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DEPARTMENT OF AGRICULTURE

7 CFR 3200

RIN 0599–AA10

Office of Procurement and Property Management (OPPM); Uniform Procedures for the Acquisition and Transfer of Excess Personal Property

AGENCY: Office of Procurement and Property Management.

ACTION: Direct final rule.

SUMMARY: The Office of Procurement and Property Management of the Department of Agriculture (USDA) proposes to amend its procedures for the acquisition and transfer of excess personal property to 1994 Institutions (as defined in section 532 of the Equity in Education Land Grant Status Act of 1994 (Pub. L. 103–382; 7 U.S.C. 301 note)); any Hispanic-Serving Institution (as defined in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)); and any college/university eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321 *et seq.*), including Tuskegee University, in support of research, educational, technical, and scientific activities or for related programs. This amendment would clarify administrative rules regarding equipment transfer and reduce the administrative burden placed on the Institutions.

DATES: This rule is effective March 1, 2004 without further action, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before January 29, 2004. If we receive adverse comments, the Office of Procurement and Property Management will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Comments should be sent to USDA, OPPM, PMD, 1400 Independence Ave., SW., Mail Stop 9304, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Kathy Fay on 202–720–9779.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Executive Order Number 12866.
B. Regulatory Flexibility Act.
C. Paperwork Reduction Act.
III. Electronic Access Addresses

I. Background

This direct final rule amends the final rule which was published in the **Federal Register** at 63 FR 57233–57236, Oct. 27, 1998.

II. Procedural Requirements

A. Executive Order Number 12866

This proposed rule was reviewed under EO 12866, and it has been determined that it is not a significant regulatory action because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This proposed rule will not create any serious inconsistencies or otherwise interfere with any actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof.

B. Regulatory Flexibility Act

USDA certifies that this proposed rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, for the reason that this regulation imposes no new requirements on small entities.

C. Paperwork Reduction

The forms necessary to implement these procedures have been cleared by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act, 44 U.S.C. 2500, *et seq.*

III. Electronic Access Addresses

You may send electronic mail (E-mail) to *kathy.fay@usda.gov* or contact us via fax at (202) 720–3339.

CHAPTER 32—OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT

PART 3200—DEPARTMENT OF AGRICULTURE GUIDELINES FOR THE ACQUISITION AND TRANSFER OF EXCESS PERSONAL PROPERTY

■ 1. The authority citation for part 3200 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 2206a.

■ 2. Amend § 3200.4 by revising paragraphs (a), (d) and (e)(2) to read as follows:

§ 3200.4 Procedures.

(a) To receive information concerning the availability of Federal excess personal property, an eligible institution's property management officer may contact their regional GSA, Area Utilization Officer. For information on USDA excess personal property, visit the USDA Web site at *http://www.nfc.usda.gov/propexcs*. USDA excess property will first be screened by USDA agencies through the Departmental Excess Personal Property Coordinator (DEPPC) using the Departmental Property Management Information System.

* * * * *

(d) Eligible institutions may submit property requests by mail or fax on a Standard Form 122, ''Transfer Order Excess Personal Property''.

(e)(1) * * *

(2) This statement needs to be added following the property description:

''The property requested hereon is certified to be used in support of research, educational, technical, and scientific activities or for related programs. This transfer is requested pursuant to the provisions of Section 923 Pub. L. 104–127 (7 U.S.C. 2206a). Also, in accordance with these provisions USDA authorizes transfer of title of this property to the college/university/institution.''

* * * * *

■ 3. Amend § 3200.6 by revising paragraph (a), redesignating paragraphs (b) and (c) as (c) and (d), and adding a new paragraph (b) to read as follows:

§ 3200.6 Restrictions.

(a) Property in the following Federal Supply Groups are prohibited from transfer.

INELIGIBLE FEDERAL SUPPLY CODE GROUPS

FSC Group	Name
10	Weapons.
11	Nuclear ordinance.
13	Ammunition and explosives.
14	Guided missiles.
18	Space vehicles.

(b) The property in the FSC's listed below are discouraged from transfer and not approved on a routine basis. However, Institutions may request items in these FSC groups, but all requests will be referred to the Director, Office of Procurement and Property Management for consideration and approval:

FSC Group	Name
15	Aircraft and airframe structural components.
16	Aircraft components and accessories.
17	Aircraft launching, landing and ground handling equipment.
20	Ship and marine equipment.

* * * * *

■ 4. Revise § 3200.10 to read as follows:

§ 3200.10 Disposal.

Once the requirements in § 3200.9 are met for retention and use of property by the Institution and title is transferred, Federal excess personal property (FEPP) no longer needed by an Institution will be disposed of in accordance with the Institution's disposal practices. Regardless of ownership, FEPP must never be disposed of in any manner which is detrimental or dangerous to public health or safety. Also, any costs incurred during the disposal process are the responsibility of the Institution.

Done at Washington, DC, this 22nd day of December, 2003.

W. R. Ashworth,

Director, Office of Procurement and Property Management.

[FR Doc. 03–32013 Filed 12–29–03; 8:45 am]

BILLING CODE 3410–TX–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506, 550, 560, 563, 563g, and 575

[No. 2003–68]

Technical Amendments

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations to incorporate a number of technical and conforming amendments. They include clarifications, updated statutory and other references, and corrections of typographical errors.

EFFECTIVE DATE: December 30, 2003.

FOR FURTHER INFORMATION CONTACT: Marilyn K. Burton, Senior Paralegal (Regulations), (202) 906–6467, or Karen A. Osterloh, Special Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS is amending its regulations to incorporate a number of technical and conforming amendments. OTS is making the following miscellaneous changes:

- *Part 506—Information Collection Requirements under the Paperwork Reduction Act (PRA).* The final rule updates the table displaying the OMB control numbers assigned to various OTS regulations under the PRA by adding and amending references to a control number. *See* 12 CFR 506.1(b).
- *Part 550—Fiduciary Powers of Savings Associations.* The final rule corrects typographical errors in the chart in § 550.70.
- *Part 560—Lending and Investment.* The final rule corrects a typographical error in § 560.30.
- *Part 563—Savings Associations—Operations.* The final rule adds a regulatory reference to § 563.41(b) and deletes a citation to an outdated regulation in § 563.180(c).
- *Parts 563g—Securities Offerings.* The final rule updates a reference to an OTS Office and revises citations in §§ 563g.1(a)(6), (a)(9) and (a)(10), and 563g.5.
- *Part 575—Mutual Holding Companies.* The final rule corrects a typographical error in § 575.7.

