egegik Village
Eklutna Native Village
Native Village of Ekuk
Ekwok Village
Native Village of Elim
Emmonak Village
Evansville Village (aka Bettles Field)
Native Village of Eyak (Cordova)
Native Village of False Pass
Native Village of Fort Yukon
Native Village of Gakona
Galena Village (aka Louden Village)
Native Village of Gambell
Native Village of Georgetown
Native Village of Goodnews Bay
Organized Village of Grayling (aka Holikachuk)
Gulkana Village
Native Village of Hamilton
Healy Lake Village
Holy Cross Village
Hoonah Indian Association
Native Village of Hooper Bay
Hughes Village
Huslia Village
Hydaburg Cooperative Association
Igiugig Village
Village of Iliamna

Inupiat Community of the Arctic Slope
Iqurmuit Traditional Council (formerly the Native Village of Russian Mission)
Ivanoff Bay Village
Kaguyak Village
Organized Village of Kake
Kaktovik Village (aka Barter Island)
Village of Kalskag
Village of Kaltag
Native Village of Kanatak
Native Village of Karluk
Organized Village of Kasaan
Native Village of Kasigluk
Kenaitze Indian Tribe
Ketchikan Indian Corporation
Native Village of Kiana
King Island Native Community
King Salmon Tribe
Native Village of Kipnuk
Native Village of Kivalina
Klawock Cooperative Association
Native Village of Kluti Kaah (aka Copper Center)
Knik Tribe
Native Village of Kobuk
Kokhanok Village
Native Village of Kongiganak
Village of Kotlik
Native Village of Kotzebue
Native Village of Koyuk
Koyukuk Native Village
Organized Village of Kwethluk
Native Village of Kwigillingok
Native Village of Kwinhagak (aka Quinhagak)
Native Village of Larsen Bay
Levelock Village
Lesnoi Village (aka Woody Island)
Lime Village
Village of Lower Kalskag
Manley Hot Springs Village
Manokotak Village
Native Village of Marshall (aka Fortuna Ledge)
Native Village of Mary's Igloo
McGrath Native Village
Native Village of Mekoryuk
Mentasta Traditional Council
Metlakatla Indian Community, Annette Island Reserve
Native Village of Minto
Naknek Native Village
Native Village of Nanwalek (aka English Bay)
Native Village of Napaimute
Native Village of Napakiak
Native Village of Napaskiak
Native Village of Nelson Lagoon
Nenana Native Association
New Koliganek Village Council (formerly the Koliganek Village)
New Stuyahok Village
Newhalen Village
Newtok Village
Native Village of Nightmute
Nikolai Village
Native Village of Nikolski
Ninilchik Village
Native Village of Noatak
Nome Eskimo Community
Nondalton Village
Noorvik Native Community
Northway Village
Native Village of Nuiqsut (aka Nooiksut)
Nulato Village
Nunakauyarmiut Tribe (formerly the Native Village of Toksook Bay)
Native Village of Nunapitchuk
Village of Ohogamiut
Village of Old Harbor
Orutsararmuit Native Village (aka Bethel)
Oscarville Traditional Village
Native Village of Ouzinkie
Native Village of Paimiut
Pauloff Harbor Village
Pedro Bay Village
Native Village of Perryville
Petersburg Indian Association
Native Village of Pilot Point
Pilot Station Traditional Village
Native Village of Pitka's Point
Platinum Traditional Village
Native Village of Point Hope
Native Village of Point Lay
Native Village of Port Graham
Native Village of Port Heiden
Native Village of Port Lions
Portage Creek Village (aka Ohgsenakale)
Pribilof Islands Aleut Communities of St. Paul & St. George Islands
Qagan Tayagungin Tribe of Sand Point Village
Qawalangin Tribe of Unalaska
Rampart Village
Village of Red Devil
Native Village of Ruby
Saint George Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Native Village of Saint Michael
Saint Paul Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Village of Salamatoff
Native Village of Savoonga
Organized Village of Saxman
Native Village of Scammon Bay
Native Village of Selawik
Seldovia Village Tribe
Shageluk Native Village
Native Village of Shaktoolik
Native Village of Sheldon's Point
Native Village of Shishmaref
Shoonaq' Tribe of Kodiak
Native Village of Shungnak
Sitka Tribe of Alaska
Skagway Village
Village of Sleetmute
Village of Solomon
South Naknek Village
Stebbins Community Association
Native Village of Stevens
Village of Stony River
Takotna Village
Native Village of Tanacross
Native Village of Tanana
Native Village of Tatitlek
Native Village of Tazlina
Telida Village
Native Village of Teller
Native Village of Tetlin
Central Council of the Tlingit & Haida Indian Tribes
Traditional Village of Togiak
Tuluksak Native Community
Native Village of Tuntutuliak
Native Village of Tununak
Twin Hills Village
Native Village of Tyonek
Ugashik Village
Umkumiute Native Village
Native Village of Unalakleet
Native Village of Unga
Village of Venetie (See Native Village of Venetie Tribal Government)
Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)
Village of Wainwright
Native Village of Wales
Native Village of White Mountain
Wrangell Cooperative Association
Yakutat Tlingit Tribe

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Friday,
December 5, 2003

Part IV

Securities and Exchange Commission

17 CFR Parts 200, 201, and 240

Proposed Amendments to the Rules of Practice and Related Provisions; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 201, and 240

[Release No. 34–48832; File No. S7–25–03]

RIN 3235–AI

Proposed Amendments to the Rules of Practice and Related Provisions

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing for public comment amendments to its Rules of Practice and related provisions in light of the Sarbanes-Oxley Act of 2002. The Sarbanes-Oxley Act, among other things, authorizes the Commission to review disciplinary actions of the Public Company Accounting Oversight Board (''Board'') and to create ''Fair Funds'' in Commission administrative proceedings. The Commission is also proposing for public comment amendments to other provisions of the Rules of Practice (''Rules'') as a result of its experience with those rules and to correct certain citations. The proposed amendments are intended to enhance the transparency and facilitate parties' understanding of the applicability of the review process to Board proceedings, and to make practice under the rules easier and more efficient.

DATES: Comments must be submitted on or before January 5, 2004.

ADDRESSES: To help us process and review your comments efficiently, comments should be sent by hard copy or e-mail, but not by both methods.

Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Alternatively, comments may be submitted electronically to the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–25–03. This file number should be included on the subject line if e-mail is used. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (*http://www.sec.gov).*[1]

FOR FURTHER INFORMATION CONTACT: Diane V. White, Office of the General Counsel, (202) 942–0950, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0208.

SUPPLEMENTARY INFORMATION: The Commission proposes to amend its Rules of Practice and related provisions. The amendments are being proposed in accordance with the provisions of the Sarbanes-Oxley Act of 2002 [2] and as a result of the Commission's experience with its existing rules. Additional amendments correct typographical errors and change certain citations to conform to the amended rules.[3]

I. Discussion

A. Proposed Amendments as a Result of the Sarbanes-Oxley Act

Section 107(c) of the Sarbanes-Oxley Act [4] authorizes the Commission to review disciplinary actions imposed by the Board and actions that result in the disapproval of registration of a public accounting firm.[5] Sections 105(d) and 107(c) of the Sarbanes-Oxley Act require the Board to give the Commission notice if it disapproves the registration of a public accounting firm or if it disciplines a registered public accounting firm or a person associated with a registered public accounting firm.

In creating its framework for Commission review of Board actions, section 107(c) of the Sarbanes-Oxley Act specifies that sections 19(d)(2) and 19(e)(1) of the Securities Exchange Act of 1934,[6] which govern Commission review of self-regulatory organization disciplinary proceedings, shall govern Commission review of final disciplinary sanctions imposed by the Board ''as fully as if the Board were a self-regulatory organization and the Commission were the appropriate regulatory agency for such organization for purposes of those sections 19(d)(2) and 19(e)(1) * * *'' The effect of this statutory provision is to make Board actions subject to Commission review under those Exchange Act provisions on the same basis as actions by existing self-regulatory organizations, and to make relevant rules under those provisions applicable to that review. Thus, the administrative structure currently used by the Commission in reviewing self-regulatory disciplinary organization proceedings, including relevant provisions of the Rules, is applicable to persons seeking review of Board actions.

The Commission nonetheless has determined to propose amendments to certain of its rules in order to enhance the transparency and facilitate parties' understanding of the applicability of the review process to Board proceedings. Certain of those changes to its Rules will include specific references to Commission review of Board actions and, for example, identify the process by which the Board will provide notice to the Commission of its actions. The Commission asks for comment as to whether adjustments to the existing rules, in addition to those the Commission proposes, are warranted in order to permit the Commission more effectively to exercise its statutory review authority with respect to Board proceedings.

1. Disapproval of Registration

Proposed Rule 19d–4(a) would add definitions. Proposed Rule 19d–4(b) would require the Board to file with the Commission and serve on the public accounting firm a notice of disapproval of registration within 30 days of the Board's action.[7] The notice would include the firm's name and last known address (as reflected in the Board's records) the basis for the Board's disapproval, a copy of the Board's written notice of disapproval, and such other information as the Board deems relevant.

2. Review of Disciplinary Sanctions

Proposed Rule 19d–4(c) would require the Board to file and serve a notice of any disciplinary sanction, other than a disapproval of registration, within 30 days of the Board's action.[8] The notice would provide the name and last address (as reflected in the Board's records) of the associated person or registered public accounting firm

[1] The Commission does not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. Interested persons submitting comments should submit only information that they wish to make publicly available.

[2] 15 U.S.C. 7201 *et seq.*

[3] Any necessary delegations will be adopted when the rules become final.

[4] 15 U.S.C. 7217(c).

[5] Under section 102(c) of the Sarbanes-Oxley Act, 15 U.S.C. 7212(c), the Board's written notice of disapproval of a complete application for registration as a registered public accounting firm is treated as a ''disciplinary sanction'' for purposes of sections 105(d) and 107(c) of that act, 15 U.S.C. 7215(d), 7217(c).

[6] 15 U.S.C. 78s(d)(2), 78s(e)(1).

[7] The thirty-day period for filing is consistent with the thirty days provided in section 19(d)(2) of the Exchange Act for the filing of an application for review by a person aggrieved by certain actions taken by a self-regulatory organization. The Commission requests comment as to whether this period is appropriate in the context of review of actions by the Board, or whether a longer or shorter period would be preferable.

[8] Comment is requested as to whether the thirty-day period is appropriate in this context, or whether a longer or shorter period would be preferable.

disciplined and a description of the acts or omissions upon which the sanction is based. The notice would also specify the sanction imposed, give the effective date of the sanction, and include a statement of the reasons for the sanction or a copy of the Board's statement justifying the sanction, as well as such other information as the Board deems relevant.

Proposed Rule 440(a) would permit any person aggrieved by a final disciplinary sanction (including disapproval of a completed application for registration of a public accounting firm) imposed by the Board to file an application for review with the Commission. Proposed Rule 440(b) would require that any application be filed within 30 days after the Board's notice under proposed Rule 19d–4 is received by the aggrieved person.[9] The application would identify the determination complained of and would contain a brief statement of the alleged errors in the determination. The application would be accompanied by a notice of appearance by counsel, if any, filed in accordance with Rule 102(d). Under proposed Rule 440(d), the Board would have fourteen days after receipt of the application to certify the record to the Commission and serve one copy of the record index on each party.

3. Stay of Board Action

In accordance with section 105(e)(1) of the Sarbanes-Oxley Act, [10] proposed Rule 440(c) would provide that filing of an application for review acts as a stay of the Board's action unless the Commission otherwise orders. Proposed Rule 401(e)(1) would permit any person aggrieved by the automatic stay to ask the Commission to lift the stay. The Commission may, in any event, lift the stay on its own motion. The Commission requests comment as to whether other persons should be permitted to request that the stay be lifted.

4. Summary Action; Expedition

As permitted under section 105(e)(1) of the Sarbanes-Oxley Act, proposed Rule 401(e)(2) would provide that the Commission may act summarily, without notice and opportunity for hearing. The Commission may also expedite consideration of a motion to lift a stay of Board action to the extent expedition is consistent with the Commission's other responsibilities. If the consideration of a motion to lift is expedited, proposed Rule 401(e)(3) would provide that persons opposing the lifting of the stay may file an opposition within two days of service of the motion to lift unless the Commission orders a different period. [11]

5. Review on Motion of the Commission

Proposed Rule 441(a) would permit the Commission to review a Board disciplinary sanction on its own motion. The Commission proposes that it would determine whether to take review of a Board disciplinary sanction within 40 days after the Board files its notice of the action. [12] Proposed Rule 441(b) permits the Commission to give notice to the parties that it wishes to raise any material matter, whether or not the parties previously raised that matter. The Commission may provide an opportunity for supplemental briefing if the Commission believes that such briefing would significantly aid its decisional process.

6. Amendments to Existing Rules

The Commission is also proposing amendments to the following Rules of Practice with respect to the review proceedings created by the Sarbanes-Oxley Act:

- The definition of ''proceeding'' in Rule 101(a)(9) (Definitions) would be amended to include review of Board disciplinary sanctions under proposed Rule 440.
- The Commission would amend Rule 202(a) (Specification of procedures by parties in certain proceedings) and Rule 210 (Parties, limited participants and amici curiae), which permits intervention and leave to participate on a limited basis, to exclude review of Board disciplinary sanctions under proposed Rule 440. These Rules currently do not apply to Commission enforcement or disciplinary proceedings or review of determinations by self-regulatory organizations. The Commission asks for comment as to whether proposed Rules 440 and 441 would provide sufficient procedures for review of Board disciplinary sanctions, or whether intervention or limited participation would be appropriate in Commission review of Board disciplinary sanctions.
- Rule 450(a)(2) (Briefs filed with the Commission) would be amended to provide for briefs to be filed in the Commission's review of final disciplinary sanctions imposed by the Board. Under the proposed Rule, the Commission would issue a briefing schedule order within 21 days (or such longer time as provided by the Commission) following its receipt of the Board's index of the record of the Board's determination.
- The Commission would define the contents of the record before it in its review of Board action to include the record certified to the Commission by the Board, any application for review, and any submissions made to the Commission, by adding Rule 460(a)(3) (Record before the Commission).

The Commission would also revise its *ex parte* rule, 17 CFR 200.111 (Prohibitions; application, definitions), to provide that, in proceedings to review Board action, the prohibitions against *ex parte* communications would commence when a copy of the application for review of the Board's action is served on the Secretary to the Commission.

B. Fair Funds and Disgorgement

Section 308(a) of the Sarbanes-Oxley Act [13] provides that, in a Commission administrative proceeding where the Commission or a hearing officer enters an order requiring disgorgement from a respondent for a violation of the securities laws, or the respondent agrees in settlement to payment of such disgorgement, any civil penalty also ordered against that respondent may be added to the disgorgement funds to create a ''Fair Fund'' to be disbursed by the Commission for the benefit of the victims of such violation. Section 308(b) of the Sarbanes-Oxley Act [14] authorizes the Commission to accept gifts or bequests to the United States of real and personal property for deposit in a Fair Fund.

Administration of, and distribution to investors under, Fair Funds and disgorgement plans, occurs after the conclusion of the principal action against a respondent. The functions involved are administrative, and are not subject to provisions such as Rule 120 of the Rules of Practice, the *ex parte* communication rule in subpart D of the Rules of Practice. Recognizing this, the Commission proposes to remove from subpart D of the Rules of Practice Rules 610 through 620, which relate to the

[9] Comment is requested as to whether the thirty-day period is appropriate in this context, or whether a longer or shorter period would be preferable.

[10] 15 U.S.C. 7215(c)(1).

[11] The two-day period is modeled after current Rule 401(d)(3), which permits persons opposing a motion to the Commission for a stay to file a statement in opposition within two days of service of the motion. Comment is requested as to whether this period is appropriate, or whether a longer or shorter period would be preferable.

[12] Rule 421(a) permits the Commission to order review of certain determinations by self-regulatory organization within 40 days after notice thereof is filed with the Commission. The Commission requests comment as to whether this period is appropriate, or whether a longer or shorter period would be preferable.

[13] 15 U.S.C. 7246(a).

[14] 15 U.S.C. 7246(b).

development, submission, approval, and administration of orders of disgorgement, and to the right to challenge orders of disgorgement, and to include them in a new subpart F.

Proposed Rule 1100 would state that the Commission is authorized to create a Fair Fund in any administrative proceeding in which a final order is entered against a respondent requiring disgorgement and payment of a civil money penalty. The Commission may also create a Fair Fund if it approves a settlement of an administrative proceeding that provides for a respondent's payment of disgorgement and a civil money penalty. The proposed Rule would also explain that the Commission may add to the Fair Fund any property received in accordance with section 308(b) of the Sarbanes-Oxley Act.[15]

Certain requirements for Fair Funds would suggest that the Commission's Rules should make some distinctions between Fair Funds and disgorgement funds. For example, Fair Funds must be disbursed to the investors harmed by the securities law violations at issue. The purpose of disgorgement is to require a wrong-doer to pay back the ill-gotten gains that the wrong-doer obtained by virtue of his or her violation. Thus, the Commission can order a wrong-doer to disgorge ill-gotten gains whether or not investors suffered any damages as a result of the violation.[16] Where there are no identifiable victims of a violation, the Commission proposes to permit that the disgorgement and civil money penalty amounts be paid to the United States Treasury. The Commission asks for comment on this proposal.

In other respects, the Commission believes that the requirements for Fair Funds and disgorgement funds should be similar. In some cases, the Commission may conclude that it is in the public interest to impose a civil money penalty and order disgorgement even though the relative value of the ill-gotten gains and the number of potential claimants would result in high administrative costs and *de minimis* distributions to individual investors. Under such circumstances, the Commission would continue its practice of ordering that the disgorgement and civil penalty amount be paid directly to the United States Treasury.

Current Rule 611(b) provides that the Commission may authorize payment of disgorgement funds to any court registry or court-appointed receiver in any case that alleges the same or similar facts against the respondent. The Commission proposes to continue this authority with respect to disgorgement funds and Fair Funds in proposed Rule 1102(a).

The proposed Rules would permit either the Commission or the hearing officer, as appropriate, to oversee the administration of both disgorgement funds and Fair Funds.

Proposed Rule 1101(a) would continue the practice under current Rule 610 of allowing the Commission or the hearing officer at any time to order a party to submit a plan for the administration of either a Fair Fund or a disgorgement fund. Unless ordered otherwise, the Division of Enforcement would be required to submit such a plan within 60 days after the respondent has tendered the funds or other assets pursuant to the Commission's order to pay disgorgement and, if applicable, a civil money penalty.

Proposed Rule 1101(b) would extend the requirements of current Rule 611(a) to require that both Fair Fund or disgorgement fund plans provide for: receiving and holding additional funds, including funds received under section 308(b) of the Sarbanes-Oxley Act; identifying categories of persons who are potentially eligible to receive funds; providing notice to potentially eligible persons of the fund's existence and their potential eligibility; handling claims; termination of the fund and disposition of any remaining assets; administration of the fund; and such other provisions as the Commission or hearing officer deem appropriate.

As discussed above, proposed Rule 1102(b) would continue to permit the Commission or the hearing officer to order that funds be paid directly to the United States Treasury if the cost of administering the fund and the relative value of the disgorgement fund, together with any civil money penalty, and the number of potential claimants would not justify distribution of the funds.

Proposed Rule 1103 would amend and renumber current Rule 612 to require that notice of either a proposed disgorgement plan or a proposed Fair Fund plan be published in the *SEC News Digest*, the *SEC Docket*, and such other publications as the Commission or the hearing officer directs. The notice would specify how to obtain copies of the proposed plan and inform those desiring to comment to submit their written views to the Commission. The Commission also proposes posting notice of a proposed plan on its website. The Commission seeks comment as to how website posting can be done most effectively.

Proposed Rule 1104 would replace and renumber current Rule 613 to provide that, at any time after 30 days following publication of the notice of a proposed disgorgement plan or a proposed Fair Fund plan, the Commission or the hearing officer may approve, modify, or disapprove the proposed plan. The Commission or the hearing officer may order publication of a substantially modified plan prior to adoption.

Proposed Rule 1105 would replace and amend current Rule 614 to provide for administration of Fair Funds, as well as disgorgement funds. The proposed Rule would continue to permit the Commission or hearing officer to appoint any person, including a Commission employee, as fund administrator. Either the Commission or the hearing officer would be able to remove an administrator.

An administrator who is not a Commission employee must post a bond in an amount approved by the Commission. An administrator who is not a Commission employee may receive a fee for reasonable services, subject to approval by the Commission or the hearing officer. Commission employees may not receive such fees. Fees and expenses from fund administration would be paid first from interest and then, if the interest were insufficient, from corpus. The administrator would give periodic accountings, as ordered, and submit a final accounting prior to his or her discharge and cancellation of any bond.

Current Rule 614(a) would be renumbered Rule 1105(b). The Rule currently provides that a respondent may be required or permitted to administer a plan of disgorgement, subject to terms the Commission or the hearing officer deems appropriate. At this time, the Commission does not propose to extend this provision to Fair Funds although it invites comment on this issue. A Fair Fund would include a civil penalty and might include funds conveyed to the United States pursuant to section 308(b) of the Sarbanes-Oxley Act.

Proposed Rule 1106 would renumber Rule 620 to make clear that no person would be granted the right to intervene or appear in a proceeding to challenge an order of disgorgement, an order creating a Fair Fund, an order approving, modifying, or disapproving a disgorgement plan or a Fair Fund plan,

[15] Section 308(b) of the Sarbanes-Oxley Act provides that the Commission may accept, hold, and utilize gifts of property for a Fair Fund. Gifts of property received pursuant to this section may be deposited only in a Fair Fund.

[16] *See e.g., SEC* v. *First City Financial Corp.,* 890 F. 2d 1215, 1230 (D.C. Cir. 1989) (defendant who violated Exchange Act section 13 required to disgorge although harm was to the market as a whole, not to particular persons).

or any determination relating to a plan based solely upon the person's eligibility or potential eligibility to participate in a fund or based on a private right of action. Under the proposed Rule, as is the case under the existing disgorgement Rule, such person's participation would be limited to submitting comments in accordance with proposed Rule 1103.

C. Other Proposed Amendments

In 1995, the Commission substantially amended its Rules of Practice. After several years of experience with these Rules, the Commission believes that certain changes to the Rules would make practice under those Rules easier and more efficient. The Commission invites comments with respect to these proposed modifications.

1. The existing Rules do not make explicit the Commission's authority to order a variation from the rules governing proceedings before it. The Commission is proposing to include in Rule 100 a new paragraph (c) that would specify that the Commission may by order direct, in a particular proceeding, that an alternative procedure shall apply or that compliance with an otherwise applicable rule is unnecessary, upon its determination that to do so would serve the interests of justice and not result in prejudice to any party to the proceeding.

2. Under section 11A of the Exchange Act and the rules thereunder, the Commission is authorized to adjudicate certain disputes involving registered securities information processors, national market system plans, or transaction reporting plans.[17] In addition to the inclusion of review of Board disciplinary sanctions discussed above, the Commission proposes to amend Rule 101(a)(9) to expand the definition of ''proceedings'' to make clear that the Rules of Practice are applicable to such adjudications.[18]

3. The Commission currently requires counsel to file a motion to withdraw as counsel. Many agencies instead permit counsel to file a notice of withdrawal, which does not require agency action but informs the agency and parties of counsel's withdrawal. The Commission believes that a notice would preserve the intended benefits of the existing requirement by providing timely notice to both the Commission and the parties of the withdrawal. It would also eliminate the need for the Commission or the hearing officer to rule on a motion for withdrawal.

The proposed amendment of Rule 102(d)(4) would require any person seeking to withdraw his or her appearance in a representative capacity to file a notice of withdrawal with the Commission or the hearing officer, stating the name, address, and telephone number of the withdrawing representative; the name, address, and telephone number of the person for whom the appearance was made; and the effective date of the withdrawal. If the person seeking to withdraw knows the name, address, and telephone number of the new representative, or knows that the person for whom the appearance was made intends to represent him- or herself, that information would also have to be included in the notice. The amended Rule would require that notice be served on the parties in accordance with Rule 150, and that the notice be filed at least five days before the proposed effective date of the withdrawal.

4. The Commission is considering a proposed amendment that would specifically recognize the authority of hearing officers to correct manifest errors of fact in initial decisions. The Commission has found that some appeals to it could be streamlined if certain issues were addressed first to the hearing officer. The proposed amendment would add to the enumeration of powers of hearing officers in Rule 111 the authority to consider and rule upon a motion to correct a manifest error of fact, provided that such a motion is filed within ten days of the initial decision.

5. Currently, Rule 141(a)(3) requires the Secretary to ''place in the record of the proceeding a certificate of service'' of orders instituting proceedings. The proposed amendment of the Rule would delete this requirement, substituting a requirement that the Secretary ''maintain a record of service on parties.'' The amendment would allow the Secretary to maintain computerized rather than hard copy records of service.

6. Current Rule 141(a)(3) also requires that, if service is effected by mail, the certificate ''shall be accompanied by a confirmation of receipt or of attempted delivery,'' which is also to be maintained in the record of the proceeding. The proposed amendment of Rule 141(a)(3) would delete the requirement that such documents be retained in the record of the proceeding, allowing the Secretary to retain all the confirmation or records of attempted delivery in a single file. The Commission believes that this form of recordkeeping will permit easier retrieval of these documents.

7. Current Rule 141(b) provides for the service of written orders or decisions by the Commission or a hearing officer, other than an order instituting proceedings, to be served by any method of service authorized under Rule 141(a) or Rule 150(c). The proposed amendment of Rule 150(c) discussed below would, among other things, eliminate the requirement that parties seeking to serve each other by facsimile transmission agree to do so in writing. The Commission proposes to retain the requirement of a written agreement as a precondition to service of orders and decisions by facsimile. The proposed amendment of Rule 141(b) would replace the reference to Rule 150(c) with a reference to Rules 150(c)(1)–(3).

8. Consistent with Rule 5(b)(2)(D) of the Federal Rules of Civil Procedure, existing Rule 150(c)(4), which governs service of documents on parties by facsimile transmission, requires parties who choose to serve each other by facsimile to agree to do so in a signed writing. The existing Rule also requires that receipt of each document served by facsimile be confirmed by a manually signed receipt. The proposed amendment would delete both of these requirements. It would, however, allow a party to decline to receive service by facsimile. Such a declination would have to be made in writing and served in accordance with Rule 150. The proposed Rule would also require that facsimile transmissions be made at a time that results in their receipt during the Commission's business hours as defined in Rule 104.

The Commission's experience shows that in many instances parties are serving one another by facsimile but are not entering into the agreements or confirming by manually signed receipt. Under the new Rule, parties who choose service by facsimile would be required to provide the Commission and the parties with notice of the facsimile machine telephone number to be used and the hours of facsimile machine operation.

[17] *See* Exchange Act section 11A(b)(5) (requiring Commission to review prohibitions or limitations of access to services offered by registered securities information processors); Exchange Act Rule 11Aa3–2(e) (giving Commission discretion to entertain appeals from actions under national market system plans); Exchange Act Rule 11Aa3–1(f) (giving Commission discretion to entertain appeals in connection with implementation or operation of transaction reporting plans).

[18] Because the current Rules of Practice do not specify a particular procedure for proceedings under Exchange Act section 11A, the Commission has been required to specify by order the procedural rules that are to be employed in section 11A review proceedings. *See, e.g., The Cincinnati Stock Exchange,* Exchange Act Rel. No. 43316 (Sept. 21, 2000), 73 SEC Docket 1006 (Order Accepting Jurisdiction, Establishing Procedures, and Ordering Briefs).

Proposed Rule 101(a)(12) would also define the term ''Board'' to refer to the Public Company Accounting Oversight Board.

The Commission solicits views about what might constitute sufficient evidence of completion of facsimile service. *See* current Rule 150(d). The Commission also seeks comment as to whether parties making service by facsimile, or the Commission serving orders and decisions by facsimile, should be required to transmit a non-facsimile original contemporaneously with service by facsimile. The current Rule allows parties to specify in the written agreement providing for service by facsimile whether a non-facsimile document is to be provided.

9. Rule 151 currently does not permit filing of documents with the Commission by facsimile transmission. The proposed amendment would allow such filing. The proposed amendment makes clear, however, that one who seeks to file by facsimile assumes the risk that the transmission will not be completed in a timely or legible fashion. As proposed, Rule 151 would require that parties filing by facsimile should be required to transmit a non-facsimile original contemporaneously. At present, the Commission receives a hard copy of filings to satisfy Rule 153(a), which requires that filings be signed by at least one counsel of record, or if a party is acting as his or her own counsel, by the party. The Commission requests comments as to how the signature requirement should be implemented if filings are by facsimile and if no hard copy original is required to be filed.

In addition, the Commission requests comments as to whether filing by e-mail should be permitted. If such filing is permitted, the Commission requests comments as to whether the requirements applicable to filing by facsimile transmission would also be appropriate in that context.

Current Rule 151 requires that papers required to be served on a party shall be filed with the Commission ''at the time of service or promptly thereafter.'' To conform with other Rules, the proposed amendment would require filing with the Commission ''contemporaneously'' with service on a party.

10. Rule 152(a)(2) currently allows the use of either 10-point or 12-point type in papers filed in Commission proceedings. To enhance the legibility of filings, the proposed amendment would require the use of 12-point or larger type.

11. Current Rule 154 limits a brief in support of or in opposition to a motion to 10 pages, exclusive of pages containing any table of contents, table of authorities, and/or addendum. The Commission has received filings by parties who attempt to circumvent this page limitation by filing 10-page briefs and extremely lengthy motions. The proposed amendment seeks to establish a combined page limit of 15 pages for the motion and brief.

12. Current Rule 151 provides that persons must file papers with the Commission within the time limit for filing. Rule 160 gives an additional three days for service by mail. Questions have been raised about whether a person receives three additional days to respond if service is made by mail when the Commission's or hearing officer's order specifies a date certain for filing a response. The proposed amendment to Rule 160 would make clear that the person does not receive additional time. If a party requires a short extension, the Commission believes that the party could request that extension under Rule 161.

13. Rule 201 currently provides for the consolidation of proceedings. The proposed amendment would permit the Commission also to order any proceeding severed with respect to some or all of the parties. The proposed amendment would provide that motions to sever must be addressed to the Commission and represent that a settlement offer has been submitted to the Secretary for Commission consideration, or otherwise show good cause. The Commission asks for comment as to whether the law judges should have the power to sever parties from a proceeding.

14. Current Rule 230(a)(1)(vi) requires the Division of Enforcement to make available for inspection and copying by any party any final examination or inspection reports prepared by the Office of Compliance Inspections and Examinations, the Division of Market Regulation, or the Division of Investment Management that have been obtained by the Division of Enforcement prior to the institution of the proceedings, in connection with the investigation leading to the Division of Enforcement's recommendation to institute proceedings. The proposed amendment would state that such reports must be produced only if the Division intends either to introduce them into evidence, or to use them to refresh the recollection of any witness.

Examined parties receive notice of examination findings in the examination process, and do not require notice through the Rules of Practice. Therefore, in order to protect the confidentiality of examination reports, the proposed amendment would limit production of examination and inspection reports to circumstances where the Division intends to introduce the report into evidence, either in reliance on the report to prove its case, or to refresh the recollection of any witness.

The proposed amendment would not alter the requirement that the Division produce documents that contain material exculpatory evidence as required by *Brady* v. *Maryland*.[19]

Current Rule 230(c) permits the hearing officer to require the Division of Enforcement to submit for review a list of withheld documents. The proposed amendment would provide that when similar documents are withheld, those documents may be identified by category instead of individual document. Under the proposed amendment, the hearing officer would retain discretion to determine when an identification by category is insufficient. The proposed amendment would also correct typographical errors in the cross-reference to paragraphs pursuant to which documents may be withheld.

15. Current Rule 231(a), relating to production of witness statements, refers to ''any statement * * * that would be required to be produced by the Jencks Act, 18 U.S.C. 3500.'' There has been some question as to what constitutes a ''statement'' under this provision. The proposed change would make clear that the Commission will rely on the definition of ''statement'' contained in the Jencks Act [20] in applying this Rule.

16. Current Rule 232(e)(1) allows only the person to whom a subpoena is directed or a person who is an owner, creator, or the subject of the documents to be produced pursuant to a subpoena, to oppose the subpoena. The proposed amendment would add that any party may also oppose a subpoena.

Subpoenas directed at third party witnesses can be overly broad. Some recipients of such subpoenas may lack the sophistication or resources to dispute the scope of the subpoenas, and it would be unfair to require them to make filings in opposition. The proposed amendment would allow the Division of Enforcement, or any other party, to present arguments about whether subpoenas to any witnesses are unreasonable, oppressive, or unduly burdensome.

17. Current Rule 235(a) provides that a hearing officer may grant a motion to introduce a prior sworn statement of a witness who is out of the United States, unless it appears that the absence of the witness was procured by the party offering the prior sworn statement. Current Rule 233, however, which sets forth the basis for ordering a deposition, does not permit the taking of a deposition when it is anticipated that a

[19] 373 U.S. 83, 87 (1963).

[20] 18 U.S.C. 3500(e).

witness will be absent from the United States. Since depositions can be used only to preserve testimony of a witness who is unlikely to attend the hearing, the proposed revision of Rule 233 would allow the taking of a deposition of a witness currently within the United States who is expected to be outside the United States so long as the deposition will serve the interests of justice and it appears that the party requesting the deposition did not procure the witness's absence.

18. Rule 350(b) currently requires the Secretary to retain documents that are marked for identification but not offered into evidence. There does not seem to be any reason to keep documents that the party did not seek to introduce, and the proposed amendment would delete that requirement. The Secretary would continue to retain documents offered into evidence but excluded from the record so that, in the event of an objection, the Commission could consider any arguments that the documents should be admitted.

19. Proposed Rule 351(a) deletes a reference to a practice abandoned several years ago whereby the interested division took custody of the exhibits after a hearing and was responsible for having them sent to the Secretary. Currently the court reporter takes custody of exhibits.

20. Current Rule 360(d)(1) provides that an initial decision of a hearing officer becomes the final decision of the Commission unless a party or aggrieved person entitled to review files a petition for review, or the Commission orders review on its own initiative. Current Rule 360(e) further provides that, if an initial decision becomes the final decision of the Commission as to a party, the Commission shall issue an order that the decision has become final as to that party. The interplay of these Rules appears to have engendered confusion as to when a decision is final and enforceable. The proposed amendments would renumber paragraph 360(d)(2) as (d)(1) and combine paragraphs (d)(1) and (e) as (d)(2), clarifying that a decision becomes final upon the issuance of a finality order by the Commission.

21. Current Rule 400 provides for the Commission to grant interlocutory review only in ''extraordinary circumstances.'' The proposed amendment would instruct the parties that petitions for interlocutory review are ''disfavored,'' making clear that such petitions rarely would be granted. The proposed amendment would recognize, however, that the Commission retains discretion to undertake such review on its own motion at any time.

22. A proposed amendment to Rules 400 and 430 would provide that certain matters are subject to interlocutory review under Rule 400, not Rule 430. Rule 430 permits review of matters delegated to the staff. Under 17 CFR 200.30–9 and 30–10, certain functions are delegated to the administrative law judges and the chief administrative law judge. As the Rules are currently drafted, such determinations arguably might be reviewable under Rule 430 although the determination would not merit interlocutory review under Rule 400. The amendment would make clear that Rule 400 is the sole route for interlocutory review of determinations by a hearing officer.

23. Current Rule 401(d)(1) provides that any person aggrieved by an action by a self-regulatory organization for which the Commission is the appropriate review agency, for which action review may be sought pursuant to Rule 420, may seek a stay of that action. The proposed amendment would clarify that a stay can be sought only at the time an application for review is filed or thereafter. Filing an application for review brings the action before the Commission. Since the proposed amendment of Rule 420(c) reduces the content requirements for an application for review, the requirement that an application be filed when or before a stay is sought would not impose a significant delay.

24. The Commission requests comment on the proposed amendment of Rule 410(b), which would permit an opposing party to file a cross-petition for review within ten days from the filing of a petition for review, making it unnecessary for parties to file protective defensive petitions for review.

Another proposed amendment would delete Rule 410(d), thus abolishing the opposition to the petition for review. The Commission requests comment on the proposal to abolish the petition for review. In the Commission's experience, the utility of such oppositions has been quite limited, given that the Commission has long had a policy of granting petitions for review, believing that there is a benefit to Commission review when a party takes exception to a decision. Moreover, the Commission believes that a motion for summary affirmance would permit the Commission to dispose of matters suited to more abbreviated review.

25. The proposed amendment of Rule 411(e) would provide a 21-day time limit for filing a motion for summary affirmance. The proposed amendment would also set forth standards both for granting and for denying summary affirmance. Summary affirmance would be granted if the Commission finds that no issue raised in the initial decision warrants consideration by the Commission of further oral or written argument. Summary affirmance would be denied upon a reasonable showing that a prejudicial error was committed in the conduct of the proceeding or that the decision embodies an exercise of discretion or decision of law or policy that is important and that the Commission should review.

26. Section 19(d) of the Exchange Act requires a person who appeals from self-regulatory organization disciplinary action to do so within 30 days ''or within such longer period as'' the Commission ''may determine.'' The proposed amendment to Rule 420(b) would make clear that an appeal from self-regulatory organization action must be filed within 30 days, absent a showing of extraordinary circumstances, and will not be extended by the Commission under Rule 161. This standard is consistent with prior Commission precedent.[21]

Current Rule 420 contains language that might suggest that the applicant's address be used to serve only the record index. The proposed amendment would provide that the applicant identify where he or she may be served for all purposes.

27. Rule 450(c), which sets limits on the page length of briefs, would be amended to limit instead the number of words in briefs. The proposed word limits—14,000 for principal briefs and 7,000 for any reply brief—are based on Rule 32 of the Federal Rules of Appellate Procedure. The proposed amendment would also state that motions to file oversized briefs are disfavored. In exceptional cases, however, where more pages may be needed to address the issues—for example, where the Division of Enforcement must address arguments by multiple respondents—the Commission may, upon motion, allow longer filings.

Except when a principal brief does not exceed 30 pages in length, or a reply brief does not exceed 15 pages in length, the proposed amendment would require the attorney filing the brief (or an unrepresented party) to certify that the brief complies with the length limitation and to state the number of words in the brief. The proposed amendment would permit the party certifying the length of the brief to rely on the word count of the word processing system used to prepare the brief.

[21] *See, e.g., Lance E. Van Alstyne,* 53 S.E.C. 1093, 1099 (1998) (Commission will not authorize late filing of appeals by self-regulatory organizations absent extraordinary circumstances).

The Commission has received briefs which sought to incorporate by reference briefs filed before the hearing officer in the proceeding on appeal. Such incorporation by reference, if allowed, would erode the page-limit requirements of Rule 450(c). The proposed amendment provides that pleadings incorporated by reference will be included in determining the word count of briefs. The amendment is intended to promote adherence to the length limitations of Rule 450(c) and to encourage parties to exercise judgment in selecting the arguments that best advance their positions rather than simply repeating previously formulated contentions.

28. The current Rules make no provision for the use of visual aids at oral argument. The proposed amendment of Rule 451(b) would prohibit the use of visual aids unless copies are provided to the Commission and all parties at least five business days before the argument is to be held.[22] The Commission requests comment as to whether five business days provides sufficient time for the parties to prepare adequate responses to proposed visual aids.

29. Current Rule 360(a)(2) directs the hearing officer to issue an initial decision within the time period specified in the order instituting proceedings. To address the hearing officer's inability to comply with this directive where a proceeding is stayed by order of the hearing officer or the Commission under Rule 210(c)(3) because a criminal investigation or prosecution is pending, the proposed amendment of Rule 360(a)(2) would specify that, if a proceeding is stayed under the authority of Rule 210(c)(3), the specified time period for issuance of the initial decision, as well as any other time limits established in orders issued by the hearing officer under Rule 360(a)(2), will be automatically tolled during the period in which the stay is in effect.

30. Rule 360(d)(2) provides that the initial decision shall not become final as to a party or person if a timely petition for review is filed by that party or person. The proposed amendment would add the timely filing, by a party or an aggrieved person entitled to review, of a motion to correct an initial decision to the hearing officer as an event that prevents the initial decision from becoming the final decision of the Commission as to that party or person until the hearing officer has decided the motion. The proposed amendment would also make conforming changes to Rule 360(b), which specifies that an initial decision shall include a statement reflecting the provisions of Rule 360(d).

A proposed amendment of Rule 410(b) would provide that the time to file a petition for review is stayed until 21 days after resolution of any motion to correct an initial decision filed before the hearing officer so that, while a motion to correct is pending, a party need not file a petition for review to preserve its appeal rights.

Current Rule 470 specifies a 15-page limit for a motion for reconsideration, rather than the ten pages permitted for other motions. There does not seem to be any reason for treating motions for reconsideration differently from other motions. The amendment proposes to limit the party seeking reconsideration to the same number of pages and the same format used for other motions under the Rules of Practice. The Commission requests comment as to whether motions for reconsideration should be subject to different requirements from other motions, and if so, what differences would be appropriate.

31. The proposed amendment of Rule 601 would codify existing practice for payment of disgorgement, interest, and penalties. The proposal standardizes the language currently used by hearing officers in initial decisions and the Commission in its orders, as follows:

(c) *Method of making payment.* Payment shall be made by United States postal money order, wire transfer, certified check, bank cashier's check, or bank money order made payable to the Securities and Exchange Commission. The payment shall be mailed or delivered to the Office of Financial Management of the Commission. Payment shall be accompanied by a letter that identifies the name and number of the case and the name of the respondent making payment. A copy of the letter and the instrument of payment shall be sent to counsel for the Division of Enforcement.

II. Request for Public Comments

We request and encourage any interested person to submit comments regarding: (1) The proposed changes that are the subject of this release, (2) additional or different changes, or (3) other matters that may have an effect on the proposals contained in this release.

III. Administrative Procedure Act, Regulatory Flexibility Act, and Paperwork Reduction Act

The Commission finds, in accordance with section 533(b)(3)(A) of the Administrative Procedure Act, [23] that this revision relates solely to agency organization, procedure, or practice. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice, opportunity for public comment, and publication. The Regulatory Flexibility Act [24] therefore does not apply. Similarly, because these rules relate to ''agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties,'' the Commission is not soliciting comment for purposes of the Small Business Regulatory Enforcement Fairness Act. [25] Nonetheless, the Commission has determined that it would be useful to publish these proposed rules for notice and comment, before adoption. [26]

These rules do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended. [27]

IV. Costs and Benefits of the Proposed Rules and Amendments

The Sarbanes-Oxley Act of 2002 authorizes the Commission to review disciplinary actions by the Public Company Accounting Oversight Board as well as actions resulting in disapproval of registration of public accounting firms. In response, the Commission proposes to revise certain of its rules in order to enhance the transparency and facilitate parties' understanding of the applicability of the review process to Board proceedings. The Sarbanes-Oxley Act also provides that where the Commission or a hearing officer in a Commission administrative proceeding enters an order requiring disgorgement and a civil money penalty, the Commission may create a ''Fair Fund'' combining the disgorgement and the civil money penalty to be disbursed for the benefit of the victims of the securities law violations at issue in the proceeding. In response, the Commission proposes regulatory provisions for the submission and administration of Fair Fund plans and disgorgement plans. The Commission also proposes to take this opportunity to amend other provisions of the rules.

Taken as a whole, the Commission's Rules of Practice (''Rules'') create governmental review and remedial processes. That is, they are procedural and administrative in nature. The benefits to the parties are the familiar benefits of due process: notice,

[22] A further proposed amendment would conform the language of Rule 451(b) to reflect Commission practice not to issue the order setting oral argument in a Commission administrative proceeding until the date for argument is set.

[23] 5 U.S.C. 553(b)(3)(A).

[24] 5 U.S.C. 601 *et seq.*

[25] 5 U.S.C. 804(3)(C).

[26] *See* 5 U.S.C. 603.

[27] 44 U.S.C. 3501 *et seq.*

opportunity to be heard, efficiency and fairness. The cost of these processes, on the other hand, falls largely on the oversight bodies.

For purposes of cost/benefit analysis, the processes created by the regulatory provisions proposed in this release, given their procedural nature, might best be viewed as a whole. Nonetheless, to the extent possible, specific benefits and costs that can be more narrowly associated with separate provisions are identified below. However, because there are so many provisions, and because the costs tend to be primarily governmental, we do not provide separate sections for our respective cost and benefit analyses. Rather, we simply identify each provision proposed and discuss any benefits and costs that may be associated with it beyond the more general points summarized above.

Proposed Rule 19d–4(b) requires the Board to file with the Commission and serve on the public accounting firm a notice of disapproval of registration within 30 days of the Board's action. Proposed Rule 19d–4(c) imposes on the Board a similar filing and service requirement for notices of any disciplinary sanction other than a disapproval of registration. Timely notice is a fundamental aspect of due process. It benefits those who receive notice by allowing them to plan and take action in light of the Board's findings. Timely filing with the Commission lets the Commission know of the conclusion of Board proceedings so that it can exert oversight over the quality and fairness of those proceedings, which benefits parties to the proceedings as well as the general public. These rules would impose a small administrative cost on the Board.

Proposed Rules 440 and 441 provide for Commission review of Board actions. Proposed Rule 440 allows review upon application of a person aggrieved by a final Board disciplinary sanction, including disapproval of a completed application for registration of a public accounting firm, and proposed Rule 441 permits Commission review of Board disciplinary sanctions upon the Commission's own motion. The Rules pertain to the review mechanism required by the Sarbanes-Oxley Act, informing those upon whom Board sanctions are imposed of the option of Commission review and instructing them about procedures involved in initiating the review process.

Commission review of Board findings benefits parties to Board proceedings (and, to a lesser extent, the general public) by protecting against arbitrary, capricious, or otherwise unlawful treatment. Review also allows the Commission to exercise a check on, and protect the public interest in, the quality and consistency of Board findings.

Parties involved in review proceedings will incur legal and other costs. Review upon application by a person aggrieved, under proposed Rule 440, is optional. Thus, a party would only incur these costs if it expected a net benefit from the review process. In the case of review upon the Commission's own motion under proposed Rule 441, however, the parties involved might otherwise have chosen to avoid incurring the costs.

In accordance with section 105(e)(1) of the Sarbanes-Oxley Act, proposed Rule 440(c) provides that filing an application for review with the Commission acts as a stay of the Board's action unless the Commission orders otherwise. Proposed Rule 401(e) allows (1) persons aggrieved by such an automatic stay to ask the Commission to lift the stay; (2) the Commission to lift such a stay summarily, without notice and opportunity for a hearing; and (3) persons opposing the lifting of such a stay to file an opposition.

Rule 440(c) benefits the party upon whom Board sanctions have been imposed by allowing that party an opportunity to be heard in the review process before the Board's sanctions take effect. The automatic stay imposes a cost upon third parties who would benefit if the sanctions went into place immediately.

Allowing a person aggrieved by the automatic stay to ask to have the stay lifted benefits the aggrieved person by offering the option of a possible earlier termination of the stay. Those availing themselves of this option will incur legal and other costs, though since the procedure is optional, they will presumably do so only if they conclude that doing so yields an expected net benefit. Similarly, allowing opposition to a motion to lift allows those opposing the motion an opportunity to be heard. Although opposing a motion could involve legal and other expenses, since opposition is optional, parties would only incur those costs if they expected a net benefit from opposing.

Allowing the Commission to lift a stay summarily could benefit persons aggrieved by the stay by providing prompt and inexpensive relief. At the same time, those who might oppose the lifting of the stay would be denied notice and an opportunity to be heard in connection with the lifting of the stay.

Section 308(a) of the Sarbanes-Oxley Act provides that, in a Commission administrative proceeding where the Commission or a hearing officer enters an order requiring disgorgement and a civil money penalty, the Commission may create a ''Fair Fund'' by including the civil penalty with the disgorgement amount. The Commission is required to disburse money from a Fair Fund for the benefit of the victims of the securities law violations at issue in the proceeding.

Proposed Rule 1101 would authorize the Commission to create a Fair Fund in any administrative proceeding in which a final order is entered imposing disgorgement and a civil money penalty, and would permit the Commission to add to the Fair Fund any property received in accordance with section 308(b) of the Sarbanes-Oxley Act. The Commission would also be allowed to create a Fair Fund if it approves a settlement of an administrative proceeding that provides for payment of disgorgement and a civil money penalty. Where the relative value of the ill-gotten gains and the number of potential claimants would result in high administrative costs and *de minimis* distributions to investors, the proposed rules would allow the Commission not to create a Fair Fund, and the disgorgement and civil penalty amounts would be paid directly to the United States Treasury.

Creating and administering Fair Funds benefits victims of securities law violations, who would be more likely to be made whole. Allowing monies that would otherwise go into a Fair Fund to be paid to the Treasury where investors would receive only *de minimis* distributions would prevent those monies from being consumed by administrative costs, though at a cost to victims who might otherwise have received a minimal payment from a Fair Fund.

The proposed amendment of Rule 102(d)(4) would allow a person seeking to withdraw his or her appearance before the Commission in a representative capacity to file a notice of withdrawal rather than the motion to withdraw that is currently required. Filing a notice would preserve the benefits of the existing requirement by giving the Commission and the parties timely notice of withdrawal. Preparing and filing a notice may be less expensive than preparing and filing a motion. Additionally, the proposed amendment would increase efficiency by eliminating the need for the Commission or a hearing officer to rule on a motion for withdrawal.

The proposed amendment of Rule 150(c)(4) would eliminate the requirements that parties who choose to serve each other by facsimile transmission (1) agree to do so in a

signed writing, and (2) confirm receipt of each document by a manually signed receipt. Eliminating these requirements would result in lower costs to the serving parties. However, eliminating the requirement of a signed receipt could make it more difficult to prove that a transmission was received.

The proposed amendment of Rule 151 would allow parties to file documents with the Commission by facsimile transmission. This amendment provides parties an additional option for transmitting documents to the Commission. Facsimile filing would allow the Commission to receive, and be able to address, documents in as timely a fashion as possible. Costs of transmission by facsimile are likely to be lower than overnight or courier fees. The proposal would not impose any new costs, since the existing methods for filing with the Commission remain available.

The proposed amendment to Rule 154 establishes a combined page limit of 15 pages for a motion and a brief in support of the motion. The 15-page limit would also apply to a brief in opposition to a motion and to any reply brief. The proposed amendment to Rule 450(c) provides that pleadings incorporated by reference will be included in determining the page count of briefs.

Reducing page limits may result in lower legal costs to the parties. Limiting the number of pages submitted also keeps proceedings efficient.

The proposed amendment of Rule 233 would allow the taking of a deposition of a witness then within the United States, who is expected to be outside the United States at the time of an administrative hearing, so long as the deposition will serve the interests of justice and it appears that the party requesting the deposition did not procure the witness's absence. The proposal serves the interests of justice by making available a statement that otherwise might not have been made part of the record. If use of such a deposition results in the absence from a hearing of a witness who otherwise would have appeared, there would be a loss in that the hearing officer would have no opportunity to assess demeanor. However, since the Rule allows a deposition only where it appears that the party requesting the deposition did not procure the witness's absence, such a series of events should rarely occur.

The remaining proposals variously clarify existing practice, relate to internal agency management, increase the efficiency of proceedings, or promote due process.

The Commission requests data to quantify the costs and the value of the benefits identified. The Commission also seeks estimates and views regarding these costs and benefits for particular types of market participants, as well as any other costs or benefits that may result from the adoption of the proposed rules.

V. Effect on Efficiency, Competition and Capital Formation

Section 2(b) of the Securities Act of 1933,[28] section 3(f) of the Exchange Act,[29] section 2(c) of the Investment Company Act of 1940,[30] and section 202(c) of the Investment Advisers Act of 1940 [31] require us, when engaging in rulemaking that requires us to consider or determine whether an act is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act [32] prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rules are intended to enhance the transparency and facilitate parties' understanding of the applicability of the Commission review process to Board proceedings. The proposed rules and amendments also include regulatory provisions for the submission and administration of Fair Funds plans and disgorgement plans, and the proposed amendments are intended to clarify existing practice and increase the efficiency of Commission enforcement and self-regulatory organization disciplinary review proceedings. The proposed rules and amendments would apply to all persons involved in administrative proceedings before the Commission and therefore the Commission does not expect the proposed rules and amendments to have an anti-competitive effect. To the extent the proposed rules and amendments would foster making whole victims of securities laws violations and would increase the transparency of the Commission's administrative practice and the efficiency of the Commission's proceedings, there might be an increase in investor confidence in market fairness and efficiency. However, the magnitude of the effect of the proposed amendments in this regard is difficult to quantify. We request comment on the possible effects of our rule proposals on efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

[28] 15 U.S.C. 77b(b).

[29] 15 U.S.C. 78c(f).

[30] 15 U.S.C. 80a–2(c).

[31] 15 U.S.C. 80b–2(c).

[32] 15 U.S.C. 78w(a)(2).

VI. Statutory Basis and Text of Proposed Amendments

These amendments to the Rules of Practice and related provisions are being adopted pursuant to statutory authority granted to the Commission, including section 3 of the Sarbanes-Oxley Act, 15 U.S.C. 7202; section 19 of the Securities Act, 15 U.S.C. 77s; sections 19 and 23 of the Securities Exchange Act, 15 U.S.C. 78s and 78w; section 20 of the Public Utility Holding Company Act, 15 U.S.C. 79t; section 319 of the Trust Indenture Act, 15 U.S.C. 77sss; sections 38 and 40 of the Investment Company Act, 15 U.S.C. 80a-37 and 80a-39; and section 211 of the Investment Advisers Act, 15 U.S.C. 80b-11.

List of Subjects

17 CFR Parts 200 and 201

Administrative practice and procedure.

17 CFR Part 240

Reporting and Recordkeeping Requirements; Securities.

Text of the Amendment

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The general authority citation for part 200, subpart A is revised to read as follows:

Subpart A—Organization and Program Management

Authority: 15 U.S.C. 77s, 77sss, 78d–1, 78d–2, 78w, 78*ll*(d), 78mmm, 79t, 80a–37, 80b–11, and 7202, unless otherwise noted.

* * * * * ′

2. In § 200.21, paragraph (b), remove the words ''Rule 2(e) of the Commission's Rules of Practice (§ 201.2(e) of this chapter)'' and, in their place, add the words ''Rule 102(e) of the Commission's Rules of Practice (§ 201.102(e) of this chapter)''.

Subpart B—Disposition of Commission Business

3. The authority citation for subpart B continues to read as follows:

Authority: 5 U.S.C. 552b; 15 U.S.C. 78d–1 and 78w.

4. In § 200.43, paragraph (c)(3), remove the words ''Rule 26 of the Commission's rules of practice, 17 CFR 201.26'' and, in their place, add the words ''Rules 430 and 431 of the Commission's Rules of Practice, §§ 201.430 and 201.431 of this chapter''.

5. The authority citation for part 200, subpart F, is revised to read as follows:

Subpart F—Code of Behavior Governing Ex Parte Communications Between Persons Outside the Commission and Decisional Employees

Authority: 15 U.S.C. 77s, 77sss, 78w, 79t, 80a–37, 80b–11, and 7202; and 5 U.S.C. 557.

6. Section 200.111 is amended by:

a. Redesignating paragraph (c)(1)(iii) as paragraph (c)(1)(iv); and

b. Adding new paragraph (c)(1)(iii).

The addition reads as follows:

§ 200.111 Prohibitions; application; definitions.

* * * * *

(c) *Period during which prohibitions apply.* (1) * * *

(iii) That, in proceedings under Title I of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7211–7219, these prohibitions shall commence at the time that a copy of an application for review has been filed with the Commission and served on the Public Company Accounting Oversight Board; and

* * * * *

PART 201—RULES OF PRACTICE

Subpart D—Rules of Practice

7. The authority citation for part 201, subpart D, is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77h–1, 77j, 77s, 77sss, 77ttt, 77u, 78c(b), 78d–1, 78d–2, 78*l*, 78m, 78n, 78*o*(d), 78*o*–3, 78s, 78u–2, 78u–3, 78v, 78w, 79c, 79s, 79t, 79z–5a, 80a–8, 80a–9, 80a–37, 80a–38, 80a–39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, 80b–12, 7202, 7215, and 7217.

8. Section 201.100 is amended by adding paragraph (c) to read as follows:

§ 201.100 Scope of the rules of practice.

* * * * *

(c) The Commission, upon its determination that to do so would serve the interests of justice and not result in prejudice to the parties to the proceeding, may by order direct, in a particular proceeding, that an alternative procedure shall apply or that compliance with an otherwise applicable rule is unnecessary.

9. Section 201.101 is amended by:

a. Revising paragraph (a)(9); and

b. Adding paragraph (a)(12).

The revision and addition read as follows:

§ 201.101 Definitions.