Administrative Procedure Act; Riegle Community Development and Regulatory Improvement Act of 1994

OTS finds that there is good cause to dispense with prior notice and comment on this final rule and with the 30-day delay of effective date mandated by the Administrative Procedure Act.[1] OTS believes that these procedures are unnecessary and contrary to public interest because the rule merely corrects and clarifies existing provisions. Because the amendments in the rule are not substantive, these changes will not detrimentally affect savings associations.

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 provides that regulations that impose additional reporting, disclosure, or other new requirements may not take effect before the first day of the quarter following publication.[2] This section does not apply because this final rule imposes no additional requirements and makes only technical changes to existing regulations.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act,[3] the OTS Director certifies that this technical corrections regulation will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

OTS has determined that this rule is not a ''significant regulatory action'' for purposes of Executive Order 12866.

Unfunded Mandates Reform Act of 1995

OTS has determined that the requirements of this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 550

Savings associations, Trusts and trustees.

12 CFR Part 560

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

[1] 5 U.S.C. 553.

[2] Pub. L. No. 103–325, 12 U.S.C. 4802.

[3] Pub. L. No. 96–354, 5 U.S.C. 601.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 563g

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 575

Administrative practice and procedure, Capital, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

■ Accordingly, the Office of Thrift Supervision amends title 12, chapter V of the Code of Federal Regulations, as set forth below.

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

■ 1. The authority citation for part 506 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. Amend the table in § 506.1(b) by:

■ a. Revising the entries for §§ 563.22 and 563.81; and

■ b. Removing the entries for §§ 552.6, 552.7, 563.80, 563b.4, and 563b.20 through 563b.32.

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

12 CFR part or section where identified and described	Current OMB control No.
* * * * * * *	
563.22	1550–0016, 1550–0025
* * * * * * *	
563.81	1550–0030
* * * * * * *	

PART 550—FIDUCIARY POWERS OF SAVINGS ASSOCIATIONS

■ 3. The authority citation for part 550 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464.

■ 4. Revise the table in § 550.70 at paragraphs (b) and (d) to read as follows:

§ 550.70 Must I obtain OTS approval or file a notice before I exercise fiduciary powers?

* * * * *

If you will conduct . . .	Then . . .
* * * * * * *	
(b) Fiduciary activities that are materially different from the activities that OTS has previously approved for you, including fiduciary activities that OTS has previously approved for you that you have not exercised for at least five years.	You must obtain prior approval from OTS under §§ 550.80 through 550.120 before you conduct the activities
* * * * * * *	
(d) Activities that are ancillary to your fiduciary business	You do not have to obtain prior OTS approval or file a notice with OTS.

PART 560—LENDING AND INVESTMENT

■ 5. The authority citation for part 560 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806; 42 U.S.C. 4106.

■ 6. Revise the fifth entry in the table in § 560.30 to read as follows:

§ 560.30 General lending and investment powers of Federal savings associations.

* * * * *

LENDING AND INVESTMENT POWERS CHART

Category	Statutory authorization [1]	Statutory investment limitations (Endnotes contain applicable regulatory limitations)
* * * * * * *		
Community development loans and equity investments.	5(c)(3)(A)	5% of total assets, provided equity investments do not exceed 2% of total assets.[4]
* * * * * * *		

Endnotes:

1. All references are to section 5 of the Home Owners' Loan Act (12 U.S.C. 1464) unless otherwise indicated.

* * * * * * * *

4. The 2% of assets limitation is a sublimit for investments within the overall 5% of assets limitation on community development loans and investments. The qualitative standards for such loans and investments are set forth in HOLA section 5(c)(3)(A) (formerly 5(c)(3)(B), as explained in an opinion of the OTS Chief Counsel dated May 10, 1995 (available at *http://www.ots.treas.gov*)).

* * * * *

PART 563—SAVINGS ASSOCIATIONS—OPERATIONS

■ 7. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831o, 3806; 42 U.S.C. 4106.

■ 8. Revise the last sentence of the introductory paragraph of § 563.41(b) to read as follows:

§ 563.41 Transactions with affiliates.

* * * * *

(b) * * * In addition, a savings association should read all references to ''the Board'' or ''appropriate federal banking agency'' to refer only to ''OTS,'' except for references at 12 CFR 223.2(a)(9)(iv), 223.3(h), 223.3(z), 223.14(c)(4), 223.43, and 223.55.

* * * * *

§ 563.180 [Amended]

■ 9. Amend § 563.180(c) by removing the last sentence.

PART 563g—SECURITIES OFFERINGS

■ 10. The authority citation for part 563g continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 78c(b), 78*l*, 78m, 78n, 78p, 78w.

§ 563g.1 [Amended]

■ 11. In § 563g.1, amend paragraph (a)(6) by removing ''Corporate and Securities Division'' and by adding in lieu thereof ''Business Transactions Division'; amend paragraph (a)(9) by removing ''§ 563b.2(a)(27)'' and adding in lieu thereof ''§ 563b.25''; and amend paragraph (a)(10) by removing ''§ 563b.2(a)(29)'' and adding in lieu thereof ''§ 563b.25''.

§ 563g.5 [Amended]

■ 12. Amend § 563g.5(a) by removing the phrase ''§ 563b.8(e)(1), (e)(3), and (e)(4), (f) through (q), and (s)'' and adding in lieu thereof ''§§ 563b.115(a), 563b.150(a)(6), 563b.155, 563b.180(b), and Form AC, General Instruction B''.

PART 575—MUTUAL HOLDING COMPANIES

■ 13. The authority citation for part 575 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

§ 575.7 [Amended]

■ 14. Amend § 575.7 by removing ''12 CFR Form OC'' in paragraph (d)(6)(i) and by adding in lieu thereof ''Form OC''.

Dated: December 17, 2003.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Deputy Director.