(a) * * *

(9) *Proceeding* means any agency process initiated:

(i) By an order instituting proceedings; or

(ii) By the filing, pursuant to § 201.410, of a petition for review of an initial decision by a hearing officer; or

(iii) By the filing, pursuant to § 201.420, of an application for review of a self-regulatory organization determination; or

(iv) By the filing, pursuant to § 201.430, of a notice of intention to file a petition for review of a determination made pursuant to delegated authority; or

(v) By the filing, pursuant to § 201.440, of an application for review of a determination by the Public Company Accounting Oversight Board; or

(vi) By the filing, pursuant to § 240.11Aa3–1(f) of this chapter, of an application for review of an action or failure to act in connection with the implementation or operation of any effective transaction reporting plan; or

(vii) By the filing, pursuant to § 240.11Aa3–2(e) of this chapter, of an application for review of an action taken or failure to act in connection with the implementation or operation of any effective national market system plan.

* * * * *

(12) *Board* means the Public Company Accounting Oversight Board.

* * * * *

10. Section 201.102 is amended by revising paragraph (d)(4) to read as follows:

§ 201.102 Appearance and practice before the Commission.

* * * * *

(d) *Designation of address for service; notice of appearance; power of attorney; withdrawal.* * * *

(4) *Withdrawal.* Any person seeking to withdraw his or her appearance in a representative capacity shall file a notice of withdrawal with the Commission or the hearing officer. The notice shall state the name, address, and telephone number of the withdrawing representative; the name, address, and telephone number of the person for whom the appearance was made; and the effective date of the withdrawal. If the person seeking to withdraw knows the name, address, and telephone number of the new representative, or knows that the person for whom the appearance was made intends to represent him- or herself, that information shall be included in the notice. The notice must be served on the parties in accordance with § 201.150. The notice shall be filed at least five days before the proposed effective date of the withdrawal.

* * * * *

11. Section 201.111 is amended by revising paragraph (h) to read as follows:

§ 201.111 Hearing officer: Authority.

* * * * *

(h) Subject to any limitations set forth elsewhere in these Rules of Practice, considering and ruling upon all procedural and other motions, including a motion to correct a manifest error of fact in the initial decision, provided that such a motion to correct is filed within ten days of the initial decision;

* * * * *

12. Section 201.141 is amended by:

a. Revising the section heading; and

b. Revising paragraphs (a)(3) and (b) to read as follows:

The revisions read as follows:

§ 201.141 Orders and decisions: Service of orders instituting proceedings and other orders and decisions.

(a) *Service of an order instituting proceedings.*

* * * * *

(3) *Record of service.* The Secretary shall maintain a record of service on parties, identifying the party given notice, the method of service, the date of service, the address to which service was made, and the person who made service. If service is made in person, the certificate of service shall state, if available, the name of the individual to whom the order was given. If service is made by U.S. Postal Service certified or Express Mail, the Secretary shall maintain the confirmation of receipt or of attempted delivery. If service is made to an agent authorized by appointment to receive service, the certificate of service shall be accompanied by evidence of the appointment.

* * * * *

(b) *Service of orders or decisions other than an order instituting proceedings.* Written orders or decisions issued by the Commission or by a hearing officer shall be served promptly on each party pursuant to any method of service authorized under paragraph (a) of this section or § 201.150(c)(1)–(3). Such orders or decisions may also be served by facsimile transmission if the party to be served has agreed to accept such service in a writing, signed by the party, and has provided the Commission with information concerning the facsimile machine telephone number and hours of

facsimile machine operation. Service of orders or decisions by the Commission, including those entered pursuant to delegated authority, shall be made by the Secretary or, as authorized by the Secretary, by a member of an interested division. Service of orders or decisions issued by a hearing officer shall be made by the Secretary or the hearing officer.

13. Section 201.150 is amended by revising paragraph (c)(4) to read as follows:

§ 201.150 Service of papers by parties.

* * * * *

(c) *How made.* * * *

(4) Transmitting the papers by facsimile transmission where the following conditions are met:

(i) The persons so serving each other have provided the Commission and the parties with notice of the facsimile machine telephone number to be used and the hours of facsimile machine operation;

(ii) The transmission is made at such a time that it is received during the Commission's business hours as defined in § 201.104; and

(iii) The sender of the transmission has not been served in accordance with § 201.150 with a written notice from the recipient of the transmission declining service by facsimile transmission.

* * * * *

14. Section 201.151 is amended by revising paragraph (a) to read as follows:

§ 201.151 Filing of papers with the Commission: Procedure.

(a) *When to file.* All papers required to be served by a party upon any person shall be filed contemporaneously with the Commission. Papers required to be filed with the Commission must be received within the time limit, if any, for such filing. Filing with the Commission may be made by facsimile transmission if the party also contemporaneously transmits to the Commission a non-facsimile original with a manual signature. However, any person filing with the Commission by facsimile transmission will be responsible for assuring that the Commission receives a complete and legible filing within the time limit set for such filing.

* * * * *

15. Section 201.152 is amended by revising paragraph (a)(2) to read as follows:

§ 201.152 Filing of papers: Form.

(a) *Specifications.* * * *

(2) Be typewritten or printed in 12-point or larger typeface or otherwise reproduced by a process that produces permanent and plainly legible copies;

* * * * *

16. Section 201.154 is amended by revising paragraph (c) to read as follows:

§ 201.154 Motions.

* * * * *

(c) *Length limitation.* A motion, together with the brief in support of the motion; the brief in opposition to the motion; or any reply brief, shall not exceed 15 pages, exclusive of pages containing any table of contents or table of authorities. The page limit shall not apply to any addendum that consists solely of copies of applicable cases, pertinent legislative provisions, or relevant exhibits. Requests for leave to file motions and briefs in excess of 15 pages are disfavored.

17. Section 201.160 is amended by revising paragraph (b) to read as follows:

§ 201.160 Time computation.

* * * * *

(b) *Additional time for service by mail.* If service is made by mail, three days shall be added to the prescribed period for response unless an order of the Commission or the hearing officer specifies a date certain for filing. In the event that an order of the Commission or the hearing officer specifies a date certain for filing, no time shall be added for service by mail.

18. Section 201.201 is amended by:

a. Revising the section heading;

b. Designating the current text as paragraph (a) and adding a paragraph heading; and

c. Adding paragraph (b).

The revision and additions read as follows:

§ 201.201 Consolidation and severance of proceedings.

(a) *Consolidation.** * *

(b) *Severance.* By order of the Commission, any proceeding may be severed with respect to some or all parties. Any motion to sever must be made solely to the Commission and must include a representation that a settlement offer is pending before the Commission or otherwise show good cause.

19. Section 201.202 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 201.202 Specification of procedures by parties in certain proceedings.

(a) *Motion to specify procedures.* In any proceeding other than an enforcement or disciplinary proceeding, a proceeding to review a determination by a self-regulatory organization pursuant to §§ 201.420 and 201.421, or a proceeding to review a determination of the Board pursuant to §§ 201.440 and 201.441, a party may, at any time up to 20 days prior to the start of a hearing, make a motion to specify the procedures necessary or appropriate for the proceeding with particular reference to:

* * * * *

20. Section 201.210 is amended by revising paragraph (a)(1) and the introductory text to paragraphs (b)(1) and (c) to read as follows:

§ 201.210 Parties, limited participants and amici curiae.

(a) *Parties in an enforcement or disciplinary proceeding, a proceeding to review a self-regulatory organization determination, or a proceeding to review a Board determination*—

(1) *Generally.* No person shall be granted leave to become a party or a non-party participant on a limited basis in an enforcement or disciplinary proceeding, a proceeding to review a determination by a self-regulatory organization pursuant to §§ 201.420 and 201.421, or a proceeding to review a determination by the Board pursuant to §§ 201.440 and 201.441, except as authorized by paragraph (c) of this section.

* * * * *

(b) *Intervention as a party.*—(1) *Generally.* In any proceeding, other than an enforcement proceeding, a disciplinary proceeding, a proceeding to review a self-regulatory determination, or a proceeding to review a Board determination, any person may seek leave to intervene as a party by filing a motion setting forth the person's interest in the proceeding:

* * * * *

(c) *Leave to participate on a limited basis.* In any proceeding, other than an enforcement proceeding, a disciplinary proceeding, a proceeding to review a self-regulatory determination, or a proceeding to review a Board determination, any person may seek leave to participate on a limited basis as a non-party participant as to any matter affecting the person's interests:

* * * * *

21. Section 201.230 is amended by revising paragraphs (a)(1)(vi) and (c) to read as follows:

§ 201.230 Enforcement and disciplinary proceedings: Availability of documents for inspection and copying.

* * * * *

(a) *Documents to be available for inspection and copying.* (1) * * *

(vi) Any final examination or inspection reports prepared by the Office of Compliance Inspections and Examinations, the Division of Market

Regulation, or the Division of Investment Management, if the Division of Enforcement intends either to introduce any such report into evidence or to use any such report to refresh the recollection of any witness.

* * * * *

(c) *Withheld document list.* The hearing officer may require the Division of Enforcement to submit for review a list of documents or categories of documents withheld pursuant to paragraphs (b)(1)(i) through (b)(1)(iv) of this section or to submit any document withheld, and may determine whether any such document should be made available for inspection and copying. When similar documents are withheld pursuant to paragraphs (b)(1)(i) through (b)(1)(iv) of this section, those documents may be identified by category instead of by individual document. The hearing officer retains discretion to determine when an identification by category is insufficient.

* * * * *

22. Section 201.231 is amended by revising paragraph (a) to read as follows:

§ 201.231 Enforcement and disciplinary proceedings: Production of witness statements.

(a) *Availability.* Any respondent in an enforcement or disciplinary proceeding may move that the Division of Enforcement produce for inspection and copying any statement of any person called or to be called as a witness by the Division of Enforcement that pertains, or is expected to pertain, to his or her direct testimony and that would be required to be produced pursuant to the Jencks Act, 18 U.S.C. 3500. For purposes of this section, *statement* shall have the meaning set forth in 18 U.S.C. 3500(e). Such production shall be made at a time and place fixed by the hearing officer and shall be made available to any party, provided, however, that the production shall be made under conditions intended to preserve the items to be inspected or copied.

* * * * *

23. Section 201.232 is amended by revising paragraph (e)(1) to read as follows:

201.232 Subpoenas.

* * * * *

(e) *Application to quash or modify.* (1) Any person to whom a subpoena is directed, or who is an owner, creator or the subject of the documents that are to be produced pursuant to a subpoena, or any party may, prior to the time specified therein for compliance, but in no event more than 15 days after the date of service of such subpoena, request that the subpoena be quashed or modified. Such request shall be made by application filed with the Secretary and served on all parties pursuant to § 201.150. The party on whose behalf the subpoena was issued may, within five days of service of the application, file an opposition to the application. If a hearing officer has been assigned to the proceeding, the application to quash shall be directed to that hearing officer for consideration, even if the subpoena was issued by another person.

* * * * *

24. Section 201.233 is amended by revising paragraph (b) to read as follows:

§ 201.233 Deposition upon oral examination.

* * * * *

(b) *Required finding when ordering a deposition.* In the discretion of the Commission or the hearing officer, an order for a deposition may be issued upon a finding that the prospective witness will likely give testimony material to the proceeding; that it is likely the prospective witness, who is then within the United States, will be unable to attend or testify at the hearing because of age, sickness, infirmity, imprisonment, other disability, or absence from the United States, unless it appears that the absence of the witness was procured by the party requesting the deposition; and that the taking of a deposition will serve the interests of justice.

* * * * *

25. Section 201.350 is amended by revising paragraph (b) to read as follows:

§ 201.350 Record in proceedings before hearing officer; retention of documents; copies.

* * * * *

(b) *Retention of documents not admitted.* Any document offered into evidence but excluded shall not be considered a part of the record. The Secretary shall retain any such document until the later of the date upon which a Commission order ending the proceeding becomes final, or the conclusion of any judicial review of the Commission's order.

* * * * *

26. Section 201.351 is amended by revising paragraph (a) to read as follows:

§ 201.351 Transmittal of documents to Secretary; record index; certification.

(a) *Transmittal from hearing officer to Secretary of partial record index.* The hearing officer may, at any time, transmit to the Secretary motions, exhibits or any other original documents filed with or accepted into evidence by the hearing officer, together with a list of such documents.

* * * * *

27. Section 201.360 is amended by:

a. Adding a sentence at the end of paragraph (a)(2);

b. Revising paragraphs (b)(1), (b)(2) and (d); and

c. Removing paragraph (e).

The addition and revisions read as follows:

§ 201.360 Initial decision of hearing officer.

(a)(1) * * *

(2) *Time period for filing initial decision.* * * * If a stay is granted pursuant to § 201.210(c)(3), the time period specified in the order instituting proceedings in which the hearing officer's initial decision must be filed with the Secretary, as well as any other time limits established in orders issued by the hearing officer in the proceeding, shall be automatically tolled during the period while the stay is in effect.

(b) *Content.* * * *

(1) The Commission will enter an order of finality as to each party unless a party or an aggrieved person entitled to review timely files a petition for review of the initial decision or a motion to correct a manifest error of fact in the initial decision with the hearing officer, or the Commission determines on its own initiative to review the initial decision; and

(2) If a party or an aggrieved person entitled to review timely files a petition for review or a motion to correct a manifest error of fact in the initial decision with the hearing officer, or if the Commission takes action to review as to a party or an aggrieved person entitled to review, the initial decision shall not become final as to that party or person.

* * * * *

(d) *Finality.* (1) If a party or an aggrieved person entitled to review timely files a petition for review or a motion to correct a manifest error of fact in the initial decision, or if the Commission on its own initiative orders review of a decision with respect to a party or a person aggrieved who would be entitled to review, the initial decision shall not become final as to that party or person.

(2) If a party or aggrieved person entitled to review fails to file timely a petition for review or a motion to correct a manifest error of fact in the initial decision, and if the Commission does not order review of a decision on its own initiative, the Commission will issue an order that the decision has become final as to that party. The decision becomes final upon issuance of

the order. The order of finality shall state the date on which sanctions, if any, take effect. Notice of the order shall be published in the *SEC News Digest* and the *SEC Docket,* and on the SEC Web site.

28. Section 201.400 is amended by revising paragraph (a) to read as follows:

§ 201.400 Interlocutory review.

(a) *Availability.* The Commission may, at any time, on its own motion, direct that any matter be submitted to it for review. Petitions by parties for interlocutory review are disfavored, and the Commission ordinarily will grant a petition to review a hearing officer ruling prior to its consideration of an initial decision only in extraordinary circumstances. The Commission may decline to consider a ruling certified by a hearing officer pursuant to paragraph (c) of this section or the petition of a party who has been denied certification if it determines that interlocutory review is not warranted or appropriate under the circumstances. This section is the exclusive remedy for review of a hearing officer's ruling prior to Commission consideration of the entire proceeding and is the sole mechanism for appeal of actions delegated pursuant to 17 CFR 200.30–9 and 200.30–10.

* * * * *

29. Section 201.401 is amended by:

a. Revising the section heading and paragraph (d)(1); and

b. Adding paragraph (e).

The revisions and addition read as follows:

§ 201.401 Consideration of stays.

* * * * *

(d) *Stay of an action by a self-regulatory organization.*

(1) *Availability.* A motion for a stay of an action by a self-regulatory organization for which the Commission is the appropriate regulatory agency, for which action review may be sought pursuant to § 201.420, may be made by any person aggrieved thereby at the time an application for review is filed in accordance with § 201.420 or thereafter.

* * * * *

(e) *Lifting of stay of action by the Public Company Accounting Oversight Board.* (1) *Availability.* Any person aggrieved by the stay of action by the Board entered in accordance with 15 U.S.C. 7215(e) for which review has been sought pursuant to § 201.440 or which the Commission has taken up on its motion pursuant to § 201.441 may make a motion to lift the stay. The Commission may, at any time, on its own motion determine whether to lift the automatic stay.

(2) *Summary action.* The Commission may lift a stay summarily, without notice and opportunity for hearing.

(3) *Expedited consideration.* The Commission may expedite consideration of a motion to lift a stay of Board action, consistent with the Commission's other responsibilities. Where consideration is expedited, persons opposing the lifting of the stay may file a statement in opposition within two days of service of the motion requesting lifting of the stay unless the Commission, by written order, shall specify a different period.

30. Section 201.410 is amended by:

a. Revising paragraph (b); and

b. Removing and reserving paragraph (d).

The revision reads as follows:

§ 201.410 Appeal of initial decisions by hearing officers.

* * * * *

(b) *Procedure.* The petition for review of an initial decision shall be filed with the Commission within such time after service of the initial decision as prescribed by the hearing officer pursuant to § 201.360(b) unless a party has filed a motion to correct an initial decision with the hearing officer. If such correction has been sought, a party shall have 21 days from the date of the hearing officer's order resolving the motion for to correct to file a petition for review. The petition shall set forth the specific findings and conclusions of the initial decision as to which exception is taken, together with supporting reasons for each exception. Supporting reasons may be stated in summary form. Any exception to an initial decision not stated in the petition for review, or in a previously filed proposed finding made pursuant to § 201.340 may, at the discretion of the Commission, be deemed to have been waived by the petitioner. In the event a petition for review is filed, any other party to the proceeding may file a cross-petition for review within the original time allowed for seeking review or within ten days from the date that the petition for review was filed, whichever is later.

* * * * *

31. Section 201.411 is amended by revising paragraph (e) as follows:

§ 201.411 Commission consideration of decisions by hearing officers.

* * * * *

(e) *Summary affirmance.* (1) At any time within 21 days after the filing of a petition for review pursuant to § 201.410(b), any party may file a motion in accordance with § 201.154 asking that the Commission summarily affirm an initial decision. Any party may file an opposition and reply to such motion in accordance with § 201.154. Pending determination of the motion for summary affirmance, the Commission, in its discretion, may delay issuance of a briefing schedule order pursuant to § 201.450.

(2) Upon consideration of the motion and any opposition or upon its own initiative, the Commission may summarily affirm an initial decision. The Commission may grant summary affirmance if it finds that no issue raised in the initial decision warrants consideration by the Commission of further oral or written argument. The Commission will decline to grant summary affirmance upon a reasonable showing that a prejudicial error was committed in the conduct of the proceeding or that the decision embodies an exercise of discretion or decision of law or policy that is important and that the Commission should review.

* * * * *

32. Section 201.420 is amended by:

a. Revising paragraph (b);

b. Redesignating paragraphs (c) and (d) as paragraphs (d) and (e); and

c. Adding new paragraph (c).

The revision and addition read as follows:

§ 201.420 Appeal of determinations by self-regulatory organizations.

* * * * *

(b) *Procedure.* As required by section 19(d)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(d)(1), an applicant must file an application for review with the Commission within 30 days after the notice of the determination is filed with the Commission and received by the aggrieved person applying for review. The Commission will not extend this 30-day period, absent a showing of extraordinary circumstances. This section is the exclusive remedy for seeking an extension of the 30-day period.

(c) *Application.* The application shall be filed with the Commission pursuant to § 201.151. The applicant shall serve the application on the self-regulatory organization. The application shall identify the determination complained of and set forth in summary form a brief statement of the alleged errors in the determination and supporting reasons therefor. The application shall state an address where the applicant can be served. The application should not exceed two pages in length. The application shall be accompanied by the notice of appearance required by § 201.102(d).

* * * * *

33. Section 201.430 is amended by revising paragraph (a) to read as follows:

§ 201.430 Appeal of actions made pursuant to delegated authority.

(a) *Scope of rule.* Any person aggrieved by an action made by authority delegated in §§ 200.30–1 through 200.30–8 or §§ 200.30–11 through 200.30–18 of this chapter may seek review of the action pursuant to paragraph (b) of this section.

* * * * *

34. Sections 201.440 and 201.441 are added to read as follows:

§ 201.440 Appeal of determinations by the Public Company Accounting Oversight Board.

(a) *Application for review; when available.* Any person who is aggrieved by a determination of the Board with respect to any final disciplinary sanction, including disapproval of a completed application for registration of a public accounting firm, may file an application for review.

(b) *Procedure.* An aggrieved person may file an application for review with the Commission pursuant to § 201.151 within 30 days after the notice filed by the Board of its determination with the Commission pursuant to § 240.19d–4 of this chapter is received by the aggrieved person applying for review. The applicant shall serve the application on the Board at the same time. The application shall identify the determination complained of, set forth in summary form a brief statement of alleged errors in the determination and supporting reasons therefor, and state an address where the applicant can be served. The notice of appearance required by § 201.102(d) shall accompany the application.

(c) *Stay of determination.* Filing an application for review with the Commission pursuant to paragraph (b) of this section operates as a stay of the Board's determination unless the Commission otherwise orders either pursuant to a motion filed in accordance with § 201.401(e) or upon its own motion.

(d) *Certification of the record; service of the index.* Within fourteen days after receipt of an application for review, the Board shall certify and file with the Commission one copy of the record upon which it took the complained-of action. The Board shall file with the Commission three copies of an index of such record, and shall serve one copy of the index on each party.

§ 201.441 Commission consideration of Board determinations.

(a) *Commission review other than pursuant to an application for review.* The Commission may, on its own initiative, order review of any final disciplinary sanction, including disapproval of a completed application for registration of a public accounting firm, imposed by the Board that could be the subject to an application for review pursuant to § 201.440(a) within 40 days after the Board filed notice thereof pursuant to § 240.19d–4 of this chapter.

(b) *Supplemental briefing.* The Commission may at any time prior to the issuance of its decision raise or consider any matter that it deems material, whether or not raised by the parties. The Commission will give notice to the parties and an opportunity for supplemental briefing with respect to issues not briefed by the parties where the Commission believes that such briefing could significantly aid the decisional process.

35. Section 201.450 is amended by:

a. Redesignating paragraphs (a)(2)(iii) and (a)(2)(iv) as paragraphs (a)(2)(iv) and (a)(2)(v);

b. Adding new paragraph (a)(2)(iii);

c. Revising paragraph (c); and

d. Adding paragraph (d).

The additions and revision read as follows:

§ 201.450 Briefs filed with the Commission.

(a) *Briefing schedule order.* * * *

(2) * * *

(iii) Receipt by the Commission of an index to the record of a determination by the Board filed pursuant to § 201.440(d);

* * * * *

(c) *Length limitation.* Except with leave of the Commission, opening and opposition briefs shall not exceed 14,000 words and reply briefs shall not exceed 7,000 words, exclusive of pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions, or rules and exhibits. The number of words shall include pleadings incorporated by reference. Motions to file briefs in excess of these limitations are disfavored.

(d) *Certificate of compliance.* An opening or opposition brief that does not exceed 30 pages in length, exclusive of pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions, or rules and exhibits, but inclusive of pleadings incorporated by reference, is presumptively considered to contain no more than 14,000 words. A reply brief that does not exceed 15 pages in length, exclusive of pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions, or rules and exhibits, but inclusive of pleadings incorporated by reference, is presumptively considered to contain no more than 7,000 words. Any brief that exceeds these page limits must include a certificate by the attorney, or an unrepresented party, stating that the brief complies with the length limitation set forth in § 201.450(c) and stating the number of words in the brief. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the brief.

36. Section 201.451 is amended by revising paragraph (b) to read as follows:

§ 201.451 Oral argument before the Commission.

* * * * *

(b) *Procedure.* Requests for oral argument shall be made by separate motion accompanying the initial brief on the merits. The Commission shall issue an order as to whether oral argument is to be heard, and if so, the time and place therefor. If oral argument is granted, the time fixed for oral argument shall be changed only by written order of the Commission, for good cause shown. The order shall state at whose request the change is made and the reasons for any such changes. No visual aids may be used at oral argument unless copies have been provided to the Commission and all parties at least five business days before the argument is to be held.

* * * * *

37. Section 201.460 is amended by adding paragraph (a)(3) to read as follows:

§ 201.460 Record before the Commission.

* * * * *

(a) *Contents of the record.* * * *

(3) In a proceeding for final decision before the Commission reviewing a determination of the Board, the record shall consist of:

(i) The record certified pursuant to § 201.440(d) by the Board;

(ii) Any application for review; and

(iii) Any submissions, moving papers and briefs filed on appeal or review.

* * * * *

38. Section 201.470 is amended by revising paragraph (b) to read as follows:

§ 201.470 Reconsideration.

* * * * *

(b) *Procedure.* A motion for reconsideration shall be filed within 10 days after service of the order complained of, or within such time as

the Commission may prescribe upon motion for extension of time filed by the person seeking reconsideration, if the motion is made within the foregoing 10-day period. The motion for reconsideration shall briefly and specifically state the matters of record alleged to have been erroneously decided, the grounds relied upon, and the relief sought. A motion for reconsideration shall conform to the requirements, including page length, provided in § 201.154. No response to a motion for reconsideration shall be filed unless requested by the Commission. Any response so requested shall comply with § 201.154.

39. Section 201.601 is amended by adding paragraph (c) to read as follows:

§ 201.601 Prompt payment of disgorgement, interest and penalties.

* * * * *

(c) *Method of making payment.* Payment shall be made by United States postal money order, wire transfer, certified check, bank cashier's check, or bank money order made payable to the Securities and Exchange Commission. The payment shall be mailed or delivered to the Office of Financial Management of the Commission. Payment shall be accompanied by a letter that identifies the name and number of the case and the name of the respondent making payment. A copy of the letter and the instrument of payment shall be sent to counsel for the Division of Enforcement.

40. Sections 201.610 through 201.614 and § 201.620 are removed and reserved.

41. Sections 201.1100 through 201.1106, Subpart F—Fair Fund and Disgorgement Plans—are added to read as follows:

Subpart F—Fair Fund and Disgorgement Plans

Sec.
201.1100 Creation of Fair Fund.
201.1101 Submission of plan of distribution; contents of plan.
201.1102 Provisions for payment.
201.1103 Notice of proposed plan and opportunity for comment by non-parties.
201.1104 Order approving, modifying, or disapproving proposed plan.
201.1105 Administration of plan.
201.1106 Right to challenge.

Authority: 15 U.S.C. 77h–1, 77s, 77u, 78c(b), 78d–1, 78d–2, 78u–2, 78u–3, 78v, 78w, 80a–9, 80a–37, 80a–39, 80a–40, 80b–3, 80b–11, 80b–12, and 7246.

§ 201.1100 Creation of Fair Fund.

In any agency process initiated by an order instituting proceedings in which the Commission issues an order requiring the payment of disgorgement by a respondent and also assessing a civil money penalty against that respondent, the Commission may order that the amount of the disgorgement and of the civil money penalty, together with any funds received by the Commission pursuant to 15 U.S.C. 7246(b), be used to create a fund for the benefit of investors who were harmed by the violation.

§ 201.1101 Submission of plan of distribution; contents of plan.

(a) *Submission.* The Commission or the hearing officer may, at any time, order any party to submit a plan for the administration and distribution of funds in a Fair Fund or disgorgement funds. Unless ordered otherwise, the Division of Enforcement shall submit a proposed plan no later than 60 days after the respondent has turned over the funds or other assets pursuant to the Commission's order imposing disgorgement and, if applicable, a civil money penalty and any appeals of the Commission's order have been waived or completed, or appeal is no longer available.

(b) *Contents of plan.* Unless otherwise ordered, a plan for the administration of a Fair Fund or a disgorgement fund shall include the following elements:

(1) Procedures for the receipt of additional funds, including the specification of any account where funds will be held, the instruments in which the funds may be invested; and, in the case of a Fair Fund, the receipt of any funds pursuant to 15 U.S.C. 7246(b), if applicable;

(2) Specification of categories of persons potentially eligible to receive proceeds from the fund;

(3) Procedures for providing notice to such persons of the existence of the fund and their potential eligibility to receive proceeds of the fund;

(4) Procedures for making and approving claims, procedures for handling disputed claims, and a cut-off date for the making of claims;

(5) A proposed date for the termination of the fund, including provision for the disposition of any funds not otherwise distributed;

(6) Procedures for the administration of the fund, including selection, compensation, and, as necessary, indemnification of a fund administrator to oversee the fund, process claims, prepare accountings, file tax returns, and, subject to the approval of the Commission, make distributions from the fund to investors who were harmed by the violation; and

(7) Such other provisions as the Commission or the hearing officer may require.

§ 201.1102 Provisions for payment.

(a) *Payment to registry of the court or court-appointed receiver.* Subject to such conditions as the Commission or the hearing officer shall deem appropriate, a plan for the administration of a Fair Fund or a disgorgement fund may provide for payment of funds into a court registry or to a court-appointed receiver in any case pending in federal or state court against a respondent or any other person based upon a complaint alleging violations arising from the same or substantially similar facts as those alleged in the Commission's order instituting proceedings.

(b) *Payment to the United States Treasury under certain circumstances.* When, in the opinion of the Commission or the hearing officer, the cost of administering a plan of disgorgement relative to the value of the available disgorgement funds and the number of potential claimants would not justify distribution of the disgorgement funds to injured investors, the plan may provide that the disgorgement funds and any civil penalty shall be paid directly to the general fund of the United States Treasury.

§ 201.1103 Notice of proposed plan and opportunity for comment by non-parties.