[FR Doc. 03–31692 Filed 12–29–03; 8:45 am]

BILLING CODE 6720–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is updating and clarifying the definitions of certain terms used in NCUA's loan participation rule. Specifically, the definition of ''credit union organization'' is amended to conform to the terms of the credit union service organizations (CUSOs) rule. Also, the definition of ''financial organization'' is broadened to provide federal credit unions (FCUs) greater flexibility in choosing appropriate loan participation partners.

DATES: This final rule is effective January 29, 2004.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

NCUA issued a proposed rule on June 26, 2003 to update and clarify § 701.22, its loan participation rule. 68 FR 39866 (July 3, 2003). In the proposal, NCUA noted many of the benefits loan participation offers FCUs. Specifically, engaging in loan participations is an effective tool for FCUs to manage liquidity and concentration risk. Loan participation is also a way for FCUs to comply with NCUA or self-imposed lending limits. Small FCUs are able to improve the diversification of their loan portfolios by participating in loans originated by larger FCUs that have the resources to underwrite a wider variety of loan types.

Section 701.22 of NCUA's regulations provides that an FCU may engage in loan participations with ''eligible organizations'' and defines that term as a credit union, credit union organization, or financial organization. 12 CFR 701.22(b), 12 CFR 701.22(a)(2). The rule further defines ''credit union organization'' and ''financial organization.'' 12 CFR 701.22(a)(4) and (a)(5).

The Federal Credit Union Act (Act) defines ''credit union organization'' as ''any organization as determined by the Board, which is established primarily to serve the needs of its member credit unions, and whose business relates to the daily operations of the credit unions they serve.'' 12 U.S.C. 1757(5)(D). Section 701.22(a)(4) echoes this definition, but specifically excludes, among others, some CUSOs, which it describes as ''corporations or other businesses which principally provide services to credit union members as opposed to corporations or businesses whose business relates to the daily in-house operation of credit unions.'' 12 CFR 701.22(a)(4). Formerly, NCUA's CUSO rule distinguished between CUSOs providing operational services to FCUs and those providing financial services to FCU members.

In a 1998 final rule, NCUA eliminated that distinction in the CUSO rule. 63 FR 10743 (March 5, 1998). Under NCUA's regulations, CUSOs are entities that engage in providing products and services related to the routine daily operations of credit unions to credit unions and credit union members. 12 CFR 712.3, 712.5. In the June 2003 proposal, NCUA proposed to amend the definition of ''credit union organization'' in the loan participation rule to conform to NCUA's interpretation of that term in the CUSO rule.

The Act does not define the term ''financial organization.'' Section 701.22(a)(5) defines it as ''any federally chartered or federally insured financial institution.'' 12 CFR 701.22(a)(5). Although the Act is silent, the rule derives its definition from the legislative history of the 1977 public law that granted FCUs various additional authorities, including the authority to engage in loan participations. H.R. Rep. No. 95–23, at 12 (1977), *reprinted* in 1977 U.S.C.C.A.N. 115. In granting this authority, Congress expressed its intent to enhance the ability of FCUs to serve their members' loan demands.

Consistent with congressional intent to enhance the ability of FCUs to serve their members' loan demands through participations, NCUA proposed to expand the regulatory definition of ''financial organization'' to include state and federal government agencies. NCUA is aware that there are various state and federal government supported loan programs that are particularly geared to underserved borrowers. These types of programs, which include agricultural and small business lending, are ideally suited to the mission of FCUs. Also, the proposal was intended to afford FCUs

greater flexibility in choosing appropriate participation partners.

B. Summary of Comments

NCUA received twelve comment letters regarding the proposed rule: three from FCUs, two from state credit unions, one from a corporate credit union, five from credit union trade organizations, and one from a banking trade organization. Nine commenters completely supported the proposal as written. One commenter supported the proposed amendment to the definition of ''financial organization,'' but stated the current definition of ''credit union organization'' is sufficient to accomplish NCUA's goals. One commenter stated that there should be even fewer restrictions regarding the entities that may engage in loan participations than as proposed. The banking trade organization stated that NCUA's proposal exceeds congressional intent regarding who may engage in loan participations.

NCUA believes the proposed amendments improve the loan participation rule and strike an appropriate balance between enhancing flexibility for FCUs and adhering to statutory limitations. Accordingly, NCUA adopts the proposed amendments into the final rule without change.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This rule expands the pool of eligible organizations with whom an FCU may engage in loan participations, without imposing any additional regulatory burden. The final amendments will not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the final rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The final rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 701

Credit unions, Mortgages, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on December 18, 2003.

Becky Baker,

Secretary of the Board.

■ Accordingly, NCUA amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789 and Pub. L. 101–73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610.

■ 2. Section 701.22 is amended by revising paragraphs (a)(4) and (a)(5) to read as follows:

§ 701.22 Loan participation.

(a) * * *

(4) *Credit union organization* means any credit union service organization meeting the requirements of part 712 of this chapter. This term does not include trade associations or membership organizations principally composed of credit unions.

(5) *Financial organization* means any federally chartered or federally insured financial institution; and any state or federal government agency and their subdivisions.

* * * * *

[FR Doc. 03–31843 Filed 12–29–03; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 745

Share Insurance and Appendix

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its share insurance rules to simplify and clarify them and provide parity with the deposit insurance rules of the Federal Deposit Insurance Corporation (FDIC). Specifically, the amendments: Provide continuation of coverage following the death of a member and for separate coverage after the merger of insured credit unions for limited periods of time; clarify that the interests of nonqualifying beneficiaries of a revocable trust account are treated as the individually owned funds of the owner even where the owner has not actually opened an individual account; and clarify that there is coverage for Coverdell Education Savings Accounts, formerly Education IRAs.

DATES: This final rule is effective January 29, 2004.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

NCUA staff identified part 745 as a regulation in need of updating, clarification and simplification. To that end, NCUA issued a proposed rule on June 26, 2003 to improve part 745 and maintain parity between the separate federal insurance programs administered by NCUA and FDIC. 68 FR 39868 (July 3, 2003).

NCUA proposed to provide a six-month grace period for members to

restructure their insured accounts to maximize insurance coverage in each of two separate occurrences. Specifically, NCUA proposed the grace periods would take effect upon the death of a member and the merger of insured credit unions.

NCUA explained that the death of a member results in an immediate change in the ownership of the member's share accounts. This change in ownership could significantly change the amount of share insurance coverage available for those accounts, most likely reducing coverage.[1]

NCUA recognizes the practical difficulties a member's survivors might encounter in attempting to restructure the member's share accounts immediately after the member's death, and that these difficulties are worsened as they would occur at a time of grief when dealing with financial matters may be particularly difficult for the member's survivors. Accordingly, NCUA proposed to grant a six-month grace period after a member's death for his or her survivors to restructure the accounts. During this grace period, the insurance coverage of the deceased member's accounts would not change from that available immediately before the member's death, unless the accounts are restructured during the grace period by those authorized to do so. Because the intent of the proposal is to avoid reduced insurance coverage, the grace period would not be applied if doing so would result in decreased share insurance coverage.

NCUA also proposed a six-month grace period for members to restructure their insured accounts after the merger of insured credit unions. NCUA explained that a member's share accounts at an insured credit union are insured separately from that member's share accounts at any other separately chartered, insured credit union. When a member has accounts at more than one insured credit union, a merger of those credit unions could reduce the amount of share insurance coverage the member had before the merger.[2]

NCUA does not believe members should immediately have reduced share insurance coverage as a result of credit union mergers. Accordingly, NCUA proposed to provide members with a six-month grace period following the merger of insured credit unions, during which members will receive separate insurance of their accounts as though no merger had occurred. NCUA also proposed a methodology for extending insurance coverage for share certificates that mature at varying times in relation to the merger.[3]

NCUA believes insured credit unions should help their members benefit from these grace periods wherever possible and reasonable. We believe this can be done in a number of ways. For example, insured credit unions should make reasonable efforts to explain to their members how the grace periods operate. Merging credit unions are encouraged to make their members aware of the pending merger as soon as possible so members can evaluate their existing accounts and begin to plan how to restructure their accounts to maximize their coverage after the merger. Once a merger is completed, the surviving credit union should make reasonable efforts to notify members with uninsured funds as a result of the merger that the grace period has begun to run and assist members to restructure their accounts to maximize coverage. NCUA encourages insured credit unions to do all of these things as a service to their members and to minimize the potential for confusion regarding the coverage of their accounts.

In May 2000, Education IRAs were specified as insurable under NCUA's share insurance rules as irrevocable trust accounts. 65 FR 34921 (June 1, 2000). Since that time, Education IRAs have been replaced with Coverdell Education Savings Accounts. NCUA proposed to revise the share insurance rules to reflect that change.

NCUA also proposed to revise its revocable trust account insurance rule to address the frequent inquiries NCUA receives regarding how: (1) Revocable trusts are created; (2) an owner demonstrates testamentary intent; and (3) the interests of nonqualifying beneficiaries are treated. In brief, NCUA explained that simple revocable trusts can be created at the credit union without the need for a formal written trust. NCUA proposed that the member's intent to create a revocable trust be noted in the title to the account. NCUA explained that common terms used in the account title to create a revocable trust and indicate the owner's intent include ''payable on death,'' ''in trust for,'' and ''as trustee for,'' or acronyms for these phrases, respectively, POD, ITF and ATF. NCUA explained that the account title ''John Smith POD'' is sufficient to create a revocable trust account. NCUA stated in the proposal it believed that naming the beneficiaries in the account *title* is the most effective way of establishing insurance coverage, but made it clear that, to be insurable, the beneficiaries must only be specifically named somewhere in the credit union's account *records*, not necessarily in the account *title*.

Finally, NCUA explained that it treats the interests of nonqualifying beneficiaries, those beneficiaries that are not the owner's spouse, child, grandchild, parent, brother or sister, as the individually owned funds of the owner of the account. In this context, these funds would be aggregated with all other individual accounts of the owner and insured up to $100,000. NCUA acknowledged that the current language of the rule could be read as providing that these nonqualifying beneficiary interests would only be insured as the individually owned funds of the owner if the owner has actually opened an individual account in the insured credit union where the revocable trust account is held. NCUA proposed to revise the rule to clarify that it will treat nonqualifying beneficiary interests as the individually owned funds of the owner even if the owner has not actually opened an

[1] For example, a husband and wife may hold a joint account, a joint revocable trust account for the benefit of their two children, and two individual accounts in their own names. Assuming these accounts satisfy all applicable requirements, these four accounts would be insured up to a maximum of $800,000. The $800,000 is broken down as follows: $200,000 for the joint account; $400,000 for the joint revocable trust account; and $100,000 for each of the two individual accounts. Upon the death of either the husband or wife, however, the surviving spouse would become the sole owner of the joint account and the joint revocable trust account. Under NCUA share insurance rules, the joint account would be transformed into an individual account subject to aggregation with the surviving spouse's other individual account and insured up to a maximum of $100,000. The single ownership (individual) account in the name of the deceased spouse would continue to be insured separately from the other accounts. The maximum coverage of the joint revocable trust account would be reduced from $400,000 to $200,000, because coverage for this type of account is calculated as $100,000 for each combination of settlors and qualifying beneficiaries. In sum, the maximum coverage of the four accounts would be reduced immediately upon the death of the husband or wife from $800,000 to $400,000.

[2] For example, member X has a $75,000 individual account at insured credit union A and a $50,000 individual account at insured credit union B. Both accounts are fully insured because a member is entitled to $100,000 of coverage in the aggregate for all individual accounts in each insured credit union. 12 CFR 745.1; 12 CFR 745.3. If the credit unions merge, then X would have individual accounts in the surviving insured credit union totaling $125,000. X's individual accounts would be uninsured for $25,000.

[3] A share certificate that matures after the six-month grace period will receive the separate insurance treatment until the first maturity date following the grace period. One that matures during the six-month grace period and is renewed for the same term and amount will receive the separate insurance treatment until the first maturity date after the grace period under the terms of the renewed certificate. One that matures during the grace period that is not renewed, or is renewed on any basis other than for the same term and amount as the original certificate, is separately insured only for the six-month grace period.

individual account at the credit union. This is consistent with FDIC's treatment of these funds.

B. Summary of Comments

NCUA received sixteen comment letters regarding the proposed rule: Six from federal credit unions (FCUs), two from state credit unions, and eight from credit union trade organizations.