Notice of a proposed plan of disgorgement or a proposed Fair Fund plan shall be published in the *SEC News Digest* and the *SEC* Docket, on the SEC website, and in such other publications as the Commission or the hearing officer may require. The notice shall specify how copies of the proposed plan may be obtained and shall state that persons desiring to comment on the proposed plan may submit their views, in writing, to the Commission.

§ 201.1104 Order approving, modifying, or disapproving proposed plan.

At any time after 30 days following publication of notice of a proposed plan of disgorgement or of a proposed Fair Fund plan, the Commission shall, by order, approve, approve with modifications, or disapprove the proposed plan. In the discretion of the Commission, a proposed plan that is substantially modified prior to adoption may be republished for an additional comment period pursuant to § 201.1103. The order approving or disapproving the plan should be entered within 30 days after the end of the final period allowed for comments on the proposed plan unless the Commission or the hearing officer, by written order, allows a longer period for good cause shown.

§ 201.1105 Administration of plan.

(a) *Appointment and removal of administrator.* The Commission or the hearing officer shall have discretion to appoint any person, including a Commission employee, as administrator of a plan of disgorgement or a Fair Fund plan and to delegate to that person responsibility for administering the plan. An administrator may be removed at any time by order of the Commission or hearing officer.

(b) *Assistance by respondent.* A respondent may be required or permitted to administer or assist in administering a plan of disgorgement subject to such terms and conditions as the Commission or hearing officer deem appropriate to ensure the proper distribution of the funds.

(c) *Administrator to post bond.* If the administrator is not a Commission employee, the administrator shall be required to obtain a bond in the manner prescribed in 11 U.S.C. 322, in an amount to be approved by the Commission. The cost of the bond may be paid for as a cost of administration. The Commission may waive posting of a bond for good cause shown.

(d) *Administrator's fees.* If the administrator is a Commission employee, no fee shall be paid to the administrator for his or her services. If the administrator is not a Commission employee, the administrator may file an application for fees for completed services, and upon approval by the Commission or a hearing officer, may be paid a reasonable fee for those services. Any objections thereto shall be filed within 21 days of service of the application on the parties.

(e) *Source of funds.* Unless otherwise ordered, fees and other expenses of administering the plan shall be paid first from the interest earned on the funds, and if the interest is not sufficient, then from the corpus.

(f) *Accountings.* During the first 10 days of each calendar quarter, or as otherwise directed by the Commission or the hearing officer, the administrator shall file an accounting of all monies earned or received and all monies spent in connection with the administration of the plan of disgorgement. A final accounting shall be submitted for approval of the Commission or hearing officer prior to discharge of the administrator and cancellation of the administrator's bond, if any.

(g) *Amendment.* A plan may be amended upon motion by any party or by the plan administrator or upon the Commission's or the hearing officer's own motion.

§ 201.1106 Right to challenge.

Other than in connection with the opportunity to submit comments as provided in § 201.1103, no person shall be granted leave to intervene or to participate or otherwise to appear in any agency proceeding or otherwise to challenge an order of disgorgement or of creation of a Fair Fund; or an order approving, approving with modifications, or disapproving a plan of disgorgement or a Fair Fund plan; or any determination relating to a plan based solely upon that person's eligibility or potential eligibility to participate in a fund or based upon any private right of action such person may have against any person who is also a respondent in the proceeding.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

42. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

43. Section 240.19d–4 is added to read as follows:

§ 240.19d–4 Notice by the Public Company Accounting Oversight Board of disapproval of registration or of disciplinary action.

(a) *Definitions.*

(1) *Board* means the Public Company Accounting Oversight Board.

(2) *Public accounting firm* shall have the meaning set forth in 15 U.S.C. 7201(a)(11).

(3) *Registered public accounting firm* shall have the meaning set forth in 15 U.S.C. 7201(a)(12).

(4) *Associated person* shall mean a person associated with a registered public accounting firm as defined in 15 U.S.C. 7201(a)(9).

(b)(1) *Notice of disapproval of registration.* If the Board disapproves a completed application for registration by a public accounting firm, the Board shall file a notice of its disapproval with the Commission within 30 days and serve a copy on the public accounting firm.

(2) *Contents of the notice.* The notice required by paragraph (b)(1) of this section shall provide the following information:

(i) The name of the public accounting firm and the public accounting firm's last known address as reflected in the Board's records;

(ii) The basis for the Board's disapproval, and a copy of the Board's written notice of disapproval; and

(iii) Such other information as the Board may deem relevant.

(c)(1) *Notice of disciplinary action.* If the Board imposes any final disciplinary sanction on any registered public accounting firm or any associated person of a registered public accounting firm under 15 U.S.C. 7215(b)(3) or 7215(c), the Board shall file a notice of the disciplinary sanction with the Commission within 30 days and serve a copy on the person sanctioned.

(2) *Contents of the notice.* The notice required by paragraph (c)(1) of this section shall provide the following information:

(i) The name of the registered public accounting firm or the associated person, together with the firm's or the person's last known address as reflected in the Board's records;

(ii) A description of the acts or practices, or omissions to act, upon which the sanction is based;

(iii) A statement of the sanction imposed, the reasons therefor, or a copy of the Board's statement justifying the sanction, and the effective date of such sanction; and

(iv) Such other information as the Board may deem relevant.

By the Commission.

Dated: November 23, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–29932 Filed 12–4–03; 8:45 am]

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Federal Register

Friday,
December 5, 2003

Part V

Department of Energy

10 CFR Part 300

General Guidelines for Voluntary Greenhouse Gas Reporting; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 300

RIN 1901–AB11

General Guidelines for Voluntary Greenhouse Gas Reporting

AGENCY: Office of Policy and International Affairs, U.S. Department of Energy.

ACTION: Proposed rule and opportunity for public comment; proposed revised guidelines.

SUMMARY: Section 1605(b) of the Energy Policy Act of 1992 (EPACT), 42 U.S.C. 13385(b), directed the Department of Energy (DOE or Department) to issue guidelines establishing a voluntary greenhouse gas reporting program. The guidelines issued by the Department in 1994 to establish the Voluntary Reporting of Greenhouse Gases Program were intentionally flexible to encourage the broadest possible participation. On February 14, 2002, the President directed DOE, together with other involved Federal agencies, to recommend reforms to enhance this voluntary reporting program. The purposes of the proposed revised Guidelines are to establish revised procedures and reporting requirements for filing voluntary reports, and encourage corporations, government agencies, non-profit organizations, households and other private and public entities to submit annual reports of their total entity-wide greenhouse gas emissions, net emission reductions, and carbon sequestration activities that are complete, reliable and consistent. Public comments on these proposed revised Guidelines are solicited and a public workshop has been scheduled to encourage an open exchange of views on this subject.

DATES: Interested persons should submit written e-mail or written comments by February 3, 2004 to the addresses given below. You may present oral views and data at a public workshop that will be held at the Washington Plaza Hotel, 10 Thomas Circle, NW., Massachusetts Avenue at 14th Street, Washington, DC 20005, on January 12, 2004, from 8 a.m. to 5 p.m.

ADDRESSES: Send e-mail comments to: *1605bgeneralguidelines.comments@hq.doe.gov.* Alternatively, written comments may be sent to: Mark Friedrichs, PI–40; Office of Policy and International Affairs; U.S. Department of Energy; Room 1E190, 1000 Independence Ave., SW., Washington, DC 20585. DOE will hold a public workshop at the following address: Washington Plaza Hotel, 10 Thomas Circle, NW., Massachusetts Avenue at 14th Street, Washington, DC 20005. You may review comments received by DOE, the workshop transcript, and any other related material at the following Web site: *http://www.pi.energy.gov/enhancingGHGregistry/proposedguidelines/generalguidelines.html.* If you lack access to the Internet, you may access this Web site by visiting the DOE Freedom of Information Reading Room, 1000 Independence Avenue, SW., Washington, DC. See Section III of the **SUPPLEMENTARY INFORMATION** section of this notice for more information about public participation in this proceeding.

FOR FURTHER INFORMATION CONTACT: Mark Friedrichs, PI–40, Office of Policy and International Affairs, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, or email: *1605bgeneralguidelines.comments@hq.doe.gov* [Please indicate if your e-mail is a request for information, rather than a public comment.]

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I. Introduction

A. Background

Section 1605(b) of the Energy Policy Act of 1992 (EPACT) directed the Department of Energy, with the Energy Information Administration (EIA), to establish a voluntary reporting program and database on emissions of greenhouse gases, reductions of these gases, and carbon sequestration activities (42 U.S.C. 13385(b)). Section 1605(b) required that DOE's Guidelines provide for the ''accurate'' and ''voluntary'' reporting of information on: (1) Greenhouse gas emission levels for a baseline period (1987–1990) and thereafter, annually; (2) greenhouse gas emission reductions and carbon sequestration, regardless of the specific method used to achieve them; (3) greenhouse gas emission reductions achieved because of voluntary efforts, plant closings, or state or federal requirements; and (4) the aggregate calculation of greenhouse gas emissions by each reporting entity (42 U.S.C. 13385(b)(1)(A)–(D)). Section 1605(b) contemplates a program whereby voluntary efforts to reduce greenhouse gas emissions can be recorded, with the specific purpose that this record can be used ''by the reporting entity to demonstrate achieved reductions of greenhouse gases'' (42 U.S.C. 13385(b)(4)).

In 1994, after notice and public comment, DOE issued General Guidelines and sector-specific guidelines that established the Voluntary Reporting of Greenhouse Gases Program for recording voluntarily submitted data and information on greenhouse gas emissions and the

results of actions to reduce, avoid or sequester greenhouse gas emissions. The 1994 General Guidelines are appended to today's proposal to provide information with regard to reports that were filed under those Guidelines (The General Guidelines and supporting documents may be accessed at *http://www.eia.doe.gov/oiaf/1605/guidelines.html).* The Guidelines were intentionally flexible to encourage the broadest possible participation. They permit participants to decide which greenhouse gases to report, and allow for a range of reporting options, including reporting of total emissions or emissions reductions or reporting of just a single activity undertaken to reduce part of their emissions. From its establishment in 1995 through the 2001 reporting year, 365 entities, including utilities, manufacturers, coal mines, landfill operators and others, have reported their greenhouse gas emissions and/or their emission reductions to EIA.

On February 14, 2002, the President announced a series of programs and initiatives to address the issue of global climate change, including a greenhouse gas intensity reduction goal, energy technology research programs, targeted tax incentives to advance the development and adoption of new technologies, voluntary programs to promote actions to reduce greenhouse gases, and international initiatives. In addition, the President directed the Secretary of Energy, in consultation with the Secretary of Commerce, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency, to propose improvements to the current Voluntary Reporting of Greenhouse Gases Program required under section 1605(b) of EPACT. These improvements are to enhance measurement accuracy, reliability, and verifiability, working with and taking into account emerging domestic and international approaches.

On May 6, 2002, DOE published a Notice of Inquiry soliciting public comments on how best to improve the Voluntary Greenhouse Gas Reporting Program (67 FR 30370). Written comments were received from electric utilities, representatives of energy, manufacturing and agricultural sectors, Federal and State legislators, State agencies, waste management companies, and environmental and other non-profit research and advocacy organizations.

On July 8, 2002, after considering public comments, the Secretaries of Energy, Commerce and Agriculture, and the Administrator of the Environmental Protection Agency provided the President with ten recommendations on improvements to the Voluntary Greenhouse Gas Reporting Program. The four agencies also outlined a public process for developing specific revisions to the program Guidelines. Following are the ten recommendations for improving the greenhouse gas reporting program:

- Develop fair, objective and practical methods for reporting baselines, reporting boundaries, calculating real results, and awarding transferable credits for actions that lead to real reductions.
- Standardize widely accepted, transparent accounting methods.
- Support independent verification of registry reports.
- Encourage reporters to report greenhouse gas intensity (emissions per unit of output) as well as emissions or emissions reductions.
- Encourage corporate or entity-wide reporting.
- Provide credits for actions to remove carbon dioxide from the atmosphere as well as actions to reduce emissions.
- Develop a process for evaluating the extent to which past reductions may qualify for credits.
- Assure the voluntary reporting program is an effective tool for reaching the 18 percent goal.
- Factor in international strategies as well as State-level efforts; and
- Minimize transaction costs for reporters and administrative costs for the Government, where possible, without compromising the foregoing recommendations.

DOE held public workshops in Washington, D.C., Chicago, San Francisco and Houston during November and December of 2002 to receive oral views and information from interested persons. In addition, the U.S. Department of Agriculture sponsored two meetings in January 2003 to solicit input on the accounting rules and guidelines for reporting greenhouse gas emissions in the forestry and agriculture sectors. These workshops and meetings explored in greater depth many of the issues raised in the Notice of Inquiry and addressed in the written comments. The public comment covered a broad range of issues and views diverged widely on some key issues. Generally, there was substantial support for revising the current General Guidelines to enhance their utility and to accomplish the President's climate change goals.

DOE today is proposing revised General Guidelines, and subsequently will propose Technical Guidelines, that when effective will modify and replace the guidelines for the Voluntary Reporting of Greenhouse Gases issued by DOE in October 1994. The proposed revised General Guidelines would continue to provide procedures for entities to report their greenhouse gas emissions inventories and a wide range of actions they have taken to reduce, avoid or sequester greenhouse gas emissions. In addition, the proposal would enable entities that meet criteria established by DOE to register such reductions in a database maintained by the Energy Information Administration (EIA). The criteria established by DOE will ensure that units of registered reductions will be comparable with regard to the standards of accuracy, reliability and verifiability. Registered reductions will be recorded in a publicly accessible database.

The Secretary of Energy has approved issuance of this notice.

B. Process for Finalizing and Implementing Guidelines

After full consideration of the public comments received, DOE will develop and issue final revised General Guidelines. In parallel, DOE intends to propose Technical Guidelines that will, when finalized, specify the methods and factors to be used in measuring and estimating greenhouse gas emissions, emission reductions, and carbon sequestration. Concurrently with development of the General and Technical Guidelines, DOE's Energy Information Administration will, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), solicit public comment on the reporting elements to be contained in the reporting forms to be used under the revised program Guidelines. With respect to the existing 1994 General Guidelines, DOE intends to publish a **Federal Register** notice of termination on the same day that DOE publishes the notice of final rulemaking setting forth the revised guidelines under section 1605(b) of EPACT. Both the notice of termination and the notice of final rulemaking will contain an effective date, which will be the beginning of a future reporting period.

II. Discussion of Proposal and Requests for Comments

The following section describes the proposed revised General Guidelines, summarizes the rationale for the key elements of the proposal and solicits public comments on a wide range of specific issues.

A. Overview

The proposed revisions to the General Guidelines are designed to enhance the measurement accuracy, reliability and verifiability of information reported

under the 1605(b) program and to contribute to the President's climate change goals. The proposed revised Guidelines will continue to provide considerable flexibility to entities that wish to report emissions or emission reductions in the future, as they have in the past. In addition, the revised Guidelines will provide a means for entities that are able to meet additional requirements to register emission reductions achieved after 2002. This registry will provide special recognition to such emission reductions.

To register emission reductions, reporting entities with substantial emissions (average annual emissions of over 10,000 tons of carbon dioxide (CO_2) equivalent) will need to provide an inventory of their total emissions and calculate the net reductions associated with entity-wide efforts to reduce emissions or sequester carbon. Entities with average annual emissions of less than 10,000 tons of CO_2 equivalent (small emitters) would be eligible, under certain conditions, to register emission reductions associated with specific activities even without completing an entity-wide inventory or reduction assessment.

The proposed revised Guidelines would enable and encourage entities to report (but not register) emission reductions achieved prior to 2003. The revised Guidelines would also permit entities to report (but not necessarily register) emission reductions associated with specific actions or with specific parts of the entity, even if these reports were not accompanied by entity-wide emissions and reductions reports.

The chief executive officer of the company or institution, an agency head, head of household or other responsible official would be required to certify that the reporting entity accurately followed the revised Guidelines for determining emissions, emission reductions and sequestration. Entities would be encouraged to obtain independent verification of the accuracy of their reports, and their compliance with DOE Guidelines.

For convenience, the basic elements of the proposed revised guidelines are graphically represented in Figure 1. DOE solicits public comments on this approach and any suggestions of alternative means of achieving the objectives outlined above.

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FIGURE 1
VOLUNTARY REPORTING OF GREENHOUSE GASES
REPORTING AND REGISTERING EMISSIONS AND EMISSIONS REDUCTIONS

All Reports.

All voluntary reporting entities provide:

1. Baseline Entity Statement (ES) fully documenting operational boundaries on the basis of: **§ 300.5**
   - Legal structure, managerial structure, and financial structure; **§ 300.4(a)(1)**
   - Examines ownership and control of leased and partially owned facilities; **§ 300.5(a)(6)**
   - Confers with other entities to ensure no double-counting; and **§ 300.5(a)(6)**
   - Statement of changes to the entity statement for each reporting year. **§ 300.5(c)**
2. Certification statement indicating: **§ 300.10**
   - Report is accurate and complete on the basis of the ES and consistent with all prior year reports;
   - All information reported follows the calculation methods described in the revised General and Technical Guidelines;
   - Verifiable records will be kept for a minimum of 3 years; and
   - Report was/was not independently verified.

All reports must describe emissions, sequestration, and reductions using the calculation methods described in the revised General and Technical Guidelines.

All emissions reductions and removals must have occurred after December 31, 1990. **§ 300.9(a)**

↓

EIA accepts the report (**reported reductions**).

Registration

↓

To register reductions, entities must demonstrate that the emissions reductions and removals occurred after December 31, 2002. **§ 300.7(b)**

Large emitters (average annual emissions of more than 10,000 tons CO_2 equivalent) must provide:

- Entity-wide Emissions Inventories of:
  - Direct emissions; **§ 300.6(b)**
  - Indirect emissions associated with purchased energy; **§ 300.6(c)**
  - Sequestration; **§ 300.6(d)**
  - Describe de minimis emissions excluded from emission & sequestration inventories; **§ 300.6(e)**
- Calculate net entity-wide reductions on the basis of all changes in an entity's emissions, avoided emissions and sequestration, plus any emission offsets. **§ 300.7**

Small emitters (average annual emissions of less than 10,000 tons CO_2 equivalent) must provide:

- A complete assessment of annual emissions and sequestration associated with the type of activity(ies) being reported;
- Determine the associated reductions; and
- Certify that the reductions reported were not caused by actions likely to cause increases in emissions elsewhere within the entity. **§ 300.7(b)**

↓

EIA accepts the report and registers the eligible emission reductions (**registered reductions**).

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B. Defining Reporting Entities

Under the proposed revised Guidelines, the first step in the reporting process is the definition of the corporation, institution, household or other entity that will be submitting reports. At a minimum, entities would have to be legally distinct businesses, institutions, organizations or households, although reporters would be encouraged to define themselves at the highest meaningful level of aggregation. The legal basis for determining whether an entity (or its subparts) is distinct could be derived from any Federal, state or local law (or regulation) governing the entity, including regulations applicable to corporations, partnerships, cooperatives, government agencies, non-profit organizations, households, or other entities. This approach would permit a legally-distinct company, plant or activity to define itself as an entity, even if it is partially-or wholly-owned by another company. In such cases, any registered reductions would accrue only to the reporting entity, rather than the parent company.

Given the flexibility inherent in this definition, some companies and institutions could be all or part of a reporting entity at any one of several different levels. For example, an individual electric power generating plant might be owned by a partnership of several different companies or individuals. One of these partners might be an electric utility that owns and operates several other electric generating plants, and a transmission and distribution system. And this utility might, in turn, be owned by a regional holding company that also owns other utilities, as well as other non-electric generating companies. In this case, the reporting entity could be defined as the electric generating plant, the utility or the holding company. The program encourages reporting entities to report at the highest level of meaningful financial and operational control, which in this case is likely to be either the utility or the holding company. DOE solicits comment on whether the proposed guidelines are likely to cause entities to establish boundaries that reflect a higher level of corporate or institutional aggregation, as is desired. DOE also solicits recommendations on what additional provisions might preserve flexibility in the establishment of boundaries while also preventing or further discouraging the shifting of emissions to non-reporting parts of the entity in order to create the appearance of net emission reductions. Finally, DOE solicits comment on the desirability of more prescriptive approaches to the definition of entities, such as a requirement that entity definitions correspond to those used for Federal tax purposes.

The Guidelines would require that the name chosen to represent the entity generally correspond to the activity covered by the report. For example, a large multi-product manufacturer should not use its corporate name to report the emissions and emission reductions of just one of its many subsidiaries. However, there may be instances when some, but not all subsidiaries of a large corporation may want to report as a single entity. One reason to report as a single entity might be that certain subsidiaries have a common business activity, while others do not. However, another reason might be that some subsidiaries could demonstrate emission reductions, while others could not. DOE solicits comments on how the Guidelines might provide the flexibility needed by entities with special circumstances, while discouraging abuses of this flexibility that could produce misleading impressions of entity performance.

Another question concerns the possible role of trade associations and other third parties as consolidators of entity-specific reports into an aggregate report to DOE. While associations may report information collectively for their memberships under the current guidelines, this may have implications for the accuracy and reliability—and transparency—of reports submitted under the revised guidelines. Should trade associations and other third parties be required to submit some or all of the entity-specific data that might be required by the revised Guidelines? Should the CEOs, other senior officials, or heads of entities be required to certify the accuracy of their companies' reports when submitted to or through trade associations? Should trade associations and other third parties be able to ''register emission reductions'' or only file reports for the record?

C. Defining Entity Boundaries

To report on an entity-wide basis and to register emissions reductions, reporting entities would have to provide an ''entity statement'' that meaningfully defines the operations and facilities (such as office buildings or vehicle fleets) covered by their entity-wide reports, and the greenhouse gas sources and sinks encompassed by these operations and facilities. Such operations would include those wholly owned and operated by the entity, and might include those operations that are partially-owned, leased or operated by the entity. Entities would be required to coordinate with other entities that shared ownership of particular operations to ensure that no double counting occurred. Entities would also have to ensure that each annual report consistently used the boundaries identified in prior year reports, unless an explicit description of any changes made and their effects on emissions accompanied the report. In cases where an entity undergoes a significant structural change, it may have to establish a new base year for all or part of its operations, or, in the case of acquisitions, recalculate its original baseline based on the prior year emissions of the acquired plant.

D. Emission Sources and Sinks Covered

Reports would be able to cover any greenhouse gas or sink that is consistent with the definitions established in the General Guidelines. An entity-wide inventory would need to cover all significant (determined by share of total emissions or absolute quantity of emissions), anthropogenic greenhouse gas emission sources within the entity's defined boundaries. Entity-wide reports must also cover all significant emission sinks. Entity-wide reports must encompass, at minimum, all six greenhouse gases specified in the Guidelines, whether emitted directly by the entity's operations and facilities, or indirectly in the generation of purchased electricity, steam or hot (or chilled) water used by the entity. Indirect emissions other than those specifically cited in the Guidelines may be reported separately, but reductions associated with such other indirect emissions may not be registered. Entities also may separately report, but not register, emissions and emission reductions associated with other gases (*e.g.* chlorofluorocarbons, black soot) that may have significant, quantifiable climate forcing effects, provided that DOE's Technical Guidelines specify the methods for measuring and reporting their emissions. DOE is soliciting comment on criteria for identifying such gases and on procedures for developing the necessary Technical Guidelines. All DOE proposals to permit the reporting of additional gases will be made available for public comment before being put into effect. DOE solicits comment on this approach and on a possible alternative that would permit participating entities to report (but not register) the emissions and emission reductions associated with other gases, even if DOE's Technical Guidelines did not specifically cover such other gases.

E. Entity-Wide Reporting of Emissions Inventories

To be eligible to register emission reductions, entities with substantial emissions (an annual average in excess of 10,000 tons of CO_2 equivalent) would need to report annual entity-wide inventories of their emissions and sequestration. Such inventories would provide a basis for assessing the significance of reported emission reductions relative to the entity's total emissions.

F. Entity-Wide Emission Reductions

To register emissions reductions, entities with average annual emissions over 10,000 tons of CO_2 equivalent would be required to demonstrate, to the maximum extent practicable, that the reported reductions represent an actual net decrease in entity-wide emissions, as calculated using one or more of the methods allowed by the General and Technical Guidelines. Some entities, such as electricity generators, would be expected to calculate net emission reductions for their entire entity (using one or more of the methods described below and in the Technical Guidelines). Others, such as multi-product manufacturers, may not be able to determine the net emission reductions achieved by all elements of their entity using the methods allowed by the Guidelines. These types of reporters could report the net emission reductions for as much of their entity as was practicable, in addition to reporting their entity-wide emission inventories.

Example: A multi-product manufacturer has instituted company-wide efforts to reduce emissions, but because its U.S. output is growing rapidly, its absolute U.S emissions have not declined. By using different calculation methods (intensity for many facilities and absolute emissions for others, as well as some project-specific calculations) it can quantify the emission reductions associated with 90% of its total emissions. It would report its total emissions and quantified emission reductions to DOE, and explain that it is not practicable to quantify the emission reductions associated with the remaining 10% of its operations because there are no year-to-year measures of output for these operations (because they involved the production of totally new products). In this case, the entity could register its reported emission reductions, but the data submitted in its report would clearly indicate that these reductions were based on an assessment of just 90 percent of the entity's emissions.

Net emission reductions achieved by third parties (offsets) could be included in an entity's report and be registered as long as the third party or other entity involved observed all of the rules that would have applied had it chosen to report its net emission reductions directly, and the entities involved have agreed that the reporting entity can register the emission reductions identified (*see* section II.O.5 below for additional discussion on the treatment of offsets).

The proposed Guidelines indicate that the owner of the facility, land or vehicle that generated the emission reductions or sequestration is the entity presumed to have the right to report and register any emission reductions or sequestration. For example, the owner of a wind turbine that sells its power to the grid is presumed to have the right to register such resulting emission reductions, even though this wind-generated electricity might be purchased at a premium by a local utility and, ultimately, resold at a premium rate to a local manufacturer. This presumption can be altered, however, if there is a written agreement between the entities involved to transfer this right.

G. Guidelines for Small Emitters

Entities with average annual emissions of less than 10,000 tons of CO_2 equivalent, such as many farms and forest operations, small businesses and individuals, could report and register emission reductions that have occurred during and after 2003 without submitting the results of an entity-wide emissions inventory or an entity-wide assessment of the annual changes in their emissions, avoided emissions and sequestration. Entities reporting under this provision would be required to determine the total annual emissions and sequestration associated with the type of activities on which they choose to report, the net emission changes associated with these specific activities, and to certify that the changes reported were not caused by actions likely to cause increases in emissions elsewhere within the entity's operations. Small emitters would be required to use the same methods for calculating emission reductions available to other reporters. DOE's Technical Guidelines will provide a list of the types of activities about which small emitters might report. It is expected that households and many small businesses, farms, and forest operations would be exempt from the requirement to submit entity-wide inventories. The use of a multi-year average rate of emissions is intended to enable certain small entities that have periodic spikes in their annual emissions (for example, a land owner that periodically harvests trees) to qualify for this exemption. Comments are specifically solicited on (1) whether 10,000 tons of CO_2-equivalent emissions would be the appropriate threshold quantity to achieve this objective, and (2) the appropriate period of time over which small entities should be permitted to average their annual emission rates. DOE is also soliciting comments on whether these special rules for small emitters are appropriate and how to ensure that reductions reported by small emitters are not a result of shifting emissions to non-reporting parts of the entity.

H. Emission Reduction Calculations

All reported and registered emission reductions would have to be calculated using one of the methods identified below, together with the procedures to be set forth in DOE's Technical Guidelines. The proposed revised General Guidelines recommend the use of emission intensity indicators as the basis for determining emission reductions, but would permit the use of several other methods to calculate emission reductions and sequestration as long as the method used excludes reductions caused by reductions in output. Regardless of the method used, a reporting entity would have to certify that none of the reported emission reductions were: Double counted by the reporting entity (or, to its knowledge, by any other reporting entity); or were the result of shifts in operations or activity from one part of the entity to another part of the entity, or to outside the boundaries of the entity. Entities would be required to report each emission reduction and sequestration calculation by type, indicate the types of actions taken that resulted in the reported emission reduction, and explain the selection of each indicator of output used. Comments are invited on the appropriateness of each of the methods described below and on the definitions provided in the proposed Guidelines. Additional guidance on each of these methods will be provided in the Technical Guidelines, including lists of possible output indicators, calculation methods for determining reductions associated with agricultural, forestry and geologic sequestration, methods and emission factors for calculating avoided emissions, and project-based methods, among others.

1. *Reductions in emissions intensity,* as long as the reporting entity demonstrates that the intensity metrics used are based on measured (or estimated) emissions and measured indicators of output that accurately represent the physical (or, in some cases, economic) output associated with the covered emissions, and that acquisitions, divestures or changes in products have not contributed significantly to the reductions.