The commenters expressed general support for all of the proposed amendments, except for the titling requirement in the revocable trust account provision. Fifteen commenters strongly opposed the titling requirement and expressed the same or similar concerns. The concerns they cited included the great expense of updating their forms and systems. The commenters noted a host of problems the titling requirement would create for their computer-based data processing systems, which they stated presently cannot accommodate the additional titling information required by the proposal. Many of these commenters stated that the information NCUA proposes to be included in the account title could just as easily be captured elsewhere in the account documentation without the need to update forms or data processing systems. Six commenters were concerned that the titling requirement would apply to existing accounts and that it would be expensive and labor intensive to identify those accounts to alter their titles to comply with the proposal.

It appears from the comment letters that a significant number of commenters misread the titling requirement of the proposal and are under the impression it requires that beneficiaries be named in the title. As noted above, that is not the case. NCUA proposed only that a member's intent to create a revocable trust must be demonstrated in the title of the account using commonly accepted terms such as ''in trust for,'' ''as trustee for,'' ''payable on death to,'' or any acronym for these terms. As noted, NCUA stated that, while it prefers the beneficiaries also be listed in the title, it only requires that the beneficiaries be named somewhere in the share account records of the insured credit union.

NCUA's intent in proposing the titling requirement was to make it simpler for credit union members to create revocable trust accounts and to obtain the expanded insurance coverage they seek. NCUA did not anticipate the proposed requirement would create any significant, additional burden for credit unions and, moreover, did not intend to impose the requirement retroactively to existing revocable trust accounts. Nevertheless, as a result of the information provided by the commenters and other interested parties, NCUA has decided not to adopt the proposed titling requirement at this time because of the difficulties commenters identified that some FCUs would have in adapting their data processing systems and account forms. NCUA continues to believe that titling of revocable trust accounts so as to indicate the nature of the account would benefit FCUs in a number of ways, including enabling FCUs to help members better appreciate the nature of their accounts and share insurance coverage. NCUA encourages FCUs to modernize and maximize their data processing systems' capabilities as much as is practicable, given their circumstances, in this regard.

As noted, there was general support for all the other proposed amendments which include: Providing a six-month grace period for members to restructure their insured accounts upon the death of a member and the merger of insured credit unions; clarifying that the interests of nonqualifying beneficiaries of a revocable trust account are treated as the individually owned funds of the owner even where the owner has not actually opened an individual account; and clarifying that there is coverage for Coverdell Education Savings Accounts, formerly Education IRAs. There was little specific comment on these proposals except that two commenters suggested extending the six-month grace periods to one year. NCUA believes six months is a sufficient amount of time to restructure insured accounts and consistent with the FDIC's deposit insurance rules. Accordingly, these proposed amendments are adopted in the final rule without change.

C. Technical Correction

In 2000, NCUA amended Part 724 of its regulations to permit an FCU in a territory, including trust territories, or a possession of the United States, or the Commonwealth of Puerto Rico, to act as a trustee or custodian for certain pension or profit sharing plans. 65 FR 10933 (March 1, 2000). At the same time, NCUA amended § 745.9–2 of the share insurance rules to clarify that these accounts would be entitled to separate share insurance coverage. *Id.*

In a subsequent separate rulemaking, NCUA further amended § 745.9–2 to address coverage of accounts unrelated to the prior amendments to § 745.9–2 providing coverage of trust or custodial accounts. 65 FR 34921 (June 1, 2000). Inadvertently, the subsequent amendments to § 745.9–2 deleted the provision providing coverage for trust or custodial accounts. Accordingly, NCUA is reinstating those provisions as a technical amendment.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This rule only clarifies the share insurance coverage available to credit union members, without imposing any regulatory burden. The final amendments would not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the final rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The final rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in

instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 745

Credit unions, Share insurance.

By the National Credit Union Administration Board on December 18, 2003.

Becky Baker,

Secretary of the Board.

■ Accordingly, NCUA amends 12 CFR part 745 as follows:

PART 745—SHARE INSURANCE AND APPENDIX

■ 1. The authority citation for part 745 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789.

■ 2. Section 745.2 is amended by adding paragraphs (e) and (f) to read as follows:

§ 745.2 General principles applicable in determining insurance of accounts.

* * * * *

(e) *Continuation of insurance coverage following the death of a member.* The death of a member will not affect the member's share insurance coverage for a period of six months following death unless the member's share accounts are restructured in that time period. If the accounts are restructured during the six-month grace period, or upon the expiration of the six months if not restructured, the share insurance coverage will be provided on the basis of actual ownership of the accounts in accordance with the provisions of this part. The operation of this grace period, however, will not result in a reduction of coverage.

(f) *Continuation of separate share insurance coverage after merger of insured credit unions.* Whenever the liability to pay the member accounts of one or more insured credit unions is assumed by another insured credit union, whether by merger, consolidation, other statutory assumption or contract: The insured status of the credit unions whose member account liability has been assumed terminates, for purposes of this section, on the date of receipt by NCUA of satisfactory evidence of the assumption; and the separate insurance of member accounts assumed continues for six months from the date the assumption takes effect or, in the case of a share certificate, the earliest maturity date after the six-month period. In the case of a share certificate that matures within the six-month grace period that is renewed at the same dollar amount, either with or without accrued dividends having been added to the principal amount, and for the same term as the original share certificate, the separate insurance applies to the renewed share certificate until the first maturity date after the six-month period. A share certificate that matures within the six-month grace period that is renewed on any other basis, or that is not renewed, is separately insured only until the end of the six-month grace period.

■ 3. Section 745.4 is amended by revising paragraph (c) to read as follows:

§ 745.4 Revocable trust accounts.

* * * * *

(c) If the named beneficiary of a revocable trust account is other than the spouse, child, grandchild, parent, brother or sister of the account owner, the funds corresponding to that beneficiary shall be treated as an individually owned account of the owner, aggregated with any other individually owned accounts of the owner, and insured up to $100,000. For example, if A establishes an account payable upon death to his nephew, the account would be insured as an individual account owned by A. Similarly, if B establishes an account payable upon death to her husband, son and nephew, two-thirds of the account balance would be eligible for revocable trust account coverage up to $200,000 corresponding to the two qualifying beneficiaries, the spouse and child. The amount corresponding to the non-qualifying beneficiary, the nephew, would be deemed to be owned by B as an individual account and insured accordingly.

* * * * *

■ 4. Section 745.9–1 is amended by revising paragraph (c) to read as follows:

§ 745.9–1 Trust accounts.

* * * * *

(c) This section applies to trust interests created in Coverdell Education Savings Accounts, formerly Education IRAs, established in connection with section 530 of the Internal Revenue Code (26 U.S.C. 530).

■ 5. Section 745.9–2 is amended by revising paragraph (a) to read as follows:

§ 745.9–2 IRA/Keogh accounts.

(a) The present vested ascertainable interest of a participant or designated beneficiary in a trust or custodial account maintained pursuant to a pension or profit-sharing plan described under section 401(d) (Keogh account), section 408(a) (IRA) and section 408A (Roth IRA) of the Internal Revenue Code (26 U.S.C. 401(d), 408(a) and 408A), or similar provisions of law applicable to a U.S. territory or possession, will be insured up to $100,000 separately from other accounts of the participant or designated beneficiary. For insurance purposes, IRA and Roth IRA accounts will be combined together and insured in the aggregate up to $100,000. A Keogh account will be separately insured from an IRA account, Roth IRA account or, where applicable, aggregated IRA and Roth IRA accounts.

* * * * *

■ 6. The Appendix to part 745 is amended by revising the third sentence of Section B to read as follows:

Appendix to Part 745—Examples of Insurance Coverage Afforded Accounts in Credit Unions Insured by the National Credit Union Share Insurance Fund

* * * * *

B. How Are Revocable Trust Accounts Insured?

* * * If the named beneficiary of a revocable trust account is other than the spouse, child, grandchild, parent, brother or sister of the account owner, the funds corresponding to that beneficiary shall be treated as an individually owned account of the owner, aggregated with any other individually owned accounts of the owner, and insured up to $100,000. * * *

* * * * *

[FR Doc. 03–31844 Filed 12–29–03; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

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

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2003–24–13, which was published in the **Federal Register** on December 4, 2003 (68 FR 67789), and applies to certain Cessna Aircraft Company (Cessna) Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H

airplanes that are equipped with a Honeywell KAP 140 autopilot computer system installed on the center instrument control panel near the throttle. We inadvertently duplicated affected airplane serial numbers and included a serial number that should not be affected by this AD in the applicability section. This action corrects the applicability section of AD 2003–24–13, Amendment 39–13382.

EFFECTIVE DATE: The effective date of this AD remains January 20, 2004.

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

SUPPLEMENTARY INFORMATION:

Discussion

On November 25, 2003, FAA issued AD 2003–24–13, Amendment 39–13382 (68 FR 67789, December 4, 2003), which applies to certain Cessna Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes that are equipped with a Honeywell KAP 140 autopilot computer system installed on the center instrument control panel near the throttle. This AD requires you to install an update to the operating software of the KAP 140 autopilot computer system, change the unit's part number, and change the software modification identification tag.

Need for the Correction

The FAA inadvertently duplicated affected airplane serial numbers for Model T206H airplanes in the applicability section of this AD. We also inadvertently included serial number T20608368 for Model T206H airplanes in the applicability section of this AD that is not affected by this AD. This correction is needed to ensure that the affected airplane owners/operators do not have unnecessary action performed on their airplanes.

Correction of Publication

■ Accordingly, the publication of December 4, 2003 (68 FR 67789), of Amendment 39–13382; AD 2003–24–13, which was the subject of FR Doc. 03–30075, is corrected as follows:

§ 39.13 [Corrected]

■ On page 67791, in section 39.13 [Amended], 2., replace paragraph (c) of the AD with the following text:

''What Airplanes Are Affected by This AD?

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

(1) equipped with a KAP 140 autopilot computer system, part number (P/N) 065–00176–2602, P/N 065–00176–5402, or P/N 065–00176–7702; and

(2) certificated in any category;

Model	Serial No.
172R	17280001 through 17281073, 17281075 through 17281127, and 17281130
172S	172S8001 through 172S9195, 172S9197, 172S9198, and 172S9200 through 172S9203
182S	18280001 through 18280944
182T	18280945 through 18281064, 18281067 through 18281145,18281147 through 18281163, 18281165 through 18281167, and 18281172
T182T	T18208001 through T18208109, and T18208111 throughT18208177
206H	20608001 through 20608183, 20608185, 20608187, and 20608188
T206H	T20608001 through T20608039, T20608041 through T20608367, T20608369 through T20608379, T20608381, T20608382, and T20608385''

Action is taken herein to correct this reference in AD 2003–24–13 and to add this AD correction to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains January 20, 2004.

Issued in Kansas City, Missouri, on December 16, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31667 Filed 12–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–22–AD; Amendment 39–13369; AD 2003–23–05]

RIN 2120–AA64

Airworthiness Directives; Titeflex Corporation; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes corrections to Airworthiness Directive (AD) 2003–23–05 applicable to certain Titeflex Corporation hoses installed on Boeing 737–300, –400, –500, –600, –700, –700C, –800, –900, 747–400, 757–200, –300, 767–200, –300, and –300F airplanes, that was published in the **Federal Register** on November 19, 2003 (68 FR 65157). The AD number is incorrect in the Preamble Section and in the Regulatory Section five corrections are needed in Table 1. This document corrects these errors. In all other respects, the original document remains the same.

EFFECTIVE DATE: Effective December 30, 2003.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7155; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule AD, FR Doc. 03–28730, applicable to certain Titeflex Corporation hoses installed on Boeing 737–300, –400, –500, –600, –700, –700C, –800, –900, 747–400, 757–200, –300, 767–200, –300, and –300F airplanes, was published in the **Federal Register** on November 19, 2003 (68 FR 65157). The following corrections are needed:

§ 39.13 [Corrected]

■ On page 65157, in the first column, in the Preamble Section, in the fifth line, ''39–13369; AD 2003–23–05–AD ''is corrected to read ''39–13369; AD 2003–23–05''. Also, on page 65158, in Table 1, the following changes are made:

■ In the fifth column, for item (2) 737–600, –700, –700C, –800, and –900 airplanes, first line, ''737–26A1109, Revision 12, dated May 8, 2003'' is corrected to read ''737–26A1109, Revision 2, dated May 8, 2003''.

■ In the second column, for item (3) 747–400 airplanes, ''BACH5R0186XX'' is corrected to read ''BACH5S0186XX'' and ''BACH5S0080YY'' is deleted.