2. *Absolute reductions in emissions,* as long as the entity demonstrates that these measured reductions were not caused by declines in its U.S. output.

3. *Increased carbon storage* (for actions within entity boundaries), as long as the entity demonstrates the sequestration measured or estimated represents a net increase in the quantity stored by the entity and has not been re-released to the atmosphere (ongoing, annual reports would be required).

4. *Avoided emissions* (for actions within entity boundaries that reduce emissions outside entity boundaries) that reflect the indirect emission reductions achieved as a result of a measured increase in the net sales of energy generated by low-or no-emission technologies.

5. *Project emission reductions* (for actions taken to reduce direct or indirect emissions within entity boundaries), as long as they exclude any reductions that might have resulted from reduced output or from shifting emissions to operations not included in the reported projects, and are derived from measured performance data or by using estimation methods consistent with DOE Technical Guidelines. In the context of entity-wide reports, this last calculation method is intended only for use when none of the other methods is practicable.

I. Recordkeeping, Report Certification, and Verification

Reporters under the existing program must certify the accuracy of their reports, but are not required to maintain records. Under the proposed revised Guidelines, the chief executive officer, agency head, head of household or person responsible for the reporting entity's compliance with environmental regulations would certify that reports are complete, accurate and consistent with DOE guidelines, and that sufficient records will be maintained for at least three years to enable independent verification. Reporting entities are strongly encouraged to obtain independent verification of their reports. The proposed Guidelines describe what would constitute such verification, including a description of the types of firms or institutions that might be qualified to independently verify the entity's reports, and the elements of an entity's records and reports that should be verified.

The proposed General Guidelines would require reports to EIA that are sufficiently detailed to enable EIA to review and confirm the final emission reduction calculations for each method and output measure utilized, and to review and confirm the rates of conversion used for each category of greenhouse gas covered and for electricity-related use or emissions avoidance, by region. EIA's review of the data submitted would be intended to assure consistency with the requirements specified in the General and Technical Guidelines. This level of reporting would indicate the basic components of each entity's emission inventory and of its entity-wide emission reductions. Entities would be required to maintain more detailed records, sufficient to permit an independent verification. The proposed levels of data reporting and recordkeeping represent a middle ground between the views of stakeholders who favor summary data and those stakeholders who prefer more detailed data that would be the basis for independent verification.

The proposal limits the recordkeeping requirement to three years. Of course, reporting entities may keep their records for a longer period of time if they deem it in their interest to do so.

The proposed Guidelines would require that the chief executive officer or other senior official of the reporting entity certify the accuracy, consistency and completeness of all reports. In addition, the Guidelines would encourage, but not require, independent verification of all reports. The proposed Guidelines would provide only general guidance on what DOE considers the necessary qualifications of verifiers and the information that they must verify. This guidance is intended to provide some assurance that such verifiers are independent and appropriately qualified, while still giving entities considerable flexibility in the selection of the type of firm most appropriate to perform such an independent verification. DOE invites comments on whether the general guidance provided is sufficient to achieve this objective.

While some stakeholders believe that independent verification should be required of all reports, many felt that independent verification is only necessary if entities seek to sell their registered emission reductions and, in such cases, private markets are likely to specify the type of independent verification required. While DOE received many comments that questioned the credibility of many of the emission reductions reported under the existing program, most of these concerns related to the methodology used to calculate the reported reductions, rather than the validity of the data used or reported. While DOE believes that requiring a senior officer to certify reports will provide adequate assurance that the data reported are reliable, the proposed Guidelines would strongly encourage reporters to obtain independent verification. DOE solicits public comment on this approach and on whether further consideration should be given to requiring independent verification of emission reductions prior to registration.

J. Starting To Report

Under the proposed revised Guidelines, entities would be permitted to begin reporting their prior-year emissions and emission reductions at any time. In general, the first full year for which an emissions inventory is available would be considered the entity's base year, although DOE would encourage entities to determine their base year by calculating the average emissions or emissions intensity during a base period of up to four years in length. This flexibility would permit a reporter to select the base year or base period most representative of actual operations. It may also, however, allow a reporter to select the most advantageous base year or base period (*i.e.*, a period that would enable the reporter to register the greatest amount of reductions). DOE solicits comments on whether this flexibility is appropriate and, if not, what steps might be taken to limit this flexibility. To focus the program on current and future efforts to reduce greenhouse gas emissions, entities would be permitted to register only those emission reductions calculated using a base year no earlier than 2002 (or base period of up to four sequential years ending no earlier than 2002). However, entities may still report emission inventories and reductions for previous years, as long as any prior year emission reductions are calculated using a base year no earlier than 1990 (or a base period no earlier than 1987–1990). To be accepted as entity-wide reports under the revised Guidelines, emission reductions already reported to the 1605(b) registry must be recast to fully comply with the revised Guidelines.

K. Report Acceptance

Upon receipt, EIA would review all reports to ensure consistency with the revised Guidelines. If EIA determines the report follows the General and Technical Guidelines, and EIA's Reporting Form Instructions, the report would be classified as either an entity-wide report or otherwise, and accepted.

L. Registration of Emission Reductions

Accepted entity-wide reports and reports from small emitters would then be further reviewed to determine if reductions were eligible to be registered. Entity-wide reports and reports from small entities that have used the methods identified in the General and Technical Guidelines, as well as EIA's Reporting Form Instructions, to

demonstrate they have achieved emission reductions after 2002 and have met all other applicable requirements would have the identified reductions registered in the 1605(b) database under the name of reporting entity and the year the reduction was achieved.

Registering only reductions that are achieved after 2002 would focus the program on those reductions most likely to contribute to the achievement of the President's goal for reducing U.S. emissions intensity by 18% between 2002 and 2012. In addition, because all of the data required to register reductions would be relatively recent, it would help ensure that all entities have an equal opportunity to register emission reductions under the new program. Nevertheless, the revised Guidelines would continue to permit entities to *report* emission reductions back to 1991, the earliest year permitted by the authorizing statute, and reports that comply with the Guidelines would be made publicly available by EIA. DOE solicits public comments on this approach and any suggestions of alternative means of achieving the objectives outlined above.

M. Sustaining Entity Reports of Emissions and Emission Reductions

To register emission reductions in any future year, an entity would be required to submit ongoing annual reports that document the net, cumulative emission reductions achieved relative to the entity's base year (or base period). Only additions to cumulative emission reductions (relative to the chosen base year or base period) would be recognized in future years. This requirement would reduce the quantity of emission reductions eligible for registration in future years if the reporting entity experiences a net increase in output-adjusted emissions after beginning to report. This approach would preserve the recognition given to all previously registered emission reductions, even if an entity experienced net emission increases in the future or stopped reporting. DOE solicits comments on this approach and possible alternatives, including those that might permit or require DOE to delete previously registered emission reductions if an entity did not continue to submit annual reports. Ongoing, annual reporting would be required to maintain recognition for registered emission reductions resulting from sequestration.

N. EIA Database and Summary Reports.

The EIA Administrator would establish a public database including all data that meets the definitional, measurement, calculation and certification requirements of the revised Guidelines. The database would provide summary information on each reporting entity's greenhouse gas emissions and its registered emission reductions, by year, according to the categories described above. The database would also provide access to all accepted reports.

O. Cross-Cutting and Other Important Issues

This section discusses various issues that affect more than one provision of the proposed revised Guidelines or were not highlighted in any of the preceding sections. DOE is seeking public comment on all of these issues, and certain specific questions are posed.

1. Entity-Wide v. Sub-Entity or Project-Only Reporting

The proposed Guidelines would highlight the net contribution of reporting entities to reducing greenhouse gas emissions, rather than sub-entity reductions resulting from actions taken in only some parts (rather than the whole) of the entity. This reflects the Administration's interest in fostering broad efforts by corporations, institutions and other entities to reduce their total emissions. Over time, individual companies and other entities often take many actions that either increase or decrease their emissions of greenhouse gases. It is the net effect of all of these actions on an entity's emissions that is the most important indicator of an entity's contribution to the President's goal of reducing U.S. emissions intensity. Under the revised Guidelines, most reporters would be able to register emission reductions only if they could demonstrate they had achieved a net reduction in their total emissions, relative to their physical or economic output. Small emitters, such as households, and some farms, forest operations, and small businesses, would be permitted to register the reductions achieved in just one area of activity, such as building operations or forestry, rather than accounting for all of their emissions, so long as they certify that these reductions are not a product of shifting emissions to non-reporting parts of the entity. In addition, the proposed Guidelines would continue to provide a mechanism for large emitters to report, but not register, the reductions resulting from individual actions or projects affecting a part of the entity's emissions, even if they could not demonstrate that they had achieved a net reduction in their total emissions, relative to their physical or economic output. DOE solicits comments on this approach and on possible alternatives to this approach, including circumstances under which project-based or sub-entity reductions might be registered in the absence of net entity wide reductions.

2. Treatment of Certain Small Emissions

The proposed Guidelines would permit reporters to exclude certain emissions that are comparatively small, as well as all non-anthropogenic emissions. Specifically, an entity could exclude emissions from multiple sources (and multiple gases) as long as the total emissions excluded did not exceed 3% of its total emission inventory or 10,000 tons of CO_2 equivalent, whichever was smaller. This exclusion is intended to enable entities to exclude small, and possibly widely dispersed, emissions that are likely to be especially costly to monitor and report, but which would have little effect on the total emissions or emission reductions reported. However, this approach has some potential drawbacks. For example, very large emitters, such as large power generators or large energy intensive industries applying this standard would have to account for a very high percentage of their total emissions (in some cases over 99.9%). Accounting for such a high percentage of total emissions could be burdensome and would have little effect on the totals reported. Several possible alternatives exist. One option might be to provide for uniform percentage exclusion, such as permitting all entities to exclude up to 3 percent of their emissions. This could lead some large utilities or industries to exclude large quantities of emissions that would be relatively easy to include in their reports. Another possible alternative is the addition of a minimum percentage exclusion, such as 1 percent. Still another alternative might be to permit firms to exclude up to 3 percent or 10,000 tons of CO_2 equivalent, whichever is greater. DOE solicits comments on the approach proposed, as well as various alternatives approaches.

3. Excluding the Effects of Changes in Output on Emissions

The proposed Guidelines would strongly encourage the use of emissions intensity indicators as the basis for calculating emission reductions and would require that any method used to calculate emission reductions ensure that reductions caused by declines in the reporting entity's output be excluded. This would require entities to develop useful physical (and/or possibly economic) indicators of the output associated with the emissions being assessed. For power generators

supplying electricity to the grid, the preferred measure of output is clear: kilowatt hours. Certain large manufacturers also have well-established measures of output that have already been widely used for many years, such as tons of cement. But many product manufacturers may have some difficulty identifying useful output indicators especially if they desire to develop indicators that represent the output associated with a large a number of different processes and products. Broad physical units, such a pounds of product (sometimes used by chemical manufacturers), often encompass a wide range of different products, and a similarly wide range of production processes and product values. As a result, some important shifts between processes or product types may not be captured by such a broad indicator. As an alternative, some entities might consider the use of economic indicators, although analysis of some entity-level economic indicators suggests that they may be significantly affected by changes in market conditions and may serve as poor indicators of production-related changes by individual entities. DOE intends to identify in the Technical Guidelines various output indicators and provide guidance on the selection of appropriate indicators. DOE may specify the use of particular indicators for certain types of economic activity, but is likely to give most reporters the flexibility to adopt the best indicators for their particular circumstances. Given the potential deficiencies of some output indicators, DOE invites public comment on what information entities should be required to provide to justify the selection of their output indicators and what criteria DOE should use to determine whether a particular output measure is acceptable.

A related issue concerns entities that base their emission reductions on changes in their ''absolute'' emissions. The proposed Guidelines would require such entities to demonstrate that any reported reductions were not associated with declines in the output associated with those emissions. Because entities should only use this approach if they could not develop an output indicator that would enable them to track their emissions intensity, they may have difficulty demonstrating that their output had not declined. Again, DOE is interested in receiving comments on what output measures or other information such entities should be required to provide to demonstrate that their output has not declined and what criteria DOE might use to determine whether the information provided was sufficient.

4. Emissions and Reductions Associated With Electricity Generation and Use

Several key provisions of the Guidelines deal with how entities are to report emissions and emission reductions associated with electricity generation and use. Approximately 32 percent of total U.S. emissions of greenhouse gases are released in the generation of electricity. As there are substantial opportunities to reduce the emissions associated with both the generation and use of electricity, it is important that the program cover both electricity generators and consumers. In doing so, however, it is also important to ensure: (1) That electricity-related emissions and emission reductions are not double counted; (2) that the conversion factors used to translate kilowatt hours into emissions are accurate indicators of the actual emissions associated with the generation of the electricity; and (3) that recognition for reductions is given to those entities primarily responsible for those reductions. Both these proposed General Guidelines and the Technical Guidelines, to be proposed subsequently, will attempt to achieve these objectives.

To avoid double counting, the proposed General Guidelines would require users to distinguish between the ''indirect'' emissions associated with electricity purchases (as well as purchased steam, and chilled/hot water) and their direct emissions. This will enable entity-level emission inventories to include such indirect emissions, while permitting DOE to exclude such emissions from compilations of multiple reports, if desired. In the Technical Guidelines, DOE will specify the factors to be used to convert purchased electricity use to greenhouse gas emissions. For the purposes of emission inventories, DOE is likely to specify a factor based on the average emissions per kilowatt hour for the region in which the electricity was consumed. However, for the purpose of calculating emission reductions associated with reduced electricity demand, DOE may specify an alternative factor, such as one based on the emissions associated with regional electricity supplies at the margin (largely excluding electricity generated by hydro, nuclear power plants and some coal, which tend to be fully utilized, regardless of changes in regional demand for power). These factors might change annually and could be required to be used by all consumers of purchased electric power, unless the reporter could demonstrate special circumstances.

There may be two methods for determining emission reductions associated with the generation of electricity. One method might be used to calculate reductions in the emissions intensity of existing power production (*e.g.*, through fuel switching or increased efficiency) and the other might be used to calculate the indirect reductions (or avoided emissions) that result from increasing the electric power generation from non-emitting or low-emitting sources. DOE is seeking to provide recognition to existing power generators that reduce their emissions intensity, while also establishing a level playing field among producers of new or additional power supplies, and end-users of electricity that reduce their demand.

DOE intends to provide, through its Technical Guidelines, clear direction on how to calculate emission reductions associated with the generation and purchase of electricity. While the specific methodologies and factors to be used have yet to be defined, DOE is soliciting suggested approaches that would achieve the objectives identified, as well as specific recommendations on how to develop the conversion factors described and how to most appropriately distinguish between existing and new power production and emissions.

5. Reporting and Registering Changes in Terrestrial Carbon Stocks

The proposed guidelines would require entity-wide emission inventories to include emissions and sequestration associated with terrestrial carbon stocks. Changes in the amount of carbon stored in sinks within the entity's boundaries over the inventory year would determine the quantities of such emissions and sequestration included in inventories. Entities that meet all of the relevant requirements in the general and technical guidelines may also register year-to-year increases in carbon stocks as ''registered reductions.'' Ongoing reporting will be required to ensure that any future changes in these stocks are fully reflected in the entity's emission inventories and registered emission reductions. The Department seeks comments on this provision as well as alternatives. For example, one alternative approach would calculate registered reductions as the change in carbon stocks during an inventory year relative to the change in stocks during a base year or period.

6. Recognizing Emission Offsets

As proposed, the General Guidelines would permit entities to report and register emission reductions achieved by others, as long as the entity that achieved the reductions observed all of the requirements applicable to reporters and the entities involved indicated that they had an agreement stipulating who would report the emission reductions. These provisions are designed to enable and encourage large emitters to support efforts to reduce emissions outside the boundaries of their entities. DOE believes this may be especially desirable when the opportunities for reducing emissions within an entity's boundaries are comparatively limited or costly. However, these provisions raise a number of issues upon which DOE is seeking public comment.

Most of these issues concern the information that must be submitted by a reporting entity about the emission reductions achieved by a non-reporting entity. For example, must the reporting entity provide all of the information that the non-reporting entity would have been required to submit directly, including an Entity Statement, an emissions inventory (unless exempted), and an entity-wide assessment of emission reductions (unless exempted)? Must the chief executive officer or other senior manager of the non-reporting entity certify to the accuracy of all of the information reported by the reporting entity? Could a non-reporting entity enter into agreements permitting some of its emission reductions to be registered by one entity and the remainder by one or more other entities? Must the reporting entity demonstrate that it helped finance or manage the achievement of the emission reductions achieved by some other entity? One approach that might avoid many of these potential issues would be to require direct reporting by all entities that generate emission reductions. This approach would ensure that complete reports, submitted directly by the entity that owned the facilities or land that produced the emission reductions, would be available for all registered emission reductions. But requiring direct reports by all entities might discourage emission reductions by entities that are unwilling to report directly and might discourage support for such offset projects by large emitters, such as utilities. DOE solicits comments on the approach proposed and on possible alternatives.

7. International Emission Reductions

The proposed revised Guidelines do not address either the reporting of non-U.S. emissions and emission reductions or the registration of non-U.S. emissions reductions. DOE is soliciting public comments on whether non-U.S. emissions and emission reductions should continue to be eligible for reporting under the revised program, recognizing that the current guidelines provide for reporting of international activities.[1] DOE is also soliciting public comments on whether non-U.S. emissions and emission reductions should qualify for registration and, if so, what procedures and requirements should be established for registration of such emissions and emission reductions.

Many factors are relevant to how non-U.S. emissions and emission reductions should be treated under the program with respect to both reporting and registration. Since 1994, many entities have reported on overseas activities; many companies likely to participate in the revised program have substantial business operations both inside and outside the United States. At the same time, reporting and registration of non-U.S. emissions and emission reductions raise certain issues that do not arise in the context of the reporting and registration of U.S. emissions and emission reductions. (For example, certifying the accuracy of data may be more complicated.)

In addition to requesting comment on the overall issue of whether to include international activities, DOE specifically requests comment on the following questions: How would the concept of ''entity-wide'' reporting be extended to include non-U.S. activities? Should an entity wishing to report non-U.S. emission reductions achieved in its own non-U.S. operations be required to inventory and report on all non-U.S. emissions and to assess changes in its emissions worldwide? Or should such entity only be required to report on its non-U.S. operations in specific countries? What requirements should third-party non-U.S. offsets be required to meet? To be eligible for registration, should reports of non-U.S. emissions reductions require independent verification? What would be the implications, including for participation in the 1605(b) program, if non-U.S. activities were excluded from reporting and/or registration?

[1] Since the current Guideline became effective in 1994, DOE has interpreted the Congressional intent underlying the statute to allow for the reporting of international activities.

8. Relationship of Proposed Guidelines to Climate VISION, Climate Leaders and Other Voluntary Programs To Reduce Greenhouse Gas Emissions

DOE, the Environmental Protection Agency and other Federal agencies have established programs to encourage companies, trade associations and other non-government organizations to take voluntary actions to reduce, sequester, or avoid greenhouse gas emissions. For example, industry participants in DOE's ''Climate VISION'' program, a Presidential initiative launched in February 2003, and EPA's Climate Leaders program have made voluntary commitments to reduce GHG emissions or emissions intensity by a specified amount, and to monitor and report on their progress.

The Administration intends to use the 1605(b) program to document, where possible, the progress of participants in these voluntary Federal programs. This is consistent with the President's desire that the 1605(b) registry be a ''tool that goes hand-in-hand with voluntary business challenges * * * by providing a standardized, credible vehicle for reporting and recognizing progress.'' However, additional reporting may be required for other specific voluntary Federal programs in order to provide distinct benefits to program participants.

DOE is soliciting comment on the merits of using the 1605(b) program for documenting progress of participants in voluntary Federal programs towards meeting their emissions reduction goals.

III. Opportunity for Public Comment

A. Written Comments

You should submit written comments by February 3, 2004. Because we continue to experience occasional mail delays due to extra processing required for delivery of mail to Federal agencies, we encourage you to submit comments electronically by e-mail at *1605bgeneralguidelines.comments@hq.doe.gov.* We will consider comments received after the comment deadline only to the extent practicable. Comments should be submitted to the e-mail or street addresses given in the **ADDRESSES** section of this notice. Written comments should be identified on the documents themselves and on the outside of the envelope, or in the e-mail message, with the designation [insert name of rulemaking and docket number]. All comments received and transcripts of any public workshop held will be available for public inspection at the following Web site: *http://www.pi.energy.gov/*

enhancingghgregistry/proposedGuidelines/comments. Persons without access to the internet can obtain such access to this Web site by visiting the DOE Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3142, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete hardcopy and two hardcopies from which the information claimed to be exempt by law from public disclosure has been deleted. DOE is responsible for the final determination with regard to disclosure or non-disclosure of the information and for treating it accordingly under the DOE Freedom of Information Act regulations at 10 CFR 1004.11.

B. Participation in Public Workshop

You will find the time and place of the public workshop at the beginning of this notice. We invite any person who has an interest in today's notice, or who is a representative of a group or class of persons that has an interest in these issues, to participate in the workshop. Because space may be limited, persons wishing to participate in the workshop should inform DOE by identifying the person or persons likely to attend, an e-mail or phone number for follow-up contacts, and providing a brief description of the specific issues of particular interest. This information may be provided electronically at the following Web site: *http://www.pi.energy.gov/enhancingGHGregistry/proposedguidelines/general guidelines.html* or may be provided in writing to the person listed in the beginning of this notice.

DOE will designate a DOE official to preside at the workshop, and may also use a professional facilitator to facilitate discussion. The workshop will not be conducted under formal rules governing judicial or evidentiary-type proceedings, but DOE reserves the right to establish procedures governing the conduct of the workshop. The workshop will be organized so as to encourage the open discussion of specific issues by the range of stakeholders and government representatives present. Prior to the workshop a draft agenda, identifying specific issues for discussion, will be made available at the following Web site: *http://www.pi.energy.gov/enhancingGHGregistry/proposedguidelines/general guidelines.html.* There will also be opportunities during the workshop for the identification and discussion of issues not specifically identified on the agenda. The presiding official will announce any further procedural rules, or modification of the above procedures, needed for the proper conduct of the workshop. Statements for the record of the workshop will be accepted at the workshop.

DOE will make the entire record of the rulemaking, including the workshop transcript, available for inspection at the following Web site: *http://www.pi.energy.gov/enhancingGHGregistry/proposedguidelines/general guidelines.html.* In addition, any person may purchase a copy of the transcript from the transcribing reporter.

IV. Regulatory Review and Procedural Requirements

A. Review Under Executive Order 12866

Today's action has been determined to be ''a significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking'' (67 FR 53461, August 16, 2002), DOE published procedures and policies to ensure that the potential impacts of its draft rules on small entities are properly considered during the rulemaking process (68 FR 7990, February 19, 2003), and has made them available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.* DOE has reviewed today's proposed Guidelines under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. Although section 1605(b)(1) of EPACT mandates a public comment opportunity before Guidelines can be issued, the proposed guideline provisions are policy statements and procedural rules. They are not substantive regulatory requirements that would have an economic impact on small entities. On the basis of the foregoing, DOE certifies that the proposed Guidelines, if promulgated, would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking.

C. Review Under the Paperwork Reduction Act

The Energy Information Administration previously obtained Paperwork Reduction Act clearance by the Office of Management and Budget (OMB) for forms used in the current Voluntary Reporting of Greenhouse Gases program (OMB Control No. 1905–0194). EIA will prepare new forms and associated instructions to implement the revised guidelines for the program, and it will publish a separate notice in the **Federal Register** requesting public comment on the proposed collection of information in accordance with 44 U.S.C. 3506(c)(2)(A). After considering the public comments, EIA will submit the new forms, instructions, and related guidelines to OMB for approval pursuant to 44 U.S.C. 3507(a)(1).

D. Review Under the National Environmental Policy Act

DOE has concluded that this proposed rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). This action deals with the procedures and policies for entities that wish to voluntarily report their greenhouse gas emissions and their reduction and sequestration of such emissions to the Energy Information Administration. Because the proposed Guidelines relate to agency procedures and impose no substantive requirement on those entities wishing to report, the proposed Guidelines are covered under the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism'' (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit

the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's proposed action and has determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

F. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

G. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of a Federal regulatory action on state, local, and tribal governments, and the private sector. The Department has determined that today's regulatory action does not impose a Federal mandate on state, local or tribal governments or on the private sector.

I. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. These proposed guidelines would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

List of Subjects in 10 CFR Part 300

Administrative practice and procedure, Energy, Gases, Reporting and recordkeeping requirements.

Issued in Washington, DC on November 20, 2003.

Robert G. Card,

Under Secretary for Energy, Science and Environment.

For the reasons set forth in the preamble, DOE proposes to amend Chapter II of Title 10 of the Code of Federal Regulations by adding a new Subchapter B consisting of part 300 to read as follows.

SUBCHAPTER B—CLIMATE CHANGE

PART 300—VOLUNTARY GREENHOUSE GAS REPORTING PROGRAM: GENERAL GUIDELINES

Sec.
300.1 General.
300.2 Definitions.
300.3 Guidance for defining the reporting entity.
300.4 Selecting operational boundaries for reporting.
300.5 Submission of an entity statement.
300.6 Emissions inventories.
300.7 Net entity-wide emission reductions.
300.8 Calculating emission reductions.
300.9 Reporting and recordkeeping requirements.
300.10 Certification of reports.
300.11 Independent verification.
300.12 Acceptance of reports and registration of entity emission reductions.
Appendix A to Part 300—Voluntary Reporting of Greenhouse Gases Under 1605(b) of the Energy Policy Act of 1992: General Guidelines (October 1994).

Authority: 42 U.S.C. 7101, *et seq.*, and 42 U.S.C. 13385(b).

§ 300.1 General.

(a) *Purpose.* These Guidelines govern the Voluntary Reporting of Greenhouse Gases Program authorized by section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. 13385(b)). The purposes of the Guidelines are to establish the procedures and requirements for filing voluntary reports, and encourage corporations, government agencies, non-profit organizations, households and other private and public entities to submit annual reports of their net

greenhouse gas emissions, emission reductions, and sequestration activities that are complete, reliable and consistent. Over time, it is anticipated that these reports will provide a reliable record of the contributions reporting entities have made to reducing their greenhouse gas emissions.

(b) *Registration and reporting options.* An entity may choose to register or report emissions and emission reductions as follows.

(1) *Registration.* An entity may have entity-wide emissions and emissions reductions registered by conforming to the requirements of this part, including the registration standards set forth in §§ 300.6 and 300.7 of this part.

(2) *Reporting.* If an entity does not choose to report emissions in a manner that conforms to the registration requirements set forth in §§ 300.6 and 300.7 of this part, then the entity may choose to report on any emissions or any emissions reductions by complying with the requirements of this part other than §§ 300.6 and 300.7.

(c) *Forms.* Annual reports of greenhouse gas emissions, emission reductions, and sequestration must be made on forms or software that are available from the Energy Information Administration of the Department of Energy (EIA).

(d) *Status of reports under previous General Guidelines.* EIA will continue to maintain in its Voluntary Reporting of Greenhouse Gases database all reports received pursuant to DOE's October 1994 General Guidelines. For the convenience of the readers, those Guidelines are included as Appendix A to this part 300.

§ 300.2 Definitions.

This section provides definitions for commonly used terms in the Guidelines.

Avoided emissions means the emissions displaced by increases in the generation and sale of electricity, steam, hot water or chilled water produced from energy sources that emit fewer greenhouse gases per unit than other competing sources of these forms of distributed energy.

Carbon stocks are the quantity of carbon stored in biological and physical systems including: Trees, plants and other terrestrial biosphere sinks, soils, oceans, sedimentary and geological sinks, and the atmosphere. [This term is to be further defined in DOE's Technical Guidelines.]

De minimis emissions means emissions from one or more sources and of one or more gases that when summed are less than 3 percent of the total annual CO_2 equivalent emissions of a reporting entity or less than 10,000 metric tons of CO_2 equivalent, whichever is smaller.

DOE or Department means the U.S. Department of Energy and, as appropriate in context, includes the Energy Information Administration.

Direct emissions means greenhouse gas emissions resulting from stationary or mobile sources within the organizational boundary of an entity, including but not limited to emissions resulting from combustion of fossil fuels, process emissions, and fugitive emissions.

Emissions means direct and specified indirect emissions of greenhouse gases from any anthropogenic (human induced) source.

Emissions intensity means emissions per unit of output—usually the quantity of physical output, but sometimes a non-physical indicator of an entity's output activity.