■ In the second column, for item (4) 757–200 airplanes, under BACH5S0110XN, add ''No number'' and add in the third column on the same line, ''109422''.

■ Also, on page 65159, in Table 1, in the second column, for item (5) 757–300

airplanes, under BACH5S0074XN, add: ''Optional 453N2240–33''

Issued in Burlington, MA, on December 19, 2003.

Peter A. White,

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

[FR Doc. 03–31850 Filed 12–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, 135, and 145

[Docket No. FA–2000–7952]

RIN 2120–A113

Service Difficulty Reports

AGENCY: Federal Aviation Administration, DOT

ACTION: Final rule; delay of effective date.

SUMMARY: The Federal Aviation Administration (FAA) is further delaying the effective date of a final rule that amends the reporting requirements for air carriers and certificated domestic and foreign repair station operators concerning failures, malfunctions, and defects of aircraft, aircraft engines, systems, and components. This action is prompted by the FAA's decision to address industry concerns about the final rule. Delaying the effective date of the final rule will allow the agency time for consideration of industry concerns.

DATES: The effective date of the rule amending 14 CFR parts 121, 125, 135, and 145 published at 65 FR 56191 (Sept. 15, 2000) and most recently delayed at 67 FR 78970 (Dec. 27, 2002) is further delayed from January 16, 2004, until January 30, 2006.

FOR FURTHER INFORMATION CONTACT: Jose E. Figueroa, Flight Standards Service, Tampa Flight Standards District Office, 5601 Mariner Street, Suite 310, Tampa, Florida 33609–3413, telephone 813–287–4932.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 2000, the FAA published the final rule entitled ''Service Difficulty Reports'' (65 FR 56191). We also requested comments on the information collection requirements. The final rule, which had an effective date of January 16, 2001, amended the reporting requirements for air carriers and certificated domestic and foreign repair station operators concerning failures, malfunctions, and defects of aircraft, aircraft engines, systems, and components. The FAA received extensive written comments on the Service Difficulty Reporting (SDR) requirements and on the potential duplicate reporting of certain failures, malfunctions, and defects.

On November 30, 2000, the FAA announced (65 FR 71247) that a public meeting on this rulemaking would be held on December 11, 2000. Participants at that meeting raised novel issues that the FAA was not aware of when preparing the final rule.

As a result of the concerns expressed at the meeting and those raised during the comment period for information collection requirements on the final rule, the FAA delayed the effective date on four separate occasions to January 16, 2004. The purpose of these delays was to allow the agency time to consider industry's concerns and to consider issuing a notice of proposed rulemaking (NPRM). Unfortunately, we have not completed action on this initiative, and a further delay of the effective date is necessary to allow additional time for us to address industry concerns.

Related Activity

Revised Aeronautical Repair Station Regulations

On August 6, 2001, the FAA published revisions to its repair station rule (66 FR 41088). As a part of that action, we removed §§ 145.63 and 145.79, and created a new § 145.221 to contain SDR requirements for repair stations. The FAA intends for the § 145.221 amendment to take effect on January 31, 2004, concurrent with other repair station requirements (*see* 66 FR 41088 (Aug. 6, 2001) delayed until Jan. 31, 2004, at 68 FR 55819 (Sept. 29, 2003).)

Good Cause for Immediate Adoption

Since the delay in the effective date of the final rule does not impose any new requirements or any additional burden on the regulated public, the FAA finds that good cause exists for immediate adoption of the new effective date without a 30-day notice.

The Effect of Our Decision

Our decision delays the effective date of the SDR final rule from January 16, 2004 until January 31, 2006. The FAA cautions the industry that the existing rules will remain in effect until the new dates are effective, with the exception of the § 145.221 amendment that will be effective on January 31, 2004.

Issued in Washington, DC, on December 19, 2003.

Marion Blakey

Administrator.

[FR Doc. 03–31883 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 600

[Docket No. 2003N–0528]

Revision of the Requirements for Spore-Forming Microorganisms

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations by providing options to the existing requirement for separate, dedicated facilities and equipment for work with spore-forming microorganisms. FDA is amending the regulations due to advances in facility, system, and equipment design and in sterilization technologies that will allow work with spore-forming microorganisms to be performed in multiproduct manufacturing areas. We are publishing this rule because the existing requirement for always using separate, dedicated facilities and equipment for work with spore-forming microorganisms is no longer necessary. We are taking this action as part of our continuing effort to reduce the burden of unnecessary regulations on industry and to revise outdated regulations without diminishing public health protection. We are issuing these amendments directly as a final rule because they are noncontroversial and there is little likelihood that we will receive any significant comments opposing the rule. Elsewhere in this issue of the **Federal Register**, we are publishing a companion proposed rule under our usual procedures for notice and comment in the event that we receive any significant adverse comments on the direct final rule. If we receive any significant adverse comments that warrant terminating the direct final rule, we will consider such comments on the proposed rule in developing the final rule.

DATES: This rule is effective June 1, 2004. Submit written or electronic comments on or before March 15, 2004. If we receive no significant adverse comments during the specified

comment period, we intend to publish a confirmation document on or before the effective date of this direct final rule confirming that the direct final rule will go into effect on June 1, 2004. If we receive any significant adverse comments during the comment period, we intend to withdraw the direct final rule before its effective date by publication of a document in the **Federal Register**.

ADDRESSES: Submit written comments on the direct final rule to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

Spore-forming microorganisms are used in the production of certain biological products. These microorganisms may be used as source material for further manufacture into final products used in the prevention, treatment, or cure of a disease or condition of human beings. By their very nature, these microorganisms pose a great challenge to manufacturers. Bacteria produce spores as a means to survive adverse environmental conditions, while some fungi use them as a form of reproduction. Spores show great resistance to high temperature, freezing, dryness, antibacterial agents, radiation, and toxic chemicals. Under favorable conditions, spores can germinate into actively growing bacteria and fungi. Many of these spore-forming microorganisms are pathogenic to humans and have been implicated in causing morbidity and mortality. To ensure the safety of a biological product manufactured in a facility in which spore-forming microorganisms are present, these microorganisms must be kept under tight control to avoid the release of spores into the manufacturing atmosphere and potential contamination of other products.