Fugitive emissions means releases to the atmosphere of greenhouse gases from the processing, transmission, and/or transportation of fossil fuels or other materials, such as HFC leaks from refrigeration, SF6 from electrical power distributors, and methane from solid waste landfills, among others, that are not emitted via a pipe(s) or stack(s).

Greenhouse gases means:

(1) *Carbon dioxide:* CO_2

(2) *Methane:* CH_4

(3) *Nitrous oxide:* N_2O

(4) *Hydrofluorocarbons:* HFCs

(5) *Perfluorocarbons:* PFCs

(6) *Sulfur Hexafluoride:* SF_6

(7) Other gases or particles that have been demonstrated to have significant, quantifiable climate forcing effects when released to the atmosphere in significant quantities.

Indirect emissions means greenhouse gas emissions from stationary or mobile sources outside the organizational boundary of an entity, including but not limited to the generation of electricity, steam and hot/chilled water, that are the result of an entity's energy use or other activities.

Natural emissions means emissions that are naturally occurring and produced independent of human actions, including biogenic (produced by biological processes), geologic and potentially other non-anthropogenic sources.

Net emissions or net entity-wide emissions means the total net annual contribution of the greenhouse gases specifically identified in section 300.6(f) to the atmosphere by an entity: total, entity-wide emissions, both direct and indirect, minus entity-wide sequestration.

Net emission reductions or net entity-wide emission reductions means the sum of all annual changes in emissions, carbon stocks and avoided emissions of the greenhouse gases specifically identified in section 300.6(f), determined in conformance with §§ 300.7 and 300.8 of these Guidelines.

Offsets means an emission reduction that meets the requirements of these guidelines, but is achieved by a party other than the entity that reports or registers the reduction.

Sequestration means the removal of atmospheric carbon dioxide, either through biologic processes or physical processes, including capture, long-term separation, isolation, or removal of greenhouse gases from the atmosphere, such as through cropping practices, forest and forest products management or injection into an underground reservoir.

Sink means an identifiable discrete physical process, occurring at a particular location, set of locations or area, by which carbon dioxide or some other greenhouse gas is sequestered.

Source means an identifiable discrete physical process, occurring at a particular location, set of locations, or area, by which a greenhouse gas is emitted.

Sub-entity means a component of any entity, such as a discrete business line, facility, plant, vehicle fleet, or energy using system, which has associated with it emissions of greenhouse gases that: can be distinguished from the emissions of all other components of the same entity; and, when summed with the emissions of all other sub-entities, equal the entity's total emissions.

§ 300.3 Guidance for defining the reporting entity.

A reporting entity must be composed of one or more legally distinct businesses, institutions, organizations or households, although reporters are strongly encouraged to define themselves at the highest level of aggregation appropriate. The legal basis for determining whether a reporting entity or its components are distinct can be derived from any Federal, State or local law or regulation governing the entity, including regulations applicable to corporations, partnerships, cooperatives, government agencies, non-profit organizations, households, or other entities. This legal basis must be described in the entity statement required by § 300.5 of these Guidelines.

§ 300.4 Selecting operational boundaries for reporting.

(a) An entity must determine, document, and maintain its operational boundary for accounting and reporting purposes. Because of the large number

of different operational structures, reporting entities are given some flexibility to set their operational boundaries in a manner that best suits their circumstances. However, all reports submitted should adhere to the following:

(1) To the extent feasible, reporting entities should establish operational boundaries in a manner that is consistent with the entity's existing legal, managerial and financial structure; and

(2) The reporting entity should establish operational boundaries that will result in accurate and comprehensive reports of its greenhouse gas emissions and sequestration.

(b) In general, a reporting entity should select operational boundaries so as to encompass all emissions and sequestration associated with facilities and vehicles that are wholly owned and operated by the named and defined entity. Emissions from facilities or vehicles that are partially owned or leased, or not directly controlled or managed by the entity, may be included at the entity's discretion, provided that the entity has taken reasonable steps to assure that doing so does not result in the double counting of emissions, sequestration or emission reductions.

§ 300.5 Submission of an entity statement.

(a) *Initial entity statement requirements.* When an entity first reports under these Guidelines, the reporting entity must provide the following information in its entity statement:

(1) The name to be used to identify the reporting entity. This should be the name commonly used to represent most of the activities being reported, as long as it is not also used to refer to substantial activities not covered by the entity's reports.

(2) The names of any parent or holding companies the activities of which will *not* be covered comprehensively by the entity's reports;

(3) The names of any large subsidiaries or organizational units that *will* be covered comprehensively by the entity's reports;

(4) A description of the entity and its primary economic activities, such as electricity generation, product manufacturing, service provider, freight transport, or household operation;

(5) A description of the types of operations, facilities, processes, vehicles and other emission sources or sinks covered in the entity's inventories;

(6) The names of the entities that share the ownership or operational control of significant facilities or sources included in the reporting entity's report, and certify that, to the best of the preparer's knowledge, the direct greenhouse gas emissions and sequestrations in the entity's report are not included in the 1605(b) report of any of those other entities for the same calendar year;

(7) Identification of the first year for which the entity will report emissions and the base year or base period from which emission reductions will be calculated.

(b) *Reasons for changing the scope of entity reports.* From time to time, entities may choose to change the scope of activities included within the entity's reports or the level at which the entity wishes to report. An entity may also choose to change its operational boundaries, its base year (or base period) or, since many entities are dynamic by nature, other elements of its Entity Statement or reporting methods. For example, companies buy and sell business units, and equity share arrangements evolve. The dynamic nature of economic activity may pose a challenge for the objective of a comprehensive and accurate documentation of greenhouse gas emissions and sequestrations from year to year. In general, DOE encourages changes in the scope of reporting that expand the coverage of an entity's report and discourages changes that reduce the coverage of such reports unless they are caused by divestitures or plant closures. Any such changes should be reported in amendments to the Entity Statement and major changes may warrant or require changes in the reporting entity's base year or base period. The Technical Guidelines under this part provide more specific guidance on how such changes should be reflected in entity reports and emission reduction calculations.

(c) *Documenting changes in amended entity statements.* A reporter's Entity Statement in subsequent reports should focus primarily on changes since the previous report. Specifically, the subsequent Entity Statement should report the following information:

(1) Significant changes in the entity's organizational (geographic or operational) boundaries. In particular, the entity statement should document:

(i) The acquisition or divestiture of discrete business units, subsidiaries, facilities, and plants;

(ii) The closure or opening of significant facilities;

(iii) The transfer of economic activity to or from specific operations outside the U.S.;

(iv) Significant changes in land holdings (applies to entities reporting on greenhouse gas emissions or sequestration related to land use, land use change, or forestry);

(v) Whether the entity is reporting at a higher level of aggregation than it did in the previous report, and if so, a listing of the subsidiary entities that are now aggregated under a revised conglomerated entity; and

(vi) Changes in its activities or operations (*e.g.*, changes in output, contractual arrangements, equipment and processes, outsourcing or insourcing of significant activities) that are likely to have a significant effect on emissions, together with an explanation of how it believes the changes in economic activity influenced its reported emissions or sequestrations.

(2) If very substantial changes have occurred, then the reporting entity is required to submit a new Entity Statement that provides a complete and current overview of the entity's operations, facilities and emission sources.

§ 300.6 Emissions inventories.

(a) *General.* The objective of the entity-wide reporting standard is to provide a comprehensive inventory of an entity's total net greenhouse gas emissions, including all six greenhouse gases listed in paragraph (f) of this section and all emissions and sequestration associated with changes in terrestrial carbon stocks. The reporting entity should report all of the covered greenhouse gas emissions from within the entity, using the methods specified in the Technical Guidelines (to be issued subsequently). Entity-wide reports are a prerequisite for the registration of emission reductions by entities with average annual emissions of more that 10,000 tons of CO_2 equivalent. Entities that have average annual emissions of less than 10,000 tons of CO_2 equivalent are eligible to register emission reductions associated with specific activities without also reporting an inventory of the total emissions.

(b) *Direct emissions inventories.* (1) Direct greenhouse gas emissions that must be reported are those emissions resulting from stationary or mobile sources within the organizational boundaries of an entity, including but not limited to emissions resulting from combustion of fossil fuels, process emissions, and fugitive emissions. Process emissions should be reported (*e.g.*, PFC emissions from aluminum production) along with fugitive emissions (*e.g.*, leakage of greenhouse gases from equipment).

(2) Entities should separately report emissions of greenhouses gases from combustion of biomass fuels or biomass-

based fuels (*e.g.*, wood waste, landfill gas, ethanol from corn, charcoal). The Technical Guidelines (to be issued subsequently) will specify the applicable list of biomass fuels or biomass-based fuels.

(c) *Inventories of indirect emissions associated with purchased energy.* (1) To provide a clear incentive for the users of electricity and other forms of purchased energy to reduce demand, the consumption of purchased electricity, steam, and hot or chilled water must be included in a reporting entity's inventory as indirect emissions. To avoid double counting among entities, the reporting entity must report all indirect emissions (as defined in § 300.2) separately from its direct emissions. Reporting entities should use the methods for quantifying indirect emissions specified in the Technical Guidelines.

(2) Reporting entities may also choose to report other forms of indirect emissions, such as emissions associated with employee commuting, materials consumed or products produced, although emission reductions associated with such other indirect emissions are not eligible for registration. All such reports of other forms of indirect emissions must be clearly distinguished from reports of indirect emissions associated with purchased energy. The Technical Guidelines also address the reporting of these other types of indirect emissions.

(d) *Entity-level inventories of changes in terrestrial carbon stocks.* Annual changes in terrestrial carbon stocks should be comprehensively assessed and reported across the entity and the net emissions resulting from such changes included in the entity's inventory of its net emissions. In other words, activities that lead to the release of carbon to the atmosphere must be reported along with activities that sequester carbon. This is necessary to provide an accurate entity-wide estimate of net greenhouse gas emissions. Entities should use the methods for estimating changes in terrestrial carbon stocks specified in the Technical Guidelines.

(e) *Treatment of de minimis emissions and sequestration.* Although the goal of the entity-wide reporting Guidelines is to provide an accurate and comprehensive estimate of total entity-wide emissions, there may be small emissions from certain sources that are unreasonably costly or difficult to quantify. A reporting entity may exclude particular sources of emissions or sequestration if the total quantities excluded represent less than 3 percent of the total annual CO_2 equivalent emissions of the entity or less than 10,000 metric tons of CO_2 equivalent, whichever is less. The entity must identify the types of emissions excluded and provide a short justification as to why an estimate was not included in the entity's report.

(f) *Covered gases.* (1) Entity-wide emissions inventories must include all emissions of the following greenhouse gases:

(i) CO_2
(ii) CH_4
(iii) N_2O
(iv) HFCs
(v) PFCs
(vi) SF6

(2) Entities may also choose to report other greenhouse gases, as defined in section 300.2, but such gases are to be reported separately and any emission reductions associated with such other gases are not eligible for registration.

(g) *Units for reporting.* Emissions and sequestration should be reported in terms of the mass (not volume) of each gas, using metric units (*e.g.*, metric tons of methane). Entity-wide and sub-entity summations of emissions and reductions from multiple sources shall be converted into carbon dioxide equivalent units using the global warming potentials for each gas. Entities should specify the units used (*e.g.*, kilograms, or metric tons). Where necessary, reporting entities must use the standard conversion factors specified in the Technical Guidelines to convert existing data into the common units required in the entity-level report. Consumption of purchased electricity must be reported by region (from a list to be provided by DOE in the Technical Guidelines). Consumption of purchased steam or chilled/hot water must be reported according to the type of system and fuel used to generate it (from a list provided by DOE in the Technical Guidelines). Purchased energy will be converted to carbon dioxide equivalents using conversion factors in the Technical Guidelines.

§ 300.7 Net entity-wide emission reductions.

(a) *Assessing entity-wide emission reductions.* (1) Entity-wide reports are a prerequisite for the registration of emission reductions by entities with average annual emissions of more that 10,000 tons of CO2 equivalent. Net annual entity-wide emission reductions must be based, to the maximum extent practicable, on a full assessment and sum total of all changes in an entity's emissions, avoided emissions and sequestration relative to the entity's established base year (or base period), plus any emission offsets. All changes in emissions, avoided emissions, and sequestration must be determined using methods that are consistent with the guidelines described in § 300.8 of this part, and in compliance with all other relevant DOE guidelines.

(2) If it is not practicable to assess the changes in net emissions resulting from certain entity activities using at least one of the methods described in § 300.8 of this part, the reporting entity may exclude them from its estimate of net entity-wide emission reductions. The reporting entity must describe the sources excluded for this reason from the entity's assessment of its net emission reductions, the reasons why it was not practicable to assess the changes that had occurred, and the approximate quantity of emissions or sequestration not assessed.

(3) A reporting entity should also exclude from the entity-wide assessment of changes in emissions, avoided emissions and sequestration any emissions or sequestration that have been excluded from the entity's inventory.

(b) *Assessing the emission reductions of entities with small emissions.* Entities with average annual emissions of less than 10,000 tons of CO2-equivalent emissions are not required to inventory their total emissions or assess all changes in their emissions, avoided emissions and sequestration in order to register their reductions. They may register the emission reductions that have occurred since 2002 and that are associated with certain activities, as long as they perform a complete assessment of the annual emissions and sequestration associated with all of the activities of the same type, determine the changes in the emissions, avoided emissions or sequestration associated with these activities, and certify that the reductions reported were not caused by actions likely to cause increases in emissions elsewhere within the entity's operations. For example, a farmer may report emission reductions associated with tree plantings on a single wood lot, but must assess and report the net sequestration resulting from the farmer's management of all woodlots within the entity's boundaries.

(c) *Net emission reductions achieved by third parties (offsets).* Net emission reductions achieved by third parties may be included in an entity-wide assessment of emission reductions as long as:

(1) The emission reductions reported were calculated using the same method(s) that would have been applicable if the third party that achieved the emission reduction had chosen to report it directly to DOE.

(2) All of the reporting entities or other parties involved certify to DOE that they have agreed that the reporting entity should be recognized as the entity responsible for the reduction.

(d) *Adjusting for year-to-year increases in net emissions.* Net annual emission reductions are calculated normally relative to an entity's base year (or base period). However, if the entity has experienced a net increase (relative to the base year) in emissions for one or more intervening years, these increases must be subtracted from net emission reductions reported in future years.

§ 300.8 Calculating emission reductions.

(a) *Establishing base year (or base period) emissions.* In general, base year or base period emissions are those that occurred over the full year (or average annual emissions over the full multi-year period) immediately preceding the first year of calculated emission reductions. Base year or base period emissions may represent the whole entity, or specific sub-entities, but must be defined so as to correspond to the scope of the chosen emission reduction calculation. To ensure that the summation of entity annual reports accurately represents net, multi-year emission reductions, a specific base year or base period may be used to determine emission reductions in a given future year only if the entity has submitted qualified reports for each intervening year.

(b) *Calculation methods.* Entities must calculate any change in emissions, avoided emissions or sequestration using one or more of the methods described in this section. All changes must be calculated relative to a base year or base period established by the entity, unless the change results from an offset (*see* subsection 300.7(c)). In general, entities are encouraged to use changes in net emissions intensity as the primary basis for calculating changes in net, entity-wide emissions.

(1) *Changes in emissions intensity.* A reporting entity may use reductions in the rate of emissions per unit of output (emissions intensity) as a basis for determining emission reductions as long as the reporting entity demonstrates in its report that the measure(s) of output used in the emissions intensity metric is a reasonable indicator of the physical output or economic value produced by the activity associated with these emissions, and that acquisitions, divestures or changes in products have not contributed significantly to changes in emissions intensity.

(2) *Changes in absolute emissions.* A reporting entity may use changes in the absolute (actual) emissions (direct or indirect) as a basis for determining net emission reductions, as long as the entity demonstrates in its report that any reductions derived from such changes were not achieved as a result of reductions in U.S. output, or major shifts in the types of products or services produced.

(3) *Changes in carbon storage (for actions within entity boundaries).* A reporting entity may use changes in carbon storage as a basis for determining net emission reductions as long as the reporting entity uses estimation and measurement methods that comply with DOE Technical Guidelines, and has included an assessment of the net changes in all sinks included in its inventory.

(4) *Changes in avoided emissions (for actions within entity boundaries).* A reporting entity may use changes in the avoided emissions associated with the sale of electricity, steam, hot water or chilled water generated from non-emitting or low-emitting sources as a basis for determining net emission reductions as long as:

(i) the measurement and calculation methods used comply with DOE Technical Guidelines, and

(ii) the reporting entity certifies that any increased sales were not attributable to the acquisition of a generating facility that had been previously operated, unless the entity utilized base year generation values derived from records of the facility's operation prior to its acquisition.

(5) *Project-based emission reductions (for actions within entity boundaries).* Emission reductions may be determined based on an estimate of the effects on emissions of a specific action, as long as the reporting entity demonstrates that the estimate is based on analysis that:

(i) Uses output, utilization and other factors that are consistent, to the maximum extent practicable, with the action's actual performance in the year for which reductions are being reported;

(ii) Excludes any emission reductions that might have resulted from reduced output or were caused by actions likely to be associated with increases in emissions elsewhere within the entity's operations; and

(iii) Uses methods that are in compliance with DOE Technical Guidelines. Entity-wide reporters should use this project-based approach only if it is not possible to measure accurately emission changes by using one of the methods identified in paragraphs (a)(1) through (a)(4) of this section.

(c) *Summary description of actions taken to reduce emissions.* Each reported emission reduction must be accompanied by an identification of the types of actions that were the likely cause of the reductions achieved.

(d) *Emission reductions associated with plant closings, voluntary actions and government requirements.* Each report of emission reductions shall indicate whether the reported emission reductions were the result, in whole or in part, of plant closings, voluntary actions, or government requirements.

(1) If emission reductions were associated, in whole or part, with plant closings, the report should include an explanation of how such emission reductions did not result from a decline in the U.S. output of the reporting entity.

(2) If the reductions were associated, in whole or part, with government requirements, the report should identify the government requirement involved and describe the type of effect these requirements had on the reported emission reductions.

(e) *Determining the entity responsible for emission reductions.* The entity presumed to be responsible for emission reduction, avoided emission or sequestered carbon is the legal owner of the facility, land or vehicle which generated the affected emissions, generated the energy that was sold so as to avoid other emissions, or was the place where the sequestration action occurred. If ownership is shared, reporting of the associated emission reductions should be determined by agreement between the entities involved in order to avoid double-counting, and this agreement must be reflected in the entity statements filed and in any report of emission reductions. DOE will presume that an entity is not responsible for any emission reductions associated with a facility, property or vehicle excluded from its entity statement.

§ 300.9 Reporting and recordkeeping requirements.

(a) *Starting to report under the revised Guidelines.* (1) Entities may report emissions and sequestration on an annual basis beginning in any year, but no earlier than the base period of 1987–1990 specified in the Energy Policy Act of 1992. To be recognized under these revised Guidelines, all reports must conform to the measurement methods established by the Technical Guidelines. This requirement applies to entities that report to the revised Voluntary Reporting of Greenhouse Gases Program registry for the first time as well as those entities that have previously submitted emissions reports pursuant to section 1605 (b) of the Energy Policy Act of 1992.

(2) Entities may submit initial reports or corrected reports for previous calendar years at any time. For example, an entity may choose to begin reporting in 2005 and may choose, at that time, to submit reports on prior year emissions back to 2002. Also, if a change in the emissions calculation method is made for 2005, an entity may submit revised estimates for its previous reporting years to ensure that a consistent method is used across the whole time-series. Entities may also submit revised reports to reflect agreements with other entities regarding the appropriate entity to designate as the entity responsible for certain registered emission reductions.

(b) *Continuing to report*. Reporting entities are strongly encouraged to report emissions on an annual basis, starting from the first year they submit a report under these revised Guidelines. Annual entity reporting is necessary to ensure that calculated reductions have been sustained over time. If a reporting entity chooses not to submit a report in any given year, the next report made should include reports for intervening years, or the reporting entity must establish a new base year from which to calculate all future emission reductions. Entities that wish to sustain recognition for previously registered emission reductions resulting from sequestration must continue to report annually.

(c) *Definition and deadline for annual reports*. Entities should report emissions on an annual basis, from January 1 to December 31, although DOE may grant exceptions to these dates. To be included in the earliest possible DOE annual report of greenhouse gas emissions reported under section 1605(b), entity reports must be submitted to DOE no later than July 1 for emissions during the previous calendar year.

(d) *Recordkeeping*. Entities must maintain adequate records for at least three years to enable independent verification of all information reported. Such records must include:

(1) A full description of the process and methods used to gather emissions data;

(2) A full description of the process and methods used to calculate emission reductions;

(3) The primary data upon which the data included in the any report to DOE was based; and

(4) A full description of any internal quality control or other verification measures taken to ensure that the data reported was in compliance with all relevant DOE Guidelines and other measurement protocols.

§ 300.10 Certification of reports.

(a) The chief executive officer, agency or household head, or person responsible for the reporting entity's compliance with environmental regulations must, for each report of such entity, certify that:

(1) The information provided to DOE is complete and accurate, in accordance with DOE's revised Guidelines, and is consistent with all prior year reports submitted by that entity (unless otherwise indicated); and

(2) Adequate records will be maintained for at least 3 years to enable independent verification of the information reported.

(b) If the report has been independently verified in accordance with DOE's Guidelines, the certification of the report by the entity reporting should so indicate.

§ 300.11 Independent verification.

(a) Reporting entities are encouraged to have their annual reports verified by independent and qualified auditors.

(1) ''Independent'', as used in this paragraph (a), means that the verifiers must not be owned in whole or part by the reporting entity, nor should they provide any ongoing operational or support services to the entity, except services consistent with independent financial accounting or independent certification of compliance with government or private standards.

(2) ''Qualified'', as used in this paragraph (a), means that verifiers must be certified by independent and nationally-recognized certification programs for the types of professionals needed to determine compliance with DOE's reporting Guidelines, such as the American Institute of Certified Public Accountants, the American National Standards Institute and Registrar Accreditation Board's (ANSI–RAB's) National Accreditation Program, or the Board of Environmental, Health, and Safety Auditor Certification (BEAC).

(b) The independent verifier must provide a written description of the relevant qualifications and professional certifications of the persons that performed the independent verification and must certify that:

(1) The information provided to DOE is complete and accurate, in accordance with DOE's revised Guidelines, and is consistent with all prior year reports submitted by that entity (unless otherwise indicated); and

(2) Adequate records have been maintained by the reporter to enable further independent verification in the future.

§ 300.12 Acceptance of reports and registration of entity emission reductions.

(a) *Acceptance of reports*. Upon receipt, DOE will review all reports to ensure they are consistent with the revised Guidelines. If DOE determines the report follows the definitional, measurement, calculation and certification Guidelines, the report will be accepted.

(b) *Registration of emission reductions*. DOE will review accepted reports to determine any eligible emission reductions that were calculated using the reporting entities' base year emissions (no earlier than 2002) or the average annual emissions of its base period (a period of up to four sequential years ending no earlier than 2002), and to ensure that the reports meet other relevant DOE requirements. DOE will also review its records to verify that the entity has submitted accepted annual reports for each year between the establishment of its base year or base period and the year covered by the current report. DOE will notify entities that the reductions that meet these requirements have been registered.

(c) *EIA database and summary reports*. The Administrator of the Energy Information Administration will establish a publicly accessible database composed of all reports that meet the definitional, measurement, calculation and certification requirements of these Guidelines. A portion of the database will provide summary information on the emissions and registered emission reductions of each reporting entity.

Appendix A to Part 300—Voluntary Reporting of Greenhouse Gases Under Section 1605(b) of the Energy Policy Act of 1992: General Guidelines (October 1994)

Voluntary Reporting and You

This program was designed to help you measure and record the actions you take to reduce greenhouse gas emissions or to increase carbon storage in soil or plants. The voluntary reporting program provides an opportunity for you to gain recognition for the good effects of your actions—recognition from your customers, your shareholders, public officials, and the Federal government. Reporting the results of your actions adds to the public groundswell of efforts to deal with the threat of climate change. Reporting can show that you are part of various initiatives under the President's Climate Change Action Plan. Your reports can also record a baseline from which to measure your future actions. Finally, your reports, along with others, can contribute to the growing body of information on cost-effective actions for controlling greenhouse gases.

We've designed this simple, flexible program to encourage you to accurately record your achievements. The program allows you to define activities you choose to

report and to determine how you will estimate the effects of those activities on greenhouse gas emissions and carbon sequestration.

We recognize that you must balance your efforts to ensure the accuracy of reported data with your goals of keeping costs reasonable in generating the reports.

We are optimistic that the response to this program will show that voluntary programs can do the job. We have been impressed by the level of commitment to the President's initiatives on climate change. This reporting program provides opportunities to report your achievements and to track your progress as you use your ingenuity and creativity in responding to the challenge of climate change.

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General Guidelines

Because of concerns with the growing threat of global climate change from increasing emissions of greenhouse gases, Congress authorized a voluntary program for the public to report achievements in reducing those gases. This document offers guidance on recording historic and current greenhouse gas emissions, emissions reductions, and carbon sequestration. Under the Energy Policy Act (EPAct) of 1992 Section 1605(b) program, reporters will have the opportunity to highlight specific achievements.

If you have taken actions to lessen the greenhouse gas effect, either by decreasing greenhouse gas emissions or by sequestering carbon, the Department of Energy (DOE) encourages you to report your achievements under this program. The program has two related, but distinct parts. First, the program offers you an opportunity to report your annual emissions of greenhouse gases. Second, the program records your specific projects to reduce greenhouse gas emissions and increase carbon sequestration. Although participants in the program are strongly encouraged to submit reports on both, reports on either annual emissions or emissions reductions and carbon sequestration projects will be accepted.

These guidelines and the supporting technical documents outline the rationale for the program and approaches to analyzing emissions and emissions reduction projects. Your annual emissions and emissions reductions achievements will be reported on forms that are available through the Energy Information Administration (EIA) of the Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

GG–1 How Are These Guidelines and Supporting Documents Organized?

In these pages, you will find answers to your questions about who may report, what is involved in reporting, and how to develop a credible project analysis to help you accurately report your achievements. The General Guidelines (GG) illustrate the process for analyzing projects using three hypothetical examples (an industrial cogeneration project, an energy efficiency program, and new electricity generating capacity).

You will also find guidance on such issues as joint reporting (if two or more persons or organizations are responsible for achievements), third-party reporting (through a trade association, for example), international projects, confidentiality, certification, and other elements of the reporting process.

For more specific guidance, you may consult one or more of the supporting documents that discuss sector-specific issues and analytic approaches. The supporting documents, organized in two volumes, contain limited examples of project analysis for the relevant sectors. Supporting documents have been developed as follows:

- Volume I
  —Electricity Supply Sector (Part 1)
  —Residential and Commercial Buildings Sector (Part 2)
  —Industrial Sector (Part 3)
- Volume II
  —Transportation Sector (Part 4)
  —Forestry Sector (Part 5)
  —Agricultural Sector (Part 6).

Each volume includes appendixes that provide conversion tables and default emissions factors (for various fuels and for electricity on a state-by-state basis). You can use these tables and factors for almost any report you submit. The final appendix in each volume presents a list of greenhouse gases for which the Intergovernmental Panel on Climate Change has developed Global Warming Potentials (an index of the relative effects on climate of different gases).

GG–2 Why Report Under This Voluntary Reporting Program?

If you are undertaking activities to reduce greenhouse gas emissions or to sequester carbon, reporting under this program can be valuable to you and to others. It can be valuable to you because it provides a way to present information about your greenhouse gas-related activities to your customers or constituents who are concerned about the issue of global climate change. It can be valuable to others, including the Federal government (to recognize your achievements under various initiatives), decisionmakers and legislative bodies (to inform the public debate on future greenhouse gas policies), and other individuals or organizations (to learn from each other).

You may wish to report under this program for at least three reasons:

- To Record Emissions and Achievements. You may wish to formally record, in a national database, your greenhouse gas emissions and the results of your activities that reduce or avoid these emissions. Reporting may be part of your participation in programs that recognize your contributions to achieving greenhouse gas emissions goals. These programs include national initiatives such as the Climate Change Action Plan and programs such as Climate Challenge, ClimateWise, and Motor Challenge. However, reporting under this voluntary reporting program is not limited to participants in these programs; you may wish to record the emissions reductions benefits from activities pursued independently of formal recognition programs.

• To Inform the Public Debate. You may wish to provide data which will contribute to more informed public debate on national policy on greenhouse gas reductions. Although a database built upon voluntary reports cannot provide a complete picture of national or sectoral emissions, it could provide credible information on emissions reductions and carbon sequestration projects to evaluate their potential for broader application.

• To Participate in Educational Exchanges. Data reported under the voluntary reporting program may provide useful information to others seeking ways to reduce their own emissions. New, innovative, and more economical means of reducing or avoiding emis-sions may be more widely deployed as better information becomes available.

GG–3 May I Report and What Should I Report?

You may report under this program if you initiate, control, or in some other way participate in activities that (1) contribute to greenhouse gas emissions, (2) result in reducing greenhouse gas emissions, or (3) sequester carbon. The activities may be part of your regular operations, pilot studies, prototype projects, or demonstration projects. They may take place in your community, in your workplace, at a location controlled by a third party, or at a foreign location. You must be a legal U.S. entity, that is, any U.S. citizen or resident alien; any company, organization, or group incorporated under or recognized by U.S. law; or any U.S. Federal, state, or local government entity.

DOE encourages you to submit as comprehensive a report as you can. Elements of a comprehensive report include information about both your emissions levels and your emissions reduction projects. Emissions information could include data on the entire organization and all its greenhouse gas activities, including historic baseline emissions data for 1987 through 1990, and annual emissions for subsequent years. Comprehensive information about emissions reduction projects could include both emissions reductions and carbon sequestration projects, emissions factors used to determine reductions, assumptions about the project, and data sources. The extent to which you provide information for each of these elements is determined by your assessment of what is necessary for others to clearly understand your project and its effects. Users of the database will be able to gauge the comprehensiveness of your report relative to these elements.

You may report both *direct* and *indirect* emissions. As the name implies, direct emissions result directly from fuel combustion or other processes that release greenhouse gases on-site.

You produce emissions indirectly when your activities cause emissions to be generated elsewhere. For example, a manufacturer would report as direct emissions the carbon dioxide emitted from the stack of its assembly plant. The same manufacturer could report indirect emissions from the electricity used to light that assembly plant, since the electricity use causes emissions to be generated by an electric utility.

GG–4 What Is Involved in Reporting Emissions?

Section 1605(b) addresses the reporting of annual emissions as well as emissions reductions and carbon sequestration. You are strongly encouraged, but are not required, to report your greenhouse gas emissions (1) for the baseline period of 1987 to 1990 and (2) for subsequent calendar years on an annual basis. You may wish to report this data for all or as much of your organization as possible, particularly if it would be important to the users of your reports.

GG–4.1 Gases and Sources

These guidelines initially provide for reporting four types of greenhouse gases: carbon dioxide, methane, nitrous oxide, and halogenated substances. These are listed below, along with the major activities associated with emissions of these gases. For each gas listed in your emissions report, you should indicate your total emissions; for example, if you report two gases, carbon dioxide and methane, you should report total emissions numbers for both gases.

Greenhouse gases	Related activities
Carbon dioxide (CO_2)	Fossil energy combustion, electricity generation and use, industrial processes, forestry and agriculture.
Methane (CH_4)	Landfill operation, coal mining, oil and gas systems, stationary combustion, animal production.
Nitrous oxide (N_2O) ...	Stationary combustion, adipic acid production, forestry and agriculture.
Halogenated substances (for example, CFCs, HCFCs, PFCs).	Chemical manufacture, use in industrial processes.

The guidelines and supporting documents do not generally discuss other radiatively enhancing gases. However, after the second reporting cycle (that is, after the 1996 cycle), you will be able to report other radiatively enhancing gases, including nitrogen oxides (NO_X), nonmethane volatile organic compounds (NMVOCs), and carbon monoxide (CO). In some cases, the supporting documents contain data such as emissions factors for some of these gases. However, in general, you will have to determine how to evaluate your emissions of these gases. Your report must meet the minimum reporting requirements of the program, as described in Section GG–6.

GG–4.2 Use of Existing Information

Many organizations keep accurate data on projects that involve energy efficiency, fuel switching, conservation, pollution prevention, waste minimization, and/or carbon sequestration. If you keep related data for other purposes, reporting greenhouse gas emissions effects under this program will be especially simple and straightforward.

Many potential reporters under EPAct 1605(b) already gather and report emissions information. If you already report similar information (for example, to comply with the Clean Air Act Amendments or under another air quality program) or can easily derive it (for example, from data you submit to regulatory agencies, from smokestack monitoring technologies, or fuel use data kept for internal purposes), you are encouraged to use such information to the extent practical in reporting emissions and emissions reductions under this program. However, you must report the information in a manner that is consistent with these General Guidelines.

GG–4.3 Scope of Emissions Reporting

You should report on the most comprehensive basis possible to broaden the usefulness of your emissions reports. However, you may define the scope of your emissions reports. In most cases, the needs of your potential audience will dictate the boundaries you draw. If you are able to report emissions for your entire organization, you should consider providing a comprehensive accounting so that your audience can gain a clear understanding of your overall activities. However, reporting total emissions for a single plant or establishment may be more consistent with other elements of your report and may be based on more precise or more readily available data.

Reporting emissions for your entire organization will show the most complete picture of your activities. Entity-level emissions reports can also provide all the data you need to submit reports on emissions reductions at the entity level or can increase the credibility of reports of emissions reductions at an individual project level.

You do not need to report total organization emissions in order to report individual emissions reductions and carbon sequestration projects. In fact, some reporters may not be able to report their organization's or unit's total emissions, because information needed for the baseline years may not be available, or because it is not feasible to estimate their organization's or unit's total emissions even for the current year. Remember, however, that most users of the database will find your reported estimates of emissions reductions more credible if they are accompanied by records of your organization's total emissions for the baseline years 1987 to 1990 and subsequent years.

GG–5 How Should I Analyze Projects I Wish To Report?

Accurate and credible reporting under this program requires sound project analysis. Rigid rules do not exist for such an analysis, and you may define the emissions reductions and carbon sequestration projects that you report. Your project may consist of all emission-producing activities for your organization; several activities, perhaps as parts of an energy efficiency program; or only one activity, undertaken for its projected cost savings (such as a relighting project) or as a pilot project (for example, an experimental industrial process change). Given the broad range of possible types of projects, it is impossible to establish guidance that

provides specific rules and appropriate methods for every type of project. The appropriate procedure for project analysis depends on how clearly you can identify the effects of the project, how credibly you can define a basis for comparing greenhouse gas emissions or carbon sequestration with and without the project, and how well you can measure or estimate the effects of your project.

While the guidelines provide you with as much flexibility as possible, every report must—

- Establish the reference case to use as a basis for comparison with the project;
- Identify the project's effects; and
- Estimate emissions for the reference case and the project.

Figure GG–1 depicts the overall process of project analysis. Each of these steps is discussed below and in more detail for each sector in the supporting documents. Note that these three elements depend on each other. For example, your choice of a reference case will depend upon both the scope of your project's effects and the data you use to measure or estimate emissions.

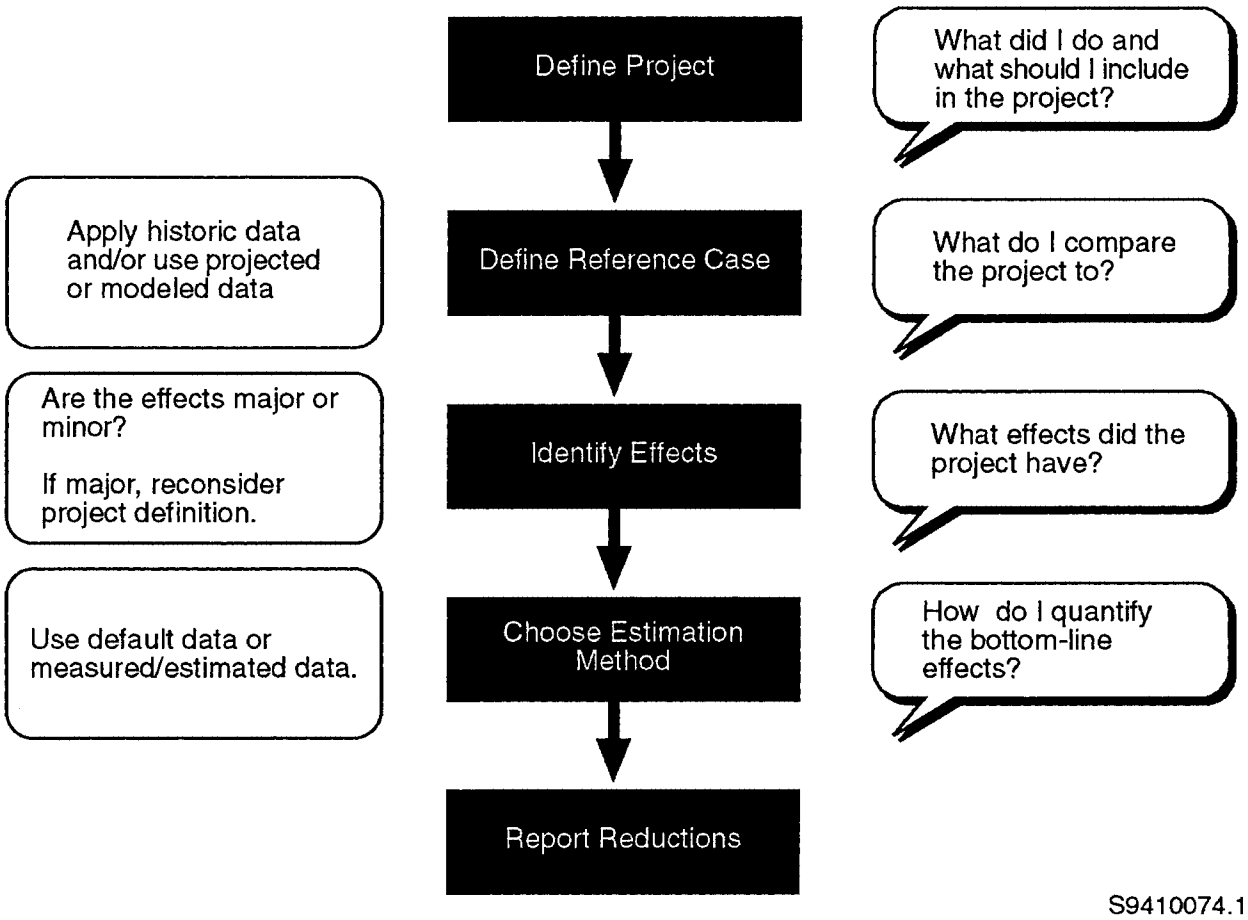


Figure GG-1. Careful Project Analysis Requires that You Consider Several Interrelated Elements.

In determining the extent of your analysis and reporting effort, you need to match your effort to your purpose for reporting. If you wish to establish a clear record of emissions and emissions reductions, you should perform extensive analysis and provide for retention of sufficient records to support your report. In any case, you will need to certify the accuracy of the information provided in your report.

These considerations and others in the project analysis process are illustrated in these General Guidelines with three hypothetical case studies: An industrial cogeneration project, an energy-efficiency project in a large office building complex, and the purchase of new solar-powered electricity generating equipment. The case studies are intended to be illustrative and by no means address all of the information that may be reported. A basic description of the facts involved in each case follows. These cases will be more fully developed as the discussion of the steps in project analysis proceeds.

These cases are intended to illustrate the range of detail and expense that might be entailed in developing reports of emissions and emissions reductions. The first case involves no emissions reporting and very simple emissions reductions analysis. The second case involves reporting emissions levels for recent years only and moderately detailed emissions reductions analysis. The third example illustrates the most comprehensive report, including emissions reporting for the baseline years 1987–1990 and detailed project analysis. Note that in each case the level of effort and detail reflected in the analysis and report is determined by the reporter's expected audience.

Case 1: Rarotonga Coconut Cream, Inc.—Project Description and Emissions Reporting

Note: This example illustrates only one approach to analyzing a project; your analysis, methods, and calculations will vary depending on your particular circumstances, the geographic location of the project, and other factors.

Rarotonga Coconut Cream, Inc. (RCCI) is a small food processing plant in Hawaii. In the past, RCCI purchased its electricity from the local electric utility and produced processing steam from a residual oil-fired boiler. While RCCI's production and energy use have been stable for the past seven years, its energy bills have been growing because of increased electricity rates and oil delivery charges to the company's remote location. Company managers anticipate continued increases in electricity costs as the distribution lines have to be replaced and upgraded over the next five years.

RCCI realized it could cut its energy costs significantly if it installed a cogeneration system to produce its process steam and electricity in a single cogeneration plant fueled by distillate fuel oil. Although the distillate is a higher grade fuel than that currently used, its increased cost is more than offset by the economies realized from the combination of the higher efficiency cogeneration unit and the installation of increased storage capacity, allowing the firm to accept larger, less frequent deliveries. Furthermore, distillate is a cleaner burning fuel oil than residual with lower carbon dioxide emissions per equivalent energy input along with enhanced handling properties. Addition of a backup generator would allow the company to disconnect from the utility transmission and distribution system.

One of RCCI's customers, a grocery wholesaler who was visiting the Rarotonga plant, commented that her company was participating in a Federally sponsored energy-efficiency program and reporting the company's contribution to greenhouse gas emissions reductions through the EPAct Section 1605(b) voluntary reporting program. While RCCI was undertaking its cogeneration project primarily for financial reasons, it was also aware that the project had some beneficial environmental effects, including the reduction of carbon dioxide emissions associated with switching fossil fuel use and electricity production. RCCI decided that, in the interest of sharing its experience with the cogeneration project, the company would report the results to the DOE program.

The first decision RCCI had to make was whether to report its annual emissions of greenhouse gases. As a small business whose primary purpose for participation in the voluntary reporting program was to publicize its experience with using a cogeneration system in a remote location, RCCI was interested in containing its costs of reporting as much as possible. A full entity-wide emissions report would need to account for direct emissions from its oil burner, agricultural operations, and transportation fleet, and indirect emissions from its electricity use. Estimation of emissions from these sources back to 1987 could be costly and time-consuming. RCCI managers decided instead to focus their limited resources solely on an evaluation of emissions reductions associated with their cogeneration project.

Case 2: Rural-Urban Office Managers, Inc.—Project Description and Emissions Reporting

Note: This example illustrates only one approach to analyzing a project; your analysis, methods, and calculations will vary depending on your particular circumstances, the geographic location of the project, and other factors.

In the late 1970s, Rural Office Managers built a complex of offices just outside the city of Metropolis. By the mid-1990s, the city had expanded, and the offices, originally designed for low-density occupation, were now experiencing higher density occupation.

In response to the change in its physical surroundings, the company reincorporated as Rural-Urban Office Managers, Inc. (RUOMI). Company officials also realized they needed to update their facilities, particularly their heating, ventilating, and air conditioning (HVAC), system and their lighting system to accommodate the change in use. Coincidentally, the energy planner for Metropolis contacted RUOMI to explain that the city had enrolled in a new state initiative called Energy Efficient Cities (EEC) that challenges cities to reduce commercial-sector energy consumption by five percent. RUOMI agreed to participate in EEC.

While the emphasis of the EEC program was on reducing energy use, participants were also encouraged to report the indirect effect that their energy conservation activities had on greenhouse gas emissions, that is, the reduction in greenhouse gas emissions at the generating plant resulting from reduced electricity use at RUOMI's offices. When RUOMI managers explored the DOE voluntary greenhouse gas reporting program, they discovered guidance on how to measure both energy savings and associated greenhouse gas emissions. Therefore, as their contractor designed the HVAC and lighting project, RUOMI made sure that the contractor collected all the data RUOMI needed to submit a report.

RUOMI had not preserved a complete set of its energy bills from the late 1980s. Although this information could have been recovered from the Metropolis energy utility, RUOMI managers decided not to attempt to report the company's historic baseline, entity-wide emis-sions because the generating mix for Metropolis' electricity supply had changed dramatically since the end of the last decade. However, using the data provided in the DOE guidelines and supporting documents, they were able to derive the direct emissions from natural gas combustion and the indirect emissions associated with electricity use, for the two calendar years just prior to the commencement of their project. RUOMI reported emissions for those two years and for each year thereafter.

Case 3: Illinois-Ohio Unlimited—Project Description and Emissions Reporting

Note: This example illustrates only one approach to analyzing a project; your analysis, methods, and calculations will vary depending on your particular circumstances, the geographic location of the project, and other factors.

Illinois-Ohio Unlimited (IOU) is an investor-owned utility operating and serving customers in three midwestern states. During a recent integrated resources planning (IRP) effort, it recognized an emerging inability to meet a rising midday peak-load demand, even after pursuing an aggressive peak-shaving, demand-side management program. The IRP identified two alternative responses: purchase additional power from the Indiana Plains Project (IPP), an independent power producer that had excess capacity in its natural gas combined cycle units, or install a large array of photovoltaic cells (PVCs) in southern Illinois and Indiana. PVC electricity production was expected to closely match peak-load demands. While the price of PVCs had decreased dramatically as a result of successful Federal and private research, the second option was still more expensive than the first. However, the public utility commis-sions (PUCs) in all three of the states in which IOU reported encouraged the utility to install the PVCs. The PUCs reasoned that soon PVCs would be economically competitive and this was IOU's opportunity to gain experience with the technology.

Both IOU and its PUCs were concerned, however, that the utility might be inadvertently penalized if subsequent Federal regulations should mandate reductions of emissions of greenhouse gases but not recognize IOU's early reduction effort. IOU decided to report the PVC projects through DOE's voluntary greenhouse gas reporting program. Because IOU knew that use of its information in connection with the requirements of future policy debates would demand complete and accurate information, it kept careful records, and in each case followed the most rigorous requirements of the voluntary reporting guidelines.

As part of its reporting process, IOU reported its entity-wide greenhouse gas emissions for each of the four baseline years, 1987 to 1990, and for every subsequent calendar year. These reports included estimates of emissions from generating processes, IOU fleet vehicle emissions, and office and building operations.

GG–5.1 What Should the Project Be Compared To?

A crucial consideration in evaluating your project's accomplishments is how well you can establish a reference case—that is, an emissions level against which to measure the effects of your project. Note that, once you construct your reference case for a project, that reference case should remain constant for the life of the project. If you revise your reference case, you will need to revise any previous project reports to reflect the revised reference case.

A reference case is often referred to as the ''but for'' scenario, as in, ''but for this project, emissions would have been * * * .'' Two possible ways to finish this sentence are: (1) ''* * * the same as a previous year'' (the basic, or historic, reference case) or (2) ''* * * different from any previous year'' (the modified reference case, which is adjusted from historic or projected data or based on established standards). Each of these cases is discussed below.

Under this program you may choose between these two approaches. To fulfill your purposes for reporting, you will want your reference case to be clear and understandable. Depending on the nature of and circumstances associated with your operations, a basic reference case (using

historic emissions) may provide a suitable benchmark against which to compare project emissions. In other cases, you may determine that a modified reference case is more appropriate. Even if you choose to use a modified reference case, you still may wish to provide your historic emissions data to enable users of the EPAct 1605(b) database to evaluate the reported emissions reductions efforts with respect to a historic baseline.

Basic. The basic reference case uses only historical data. Emissions from the project or sequestration levels may be compared with the corresponding emissions or sequestration level for some previous year(s), for example, (1) the 1987 to 1990 period, the period that EPAct Section 1605(b)(1)(A) describes as the baseline years for purposes of reporting emissions; (2) the year(s) just prior to commencement of the emissions reductions project; or (3) some intervening year(s) more representative of normal operations. The reference case may be defined as the average annual emissions during some multiyear period or the highest or lowest annual emissions during that time. Alternatively, you could choose a single reporting year (for example, 1990) as the reference case year.

Modified. The modified reference case recognizes that even in the absence of your project, your future emissions levels may differ from past levels. The emissions or sequestration levels in the reference case may differ from historical levels because of gradual, predictable changes or because of abrupt changes. Gradual changes in emissions might occur because of growth or decline in industrial output, slowly changing technologies, or natural processes, such as natural regeneration of clear-cut forests. In the case of expanding output or operations, you might extrapolate the reference case from past trends and external data to determine what emissions would have been in the year in which the project's effects are being measured. This process may involve using models and adjusting for growth over time. You could estimate the reference case emissions using historic or current-year data and adjusting for future growth by multiplying the historic emissions rate (emissions per unit of production) by the units produced in the reporting year.

A modified reference case based on a hypothetical, abrupt, external change presents a greater challenge for the reporter. For example, a reference case for a forest preservation project might be built on the assertion, ''The forest would have been cut if we had not taken actions to preserve it.'' If you use this type of reference case, you should take extra care to document the facts underlying the case and to build a sound explanation about why this is the appropriate reference case to use in developing your analysis.

Reference cases for projects involving new operations or added capacity may lie between the two extremes of abrupt changes and gradual changes. For these activities, you will also need to exercise care in constructing a credible modified reference case. Use of industry standards or alternatives actually considered in the planning stages will build credibility. For example, if in the construction of a new building you exceed existing building standards for energy efficiency, you could justifiably assert that the reference case for that project is a building that just meets the standards.

Case 1: Rarotonga Coconut Cream, Inc.—Reference Case

RCCI decided to use a basic reference case. Managers reasoned that, in the absence of the shift to the distillate oil-fired cogeneration system, they would have continued using the residual oil-fired boiler and purchased electricity. Because its production levels had been constant over the past seven years, RCCI felt no need to modify the historic levels of energy use to reflect expected future trends. Instead, it decided to use an average of its emissions for 1989 and 1990, the earliest two years for which it had energy use records. Consistent with the RCCI project description, the reference case only incorporated the plant's electrical, processing, and steam production systems.

Case 2: Rural-Urban Office Management, Inc.—Reference Case

RUOMI chose to use a basic reference case, averaging its emissions for the years 1993 to 1995. There were several reasons for this decision. Because the use patterns and demands of RUOMI's tenants had changed dramatically from 1980 to 1990, the years 1987 to 1990 (or an average of these years), would not have been an appropriate indicator of expected emissions in the late 1990s. However, by 1992, RUOMI had established many long-term contracts with its tenants. Energy-use patterns had stabilized, and there was no reason to expect significant shifts in the foreseeable future. The company chose to average the years 1993 to 1995 because the first three months of 1994 included unusually cold weather and were not indicative of general energy demands. While its emissions reductions would have appeared larger if RUOMI had used only 1994 as a reference case, company officials were informed by the Metropolis energy planner that the reports could lose credibility if they only compared their project's energy use and emissions levels to a worst-year reference case.

Case 3: Illinois-Ohio, Unlimited—Reference Case

IOU's project was clearly driven by increased demands for its product. This immediately suggested that past emissions levels would not be a good model of what would have been, but for the project. Therefore, the utility chose to use a modified reference case to reflect the growth in peaking demand it was experiencing. However, IOU also recognized that it was operating in an environment where a company's current emissions are often compared to some historic level. Therefore, IOU decided to report both historic 1987 to 1990 emissions levels, and the modified reference case reflecting its changing customer demands.

GG–5.2 What Effects Did the Project Have?

The second major step in project analysis is identifying effects of the project. Your report should address all the effects that you can identify—not just the obvious, intended effects, but also less noticeable, unintended effects. Effects you should consider include activity shifting (moving processes within your organization), outsourcing (purchasing commodities or services you formerly produced), life cycle emissions shifting (upstream and downstream changes in processes or materials used), and market effects (offsets to achievements caused by residual demand).

Example: An electricity conservation project reduces electricity use at an industrial site and associated carbon dioxide emissions at the utility. However, the utility's emissions of other greenhouse gases, such as methane and nitrous oxide, will be reduced as well. In addition, conserving electricity may lead to other effects within the utility's transmission and distribution system. All of these effects should be identified (and quantified, where possible).

Example: Closing an industrial plant will likely reduce on-site emissions. However, if another plant is opened or expanded to meet market demand for the former plant's products, the increase in emissions from the new plant would at least partially offset the decrease in emissions resulting from the closing. To place the overall effects of the closing in context, emissions associated with the replacement production capacity should be identified and quantified to the extent possible.

Example: Shifting an activity to another part of your organization or substituting your production of a commodity with its purchase from others may appear to reduce your emissions. Manufacturing a component at a subsidiary's plant, or the purchase of power by a utility for distribution to customers, however, are some examples in which net emissions may not have changed. The emissions associated with the shifted or substitute production activity should be taken into account, regardless of where it occurs.

Example: Manufacturers can switch from steel to aluminum and claim reductions because working with aluminum results in fewer emissions. However, the production of the aluminum itself creates emissions different from those associated with the production of the steel. Both the on-site changes and the upstream changes should be considered when you analyze whether you have emissions reductions to report under this voluntary reporting program.

Example: Extending the rotation length or completely precluding harvesting at a given forest location increases the carbon storage services at that site. However, the added sequestration may be largely offset if another site is harvested earlier than it otherwise would have been to meet the market demand for timber that was not met by timber from the first site.

Effects you can identify should be reported. These would include any on-site effects resulting from changes in both fuel combustion and electricity use. Off-site effects may be more problematic. In some situations, you may have relationships with customers or suppliers that allow you to both identify and estimate effects that occur outside your organization. If you have or can get such information, you should report it.

Effects you can identify but have no data for should be so noted in your report.

Although quantifying all effects of a project can be difficult, keep in mind that the credibility of your report will depend to some extent on your ability to identify effects. If your targeted audiences can easily identify effects that you have ignored in your analysis, the credibility of the entire report may be in question.

Case 1: Rarotonga Coconut Cream, Inc.—Project Effects

It was easy to identify the obvious effects of the cogeneration project: the reduction of direct emissions as a result of switching from residual oil to distillate as the primary on-site fuel and the reduction of indirect emissions associated with reduced production of electricity by the electric utility. However, after giving the matter some additional thought, RCCI realized that other effects were associated with the project as well. For example, the number of fuel delivery vehicle trips was reduced by half with the switch from residual oil to distillate and the increased storage capacity. Line losses and the indirect emissions associated with the very long distribution of low voltage electricity were deemed to be negligible and beyond RCCI's ability to calculate.

RCCI listed each of the effects it could identify, but decided not to attempt to quantify any but the first two effects.

Project effects	Contribution to reduction	Significance
Reduce emissions associated with utility electricity production	+	Large.
Reduce CO_2 emissions associated with on-site fossil fuel burning (switching from residual to distillate)	+	Medium
Reduce transportation-related services	+	Small-Medium.
Decrease indirect emissions associated with line losses	+	Negligible.

Case 2: Rural-Urban Office Management, Inc.—Project Effects

RUOMI contracted with Environmental Security Consulting Organization (ESCO), a local energy service company, to evaluate the costs and benefits of several alternative technologies. After careful evaluation of the use patterns and tenant needs in RUOMI's office complex, ESCO provided a list of two dozen potential energy efficiency improvements and the energy savings and costs associated with each. They explained to RUOMI's management, however, that simply summing across all technologies would not provide an accurate assessment of expected energy savings. Many of the equipment changes would interact with each other, some having negative effects on energy savings, others having synergistic effects. Further, the type and extent of the interactions would depend upon actual use patterns as well as seasonal variations and weather patterns. Following ESCO's recommendation, RUOMI contracted for 14 of the items on the list.

Because of the complex nature of the energy changes expected from the modifications, ESCO recommended that the resulting effects of the activities be analyzed as one integrated project. This avoided the difficulty of having to sort out the impact of each equipment change. It also made any evaluation for the DOE voluntary reporting program simpler. Since RUOMI was analyzing the projects at the entity level, emissions reductions could be calculated directly from its emissions report. Therefore, separate identification of each project's effects was unnecessary.

Case 3: Illinois-Ohio Unlimited—Project Effects

Identifying all of the effects of IOU's project and reference cases was not a simple exercise. IOU recognized that it needed to consider the effects that its project had (1) on its own operations and emissions, (2) on the emissions of IPP, (3) possibly on the operations of the larger regional power pool, and (4) on the supplier of the PVCs. It was not sure it could accurately estimate all of these effects without incurring unreasonable analysis costs, but it at least wanted to identify them in planning the analysis that would lead to its completed report.

Project effects	Contribution to reduction	Significance
IPP emissions that would have gone up because of additional power purchases are reduced	+	Large.
PVC manufacturer emissions do go up	-	Small.
Power pool emissions might change	?	Unknown.
IOU emissions do go down	+	Small.

GG–5.3 How Do I Estimate Project Accomplishments?

The final major step in project analysis is estimating emissions levels for both the reference case and project case to determine emissions reductions. The guidelines and supporting documents provide you with a wide range of options for obtaining data and defining the methods for estimating your project's effect on greenhouse gas emissions and carbon sequestration.

First, the guidelines and supporting documents recognize three categories of data.

Physical data. This is information that describes the activities involved in your project. For example, how many exit lights were replaced? What was the power requirement of the old and the new lights? How many hectares of trees were planted? What species of trees? How many trees per hectare?

Default data. This is information provided by the supporting documents to assist you in evaluating the emissions or sequestration effects of your project. Using default data increases your ease of reporting (in some cases, allowing you to report when you might not otherwise have enough data). However, using default data may decrease precision and, because the defaults may be conservative, your emissions reductions may appear lower than they actually are. There are two categories of default data:

Emissions factors. These are factors that allow you to convert information about a change in energy use to an estimated change in greenhouse gas emissions. Some emissions factors are rather precise. For example, the change in direct emissions of carbon dioxide from a reduction in methane combustion is essentially constant, regardless of when or where the change took place. Other emissions factors, and particularly those for indirect emissions, are less precise. For example, the supporting documents provide emissions factors for electricity on a state-by-state basis. However, the effect that a change in electricity consumption has on emissions will vary by loca-tion within the state, the time of day, and the season that a change occurs.

Stipulated factors. These are factors that allow you to convert physical data about your project into estimates of changes in energy use, greenhouse gas emissions or carbon sequestration. The guidelines provide this information for a few types of projects where the scope and nature of the project can be clearly defined and where the effects on emissions can be predicted with relative certainty. For example, the supporting document for the forestry sector provides stipulated factors for converting physical data about tree planting into estimates of carbon sequestration. The supporting document for the residential and commercial buildings sector provides stipulated factors for converting information about certain energy-efficiency projects into estimates of fuel savings. These estimates can be combined with default emissions factors to

estimate reductions in greenhouse gas emissions.

Reporter-generated data. This is information that you provide which is used to estimate the effects of your project. There are two categories of reporter-generated data:

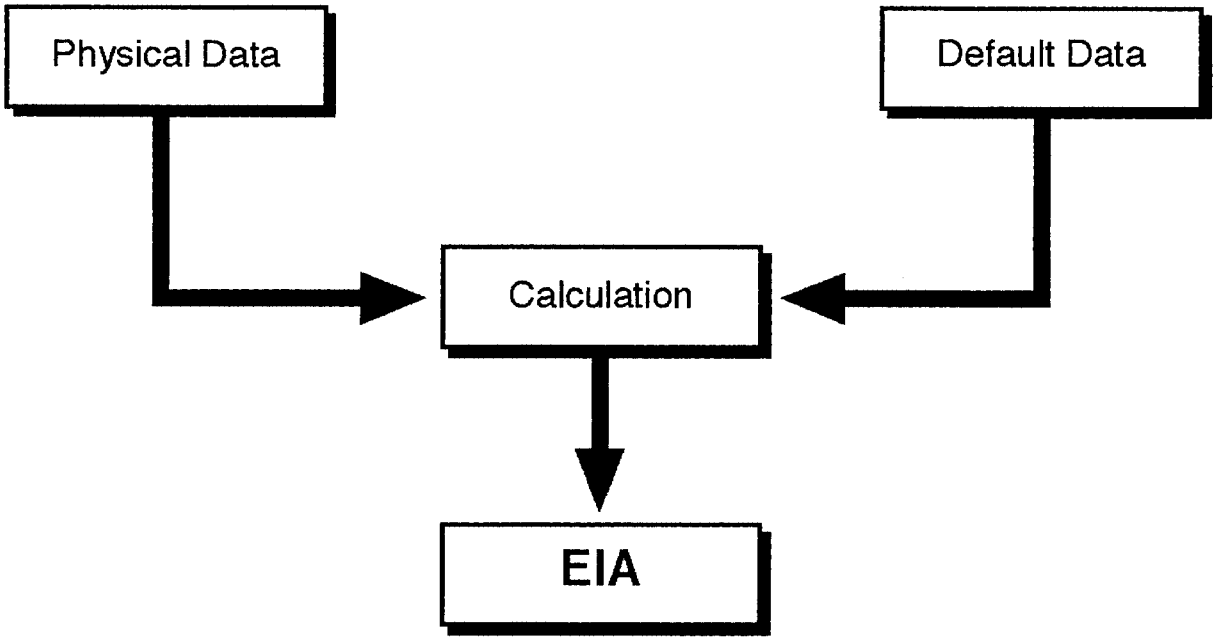
Measured data. These are data, collected directly from the project or a control group, that you use to estimate your project's accomplishments.

Engineering data. These are data that you derive from various sources, such as engineering manuals, manufacturer's equipment specifications, surveys, academic literature, professional judgment, and computer models.

Based on these three categories of data, the guidelines and supporting documents recognize two categories of projects: Standard projects, which rely on physical and default data, and reporter-designed projects, which use measured or engineering data that you develop (as well as appropriate default data). You will need to report the category(ies) of data and projects that you choose to use.

Standard projects. These are projects for which the guidelines and supporting documents provide the procedures and information to estimate the emissions reductions or carbon sequestration. Reports of these projects rely entirely on physical and default data (*see* Figure GG–2).

Not all projects can be described in standard project reports. The supporting documents for each sector delineate, where possible, projects for which emissions factors and stipulated factors are provided, and for which standard project reports can be submitted. You should recognize that default values are often conservative; that is, if you use them, you are likely to underreport your emissions reductions or carbon sequestration. However, if you do not directly measure and monitor or your organization does not have expertise in estimation methods, the default values will allow you to calculate the effects of your activities.

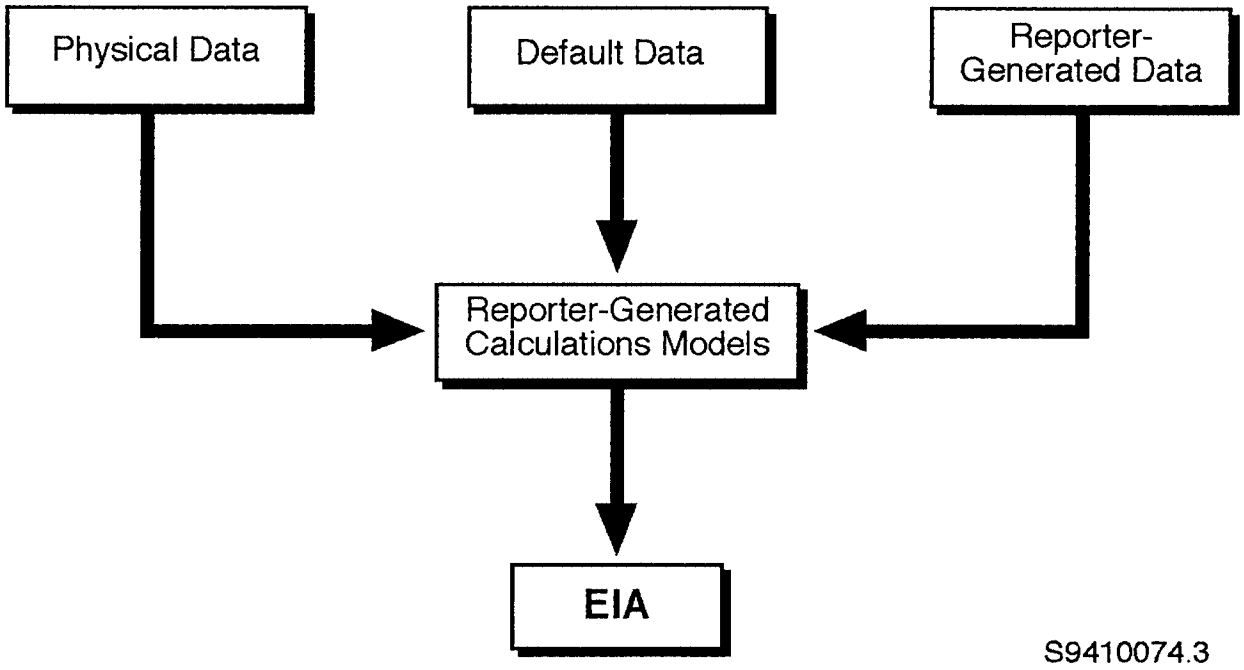


- **Figure GG-2**. Standard Projects Utilize Physical and Default Data.

Reporter-designed projects. These projects use physical and reporter-generated data, possibly in combination with default data, to estimate their accomplishments (see Figure GG–3). For this type of project, you should be able to indicate the source of all data, and in the case of data you generate, how it was measured or derived. For reporter-designed projects, the supporting documents for each sector provide principles and guidance.

Estimation of the emissions effects of many reporter-designed projects will require that you not only gather measured or estimated data, but that you also manipulate this information to derive the emissions levels of your project and reference case. The data manipulation could involve relatively simple calculations or extremely complex modeling. You should be able to identify the nature of the calculations and/or the type/name of the model you have used. In some instances, it may not be possible to estimate emissions for both the project and the reference case. In these cases, identified in the supporting documents for each sector, you may need to measure the emissions reductions directly.

Finally, the emissions reductions or carbon sequestration of your project is simply the difference between your project emissions/sequestration and your reference case emissions/sequestration.



- **Figure GG-3**. Reporter-Designed Projects Utilize Your Own Measured or Engineering Data Along with Physical and Default Data.

Case 1: Rarotonga Coconut Cream, Inc.—Estimation Methods

RCCI limited its quantitative analysis to the obvious effects; estimation of the annual emissions reductions associated with its project was simple. First, it estimated the annual emissions associated with the project. This was simply its annual distillate oil consumption multiplied by the default emissions factor for distillate oil supplied by the guidelines' supporting documents. Second, for the reference case, RCCI multiplied its reference case annual electricity use by the default electricity emissions factor for its state, multiplied its reference case annual residual oil use by the default residual oil emissions factor, and summed the two to arrive at total emissions for the reference case. Its total reported emissions reductions were the difference between the reference case emissions and the project case emissions.

RCCI was pleased that it was able to do its entire analysis based on data it had readily at hand, that is, its fuel and electricity use records from before and after the project, and the default emissions factors provided by the guidelines.

Case 2: Rural-Urban Office Managers, Inc.—Estimation Methods

ESCO, the contractor for RUOMI, had primary responsibility for preparing the voluntary report for the DOE program. ESCO knew that because of the complexity of the project it could not derive estimates using default data provided in the Guidelines' supporting documents. The project managers turned to the supporting document for the residential and commercial buildings sector to identify the recommended methods for gathering data for their type of project. They found that the recommended methods included approaches very similar to ones they had previously used to measure energy savings in complex projects. After a full year of measuring and monitoring, they summarized the energy-use data, and performed calculations to derive the difference between the project energy use and the reference case energy use.

Applying the natural gas and electricity emissions factors supplied as default data, they converted the estimated energy reductions to estimated emissions reductions.

Case 3: Illinois Ohio Unlimited: Estimation Method

IOU recognized two distinct parts to its emissions reductions estimation process. First, it needed to evaluate the direct electricity system emissions for both its reference case and project case. Second, it wanted to estimate the emissions associated with manufacturing the PVCs. Tackling this latter point first, IOU contacted a prospective PVC supplier for any information on emissions associated with the PVC manufacturing process. The supplier, it turned out, had commissioned a report that estimated not only the direct carbon dioxide emissions associated with the manufacture of PVCs, but also the emissions associated with the supply of raw materials—steel, aluminum, chemicals, and electricity—that were used in PVC fabrication. Had this information not been available, IOU would have had to decide whether or carry out this study itself or not quantify this effect at all, possibly affecting the credibility of its project report.

IOU then turned to the electricity system emissions effects of its project. The project reduced emissions that would have occurred had IOU purchased its electricity from IPP. Additional production from IPP for daytime peaking would have been generated by a natural gas combined cycle unit. IOU developed a single conversion factor for the emissions per kWh that would have occurred for electricity from IPP's system. This meant that as the peak daytime demand grew over time, IOU would be able to estimate that portion of the emissions for the reference case that was attributable to IPP, that is, how much higher IPP emissions would have been had IOU relied on purchased power.

The new PVC system was designed to meet the growth in demand over the next decade. But because the PVCs would be generating at full capacity immediately, they would actually displace some of IOU's current daytime generating capacity. The marginal unit in IOU's generation equipment was an oil-fired turbine generator. IOU developed a conversion factor for the emissions per kWh that would have occurred from that unit, if its production had not been partially displaced by the solar power system.

In summary, the IOU emissions reductions estimation consisted of three major components. First, at the start of the project there was an initial emission of carbon associated with the production of the PVC

units. This effect was reflected only in the first annual report. While some of these emissions had actually taken place as many as two years earlier, IOU believed it was sufficiently realistic to account them all to the first reporting year. Second, the project emissions also showed a sudden drop in emissions for the oil-fired plant due to displacement of daytime oil-fired generation by the PVCs, whose entire capacity was not initially required to meet midday peak demand. However, as expected, the emissions from the oil-fired plant climbed each year as daytime peak demand grew and increasingly the PVC capacity was used to meet that demand. This increase was reflected in IOU's annual reports. Third, under the reference case, IOU reported constant emissions from its own oil-fired plant and annually increasing emissions from IPP's natural gas combined cycle plant. The emissions reduction each year was calculated by subtracting the project emissions from the reference case emissions.

GG–5.4 What if Two or More Organizations Wish To Report the Same Project?

You may report activities undertaken in association with others. If you do so, you must identify other potential reporters of the same activity so that the program can account for multiple reports of the same activities. You may wish to make arrangements for reporting with others involved in your project.

Joint activities generally fall into one of two categories. The first category includes one-time transactions that are large enough to require negotiation before the exchange takes place and generally involve a written contract, such as demand-side management (DSM) programs. The second category comprises transactions that take place repeatedly between manufacturers and consumers where negotiated contracts are generally not involved, such as individual purchases of household appliances.

Three Examples of Joint Activities

Demand-side management programs: When an electric utility undertakes a DSM program, three parties are involved in reducing carbon dioxide emissions: (1) Manufacturers of the energy-efficient equipment, such as improved lighting, refrigeration, and other energy-consuming goods; (2) consumers of electricity (households, commercial operations, and industrial firms); and (3) the utility itself. All three parties may wish to report the reductions in emissions.

High-efficiency automobiles: EPAct section 1605(b) also suggests that the manufacture of high-efficiency automobile fleets be reportable under this program. On the one hand, the purchaser of a high-efficiency car makes the ultimate decision to reduce emissions related to personal transportation. On the other hand, the automobile manufacturers who shifted their fleet composition are enabling the automobile owners to obtain more efficient automobiles.

Tree-planting agreements: Some utilities have entered into agreements with landowners to plant trees. The utilities provide funding for establishing the trees; in return the landowners agree to leave the new trees in place for a specified number of years. Both landowners and utilities have played essential roles in carbon sequestration.

Where contracts are involved, you may make arrangements to assign the ability to report resulting emissions reductions before they are reported under this program. You are not required to do this sorting out before you report, but, depending upon how you believe this information will be used, you may wish to resolve any questions before reporting.

You may also wish to mutually decide reporting capabilities for purchases. If you can most easily aggregate many small reports, for example, as a manufacturer of high-efficiency automobiles or efficient appliances, you may wish to include, as part of the purchase transaction, an agreement with the consumer that you will report the energy-efficiency information, unless consumers notify you that they wish to do so.

However, for some technologies, consumers are in a better position to estimate actual accomplishments. For example, new automobile owners can better estimate annual vehicle miles traveled and, hence, the fuel and emissions savings associated with the purchase of a high-efficiency car. You need to consider the trade-off between the ease of reporting and accuracy of estimating the emissions reductions when deciding who will report the reduction—the manufacturer, the automobile owner, or both. If parties report separately, each should identify the other as potential reporters of the same information.

GG–5.5 May I Report Through My Trade Association or Other Third Parties?

You may wish to explore reporting through another party—for example, through a trade association, civic association, or fraternal organization. Each of the supporting documents discusses third-party reporting as it may apply to particular sectors.

Third-party reporting may be appropriate for a number of reasons. Organizations may be able to provide technical or administrative assistance to you in reporting. Multiple reports may be aggregated to provide a quantity of emissions and reductions which each individual reporter would not choose to report. Furthermore, confidentiality of some data reported may be enhanced by third party reporting.

Third-party reporting may not be appropriate for your purpose in reporting. For example, it does not provide the transparent link to you that is necessary for creating a formal public record of your emissions and achievements for any purpose.

GG–5.6 What Else Will I Be Asked To Report?

As part of your report, you will be asked to choose one of three descriptors of the project(s) whose effects you are reporting. This identification will be limited to those provided in the language in EPAct 1605(b): (1) Voluntary reductions, (2) plant or facility closing, and (3) state or Federal requirements.

Projects may be undertaken for other purposes, for more than one purpose, or may have greenhouse gas impacts that were not the reason for implementing the project. You may wish to, but will not be required to, report more detailed information on why you undertook the project.

GG–5.7 May I Report International Projects?

Considerable interest has been generated regarding the potential for cooperation among parties in different countries. For example, there may be opportunities for U.S. parties to reduce greenhouse gas emissions and increase carbon sequestration outside the United States, perhaps at lower cost than possible through domestic activities.

Under this program, you may report the relevant results of your activities outside the United States, under the same process applicable to similar domestic activities. Note that you may have special difficulty in analyzing international activities: determining an appropriate reference case, defining project boundaries, selecting appropriate measurement or estimation methods, and obtaining credible data. Special attention should be given to all the identifiable effects of your international activities.

Under the United Nations Framework Convention on Climate Change, nations that are parties to the Convention will determine how cooperative efforts between member nations and their respective citizens (''joint implementation'') will be counted toward meeting each country's commitments under that treaty. The President's Climate Change Action Plan, announced in October 1993, includes a pilot program called the United States Initiative on Joint Implementation (USIJI) designed to help establish an empirical basis for considering approaches to joint implementation. The USIJI program has developed evaluation criteria and will develop emissions measurement and verification methods for international projects accepted into the pilot program.

If you are reporting the results of any international project to this program, you will also indicate whether it has been accepted under the USIJI or under the Convention as an accountable joint implementation project. Reporting the results of an international activity under the EPAct 1605(b) program alone does not bring it under the umbrella of formal joint implementation.

GG–5.8 May I Report Prospective Emissions Reductions?

Many projects that reduce greenhouse gas emissions or sequester carbon achieve their results over several years, or even decades. For some of these projects, the accomplishments are evaluated by means of computer modeling or engineering estimates, rather than by direct measurement and monitoring of greenhouse gas emissions and flows. In those cases, the estimation process is generally carried out before the project begins.

If you have analyzed your project using a method that estimates effects prospectively, you may choose in the first reporting year to report the expected annual emissions reductions or carbon sequestration for future years. However, that information will be maintained separately from the EPAct 1605(b) database.

To have your project accomplishments recorded in the EPAct 1605(b) database, you must certify each year that the project continues to perform as expected. As you certify each year's accomplishments, EIA will transfer the data from the database of prospective accomplishments to the EPAct 1605(b) database.

You may also modify your estimates of past accomplishments at any time for any of several reasons. For example, if events following the commencement of the project are different than expected, you may wish to modify your model to more closely reflect actual events. Alternatively, you may simply find modeling or engineering estimation methods that you believe to be more accurate than those you initially employed. You may even decide to carry out field measurements where you had not initially anticipated doing so. Whatever your reason, you can modify the existing estimates to reflect your more accurate estimates of both your past accomplishments recorded in the EPAct 1605(b) database and your expected accomplishments recorded in the database of prospective accomplishments. However, you should provide clear documentation of how you derived the revised estimate.

GG–5.9 How Far Back May I Report Projects?

A primary purpose of the program is to record emissions reductions, not to track when projects were initiated. Therefore, you may report new or ongoing projects that have achieved reductions beginning January 1, 1991. However, for any project, you must establish a credible reference case and retain that reference case for all your reports of that project. If you use historic data to construct your reference case, you should not use data earlier than 1987. If you change your reference case, you must amend any previous reports for that project to account for the amended reference case.

Example: You initiated a project in 1991 that reduced emissions from their 1990 levels. This project is reportable.

Example: You initiated a project earlier than 1987 that has decreased emissions every year relative to each previous year. You may establish either a basic or modified reference case based on what emissions would have been without the project (using only data from 1987 on), then report the emissions reductions from the project for 1991 and subsequent years.

Example: You initiated a project earlier than 1987 that reduced emissions to a level that stabilized during (or before) the baseline years 1987–1990. This project would not be reportable, since the reductions were achieved prior to the period covered by the EPAct 1605(b) reporting program.

Example: You have an ongoing DSM program to encourage replacement of appliances or equipment. You would not be able to report achievements before 1991, but any appliances replaced in 1991 or after that year are new reductions and could be reported.

Example: You have been installing windmills every year for 10 years. In order to report emissions reductions for 1991, you would need to demonstrate that the 1991 windmill displaced emissions-producing generation. If the windmill replaced another, the project would not be reportable.

These are relatively straightforward examples when you construct historic reference cases. Your analysis becomes more complex when you wish to construct modified reference cases. In general, you should not use data from years before 1987 except as additional support for your assertion of what modified levels would have been after 1987.

GG–5.10 Must I Take Into Account the Different Effects of Different Greenhouse Gases?

Your reports on emissions and emission reductions will include data on greenhouse gases in tons of each gas emitted; you will not be required to calculate the various effects of different gases on climate for this voluntary reporting program. However, you may wish to perform these calculations for your own purposes. For example, you may wish to evaluate the costs of competing proposed projects in terms of the beneficial effects on climate; in order to do so, you may wish to look at these effects using a common index, such as the equivalent effect in tons of carbon dioxide. You may wish to talk about such equivalencies with various stakeholders or for public relations purposes.

The Intergovernmental Panel on Climate Change has developed an index that compares the impact that each gas has on global warming relative to the effect that carbon dioxide has. Information about this index, called the Global Warming Potential (GWP), is presented in Appendix E, along with GWPs for the types of gases covered by this reporting program. If you wish to use the index, remember that it does not take into account some complexities of atmospheric chemistry and that the underlying science is evolving.

GG–5.11 Is It Necessary To Report Emissions Reductions and Carbon Sequestration Every Year?

This is a voluntary reporting program. You are under no legal obligation to continue reporting. However, you should recognize that the usefulness of your initial reports may be affected by your participation in the program in subsequent years.

If you report emissions reductions for a period of time, and then fail to report thereafter, the user of the database is likely to assume that your project is no longer reducing emissions relative to the reference case. However, this does not negate the value of the reductions accomplished while the project was in place.

Reporting carbon sequestration projects raises a different type of problem. If you report carbon capture for a number of years and then cease reporting, a database user is apt to assume that the carbon that had been captured has been released back to the atmosphere. This not only limits recognition of any accomplishments that may have occurred following cessation of your reports, but largely negates the value of accomplishments already reported.

You or your firm may find that, following successfully reporting to the voluntary reporting program for several years, you miss one or more years of reporting. If you choose to resume reporting, your initial report should contain information not only for the most recent reporting year, but also, if possible, for all of the intervening years during which you did not report. This will ensure that the EPAct 1605(b) database reflects a continuous record of your activities, thereby increasing the credibility of all your reports.

GG–5.12 May I Amend My Previous Years' Reports?

If you have submitted reports under this program but afterwards develop better data (for example through field measurements or utility-specific emissions factors), or better estimation methods (for example, your organization's adoption of standard analytic procedures), you may amend your previous reports. You may also need to amend reports because you have amended your reference case for a particular project. Your amended reports should clearly state your reasons for amendment and the bottom-line difference that results from the amendment. The following case study discusses an instance in which a reporter chose to amend previous reports.

Case 4: Black Forest Cake, Inc.—Long-Term Project Reporting

Note: This example illustrates only one approach to analyzing a project; your analysis, methods, and calculations will vary depending on your particular circumstances, the geographic location of the project, and other factors.

Black Forest Cake, Inc. (BFCI) was a family-owned business that was experiencing extremely rapid growth in demand for its products, which included baked goods produced at 13 sites in five states, catering services at 10 shops in seven states, and equipment rentals at 15 stores in three states. It operated from a total of 23 sites spread across nine states.

The family members and many of their staff were environmentally conscious. While they were delighted with the increased demand for their products, they were concerned to see their energy consumption rising, particularly their natural gas consumption for baking ovens and space heating, and their gasoline use in delivery vehicles. They knew that increased energy use signaled increased greenhouse gas emissions.

Therefore, BFCI decided to voluntarily offset some of the increase in emissions by undertaking a tree-planting (carbon sequestration) project on farmland they owned. They were not interested in receiving official recognition for their effort. They were motivated purely by their interest in environmental protection and a desire to project an image of BFCI as a ''good global citizen.'' They did, however, want to be sure that their project actually reduced net carbon dioxide emissions, not just appear to do so. Therefore, BFCI decided that its project should at least meet the minimum reporting standards used by DOE in the EPAct 1605(b) voluntary greenhouse gas reporting program.

In its first report following the establishment of the tree stand, BFCI

reported that it had planted the trees and reported information consistent with the guidance provided in the forestry sector supporting document. It also reported that it expected the forest to capture carbon at a rate consistent with the stipulated factors provided by the guidelines' supporting document for forestry. Each year thereafter BFCI confirmed in its report that the project appeared to continue to perform as expected.

After eight years of relying on the default stipulated factors, BFCI became engaged in a dialogue with a local environmental group. One consequence of the discussions was that BFCI agreed to measure the standing carbon on its project site in the tenth year to determine whether the project had met the expectations established for the first decade by the stipulated factors. The field measurements, including statistical sampling of both soils and biomass, revealed that the project had actually exceeded expectations by 20 percent. This was attributed to the fact that the original soils were particularly rich in phosphorous and nitrogen.

BFCI amended its previous reports to reflect this new information based on field measurements. The amended reports increased the reported carbon dioxide flows to the forestland by 20 percent in each of the first ten years. BFCI also amended the projected annual carbon capture rates for the second decade to reflect the higher-than-expected performance. BFCI thus transformed its project from a standard project to a reporter-defined project.

GG–6 What Are the Minimum Reporting Requirements?

DOE has not established a minimum size for a reporting entity or for the reported emissions, emissions reduction, or sequestered carbon. For some purposes of reporting, such as the exchange of information on pilot projects, a minimum size requirement would limit participation. Similarly, you are not required to complete a full and comprehensive report as defined earlier. However, you must report a minimum set of information.

Whatever the scope of your report, you are required to certify the accuracy of the data you have provided. You must also meet minimum information requirements:

- If you are reporting greenhouse gas emissions, you must clearly identify the facilities that are covered by your report and, for each greenhouse gas covered by your report, clearly identify the gas, the amount of the emissions (expressed in metric tons of that gas per year), and the year of the emissions.
- If you are reporting emissions reductions or carbon sequestration projects, you must be able to describe your project and provide sufficient physical data to allow users of the database to form a clear understanding of the nature and scope of your project, including the cause of the change in emissions or carbon sequestration. You must also identify the location of the project, the reference case for the project, and the effects of the project.
- Whether you are reporting on a standard project or a reporter-designed project, you must be able to identify the sources of your data, the level of change of emissions or carbon sequestration per year, and the year in which the change took place.
- If you are submitting a reporter-designed project report involving direct monitoring and measuring or engineering estimations, you must also identify the techniques used to gather the data and make the estimates.

GG–7 Can My Data Be Kept Confidential?

The provisions of section 1605(b)(3) stipulate that ''Trade secret and commercial information that is privileged or confidential shall be protected as provided under Section 552(b)(4) of Title 5, United States Code.'' In general, information submitted to the Federal government must be made available to the public. This section prohibits release of certain trade secret and commercial or financial information.

You will enhance both the credibility and usefulness of information you report by making it available for public release. More accurate data will increase the value of emissions reductions estimates in terms of public recognition, and widely available information will help diffuse knowledge about cost-effective emissions reductions opportunities. Thus, you should try to avoid labeling reported information as confidential wherever possible.

While a reporter may believe that some of the data voluntarily submitted under this program is entitled to protection under the exclusion, this protection is neither automatic nor complete. You should be aware that, under DOE regulations (10 CFR 1004.11), DOE will evaluate each claim of confidentiality and determine whether or not to disclose the data to the public. Also, data may be released to another Federal agency under certain circumstances regardless of any claim of confidentiality.

GG–8 What Certification Is Required?

If you report under this program, you will be required to certify through your signature the accuracy of all the information reported. Therefore, the person who signs the report must be authorized to act as a representative of the reporting entity for these purposes. No independent certification is required, and the Federal government does not plan to certify your reports. However, you may wish to indicate if your data have been verified by a third party.

GG–9 What Should I Do Next?

These general guidelines present an overall picture of the reporting process for the voluntary reporting program. You will find more detailed guidance in the sectoral supporting documents for electricity supply, residential and commercial buildings, industry, transportation, forestry, and agriculture. You may have reportable projects in several sectors; you may report them separately or capture and report the total effects on an entity-wide report. If you need the supporting documents, contact United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Reporting forms are available at the following address: United States Department of Energy, Energy Information Administration, 1000 Independence Avenue, SW., Washington, DC 20585.

DOE encourages you to report your achievements in reducing greenhouse gas emissions and sequestering carbon under this program. Global climate change is increasingly being recognized as a threat that individuals and organizations can take action against. If you are among those taking action, reporting your projects may lead to recognition for you, motivation for others, and synergistic learning for the global community.

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