Due to the unique survival properties of spore-forming microorganisms, current FDA regulations require that work with these microorganisms be conducted separately from manufacturing operations for other products. (Currently, FDA regulations use the term ''spore-bearing'' microorganisms. In this rulemaking, we are revising these regulations to use the term ''spore-forming'' because it is a more commonly used term. For the purposes of these regulations, spore-forming microorganisms include both the spore and vegetative cells.) Under § 600.11(e)(3) (21 CFR 600.11(e)(3)), all work with spore-forming microorganisms must be performed in an entirely separate building, or in a completely walled-off portion of a if that portion is constructed so as to prevent contamination of other areas and if entrances to such portion are independent of the remainder of the building. Section 600.11(e)(3) further requires that all vessels, apparatus, and equipment used for spore-forming microorganisms be permanently identified and reserved exclusively for use with those organisms. This provision also states that any materials destined for further manufacturing may be removed from this area only under conditions that will prevent the introduction of spores into other manufacturing areas.

In accordance with Executive Order 12866, which directs Federal agencies to review their regulations and eliminate or modify those that are outdated or otherwise in need of reform, we are revising § 600.11(e)(3) to allow greater manufacturing flexibility regarding work with spore-forming microorganisms. The revisions provide that work with spore-forming microorganisms may be performed in multiproduct manufacturing areas when appropriate controls to prevent contamination of other products and areas exist. We recognize that advances in facility, system, and equipment design and in sterilization technologies have increased the ability of manufacturers to control and analyze the manufacture of biological products and the equipment used in their manufacture. The use of appropriate controls and procedures and processes provide an adequate degree of confidence that a product meets the expected levels of safety and purity. Areas of special concern, such as containment, contamination with pathogenic and/or toxic agents, sterilization, and disinfection can be addressed using currently available and required procedures and processes.

This direct final rule does not apply to spore-forming microorganisms used for testing of biological products to determine the growth-promoting qualities of test media used to ensure the sterility of each lot of product or as biological indicators for validation of steam sterilization cycles. The rule also does not change the requirements for those products set forth in §§ 600.11(e)(2) and 610.12 (21 CFR 610.12).

II. Highlights of the Direct Final Rule

We are amending our regulations involving spore-forming microorganisms as set forth below.

A. Work With Spore-Forming Microorganisms

We are revising § 600.11(e)(3) to provide greater flexibility in production facilities and procedures for work with spore-forming microorganisms.

Revised § 600.11(e)(3)(i) states that manufacturing processes using spore-forming microorganisms conducted in a multiproduct manufacturing site must be performed under appropriate controls to prevent contamination of other products and areas within the site. We regard a manufacturing site as an entire complex of buildings, connected or separate, that belongs to one entity engaged in the manufacture of any one product or multiple products. An area within a manufacturing site is a specified location within a facility (physical structure) associated with the manufacturing of any one product or multiple products. Revised § 600.11(e)(3)(i) further states that prevention of spore contamination can be achieved by using a separate, dedicated building or, if manufacturing is conducted in a multiproduct manufacturing building, by using process containment. Finally, revised § 600.11(e)(3)(i) states that all product and personnel movement between the area where the spore-forming microorganisms are manufactured and other manufacturing areas must be conducted under conditions that will prevent the introduction of spores into other areas of the facility.

Revised § 600.11(e)(3)(ii) states that if process containment is employed in a multiproduct manufacturing area, procedures must be in place to demonstrate adequate removal of the spore-forming microorganism(s) from the manufacturing area for subsequent manufacture of other products. Revised § 600.11(e)(3)(ii) further states that these procedures must provide for adequate removal or decontamination of the spore-forming microorganisms on and within manufacturing equipment, facilities, and ancillary room items as well as the removal of disposable or product dedicated items from the manufacturing area. Finally, revised § 600.11(e)(3)(ii) states that environmental monitoring specific for the spore-forming microorganism(s) must be conducted in adjacent areas during manufacturing operations and in

the manufacturing area after completion of cleaning and decontamination.

Under revised § 600.11(e)(3)(ii), processing and propagation of spore-forming microorganisms must be conducted in areas and using systems that are not used for any other purpose at the same time. Prior to processing and propagation of any organism, procedures must be designed and in place to prevent contamination with pathogenic and/or toxic agents, as well as to decontaminate, sterilize and/or disinfect, as appropriate, all affected areas and systems. It is important to demonstrate control over and containment of spore-forming microorganisms during their propagation and processing in order to prevent contamination of the product. Products derived from spore-forming microorganisms should not be removed from designated areas unless this can be done in a manner that prevents contamination of other products. These containment procedures will provide a level of assurance that products made using spore-forming microorganisms remain safe, pure, and of high quality.

The agency anticipates developing a guidance document to assist manufacturers in complying with these more flexible provisions on work with spore-forming microorganisms.

B. Substitution of ''Spore-Forming'' for ''Spore-Bearing''

As noted previously in this document, we are replacing the term ''spore-bearing'' in our regulations with the term ''spore-forming'' because the latter has become the more commonly used term to describe these microorganisms. Accordingly, in addition to § 600.11(e)(3), we are revising §§ 600.10(c)(3) (21 CFR 600.10(c)(3)) and 600.11(e)(1) and (e)(2) by substituting the term ''spore-forming'' for the term ''spore-bearing''.

III. Rulemaking Action

In the **Federal Register** of November 21, 1997 (62 FR 62466), FDA described its procedures on when and how the agency will employ direct final rulemaking. We have determined that this rule is appropriate for direct final rulemaking because we believe that it includes only noncontroversial amendments and we anticipate no significant adverse comments. Consistent with our procedures on direct final rulemaking, FDA is publishing elsewhere in this issue of the **Federal Register** a companion proposed rule to revise the biologics regulations to allow greater flexibility in production facilities and procedures for work with spore-forming microorganisms. The companion proposed rule provides a procedural framework within which the rule may be finalized in the event that the direct final rule is withdrawn because of any significant adverse comments. The comment period for the direct final rule runs concurrently with the companion proposed rule. Any comments received in response to the companion proposed rule will be considered as comments regarding the direct final rule.

We are providing a comment period on the direct final rule of 75 days after date of publication in the **Federal Register**. If we receive any significant adverse comments, we intend to withdraw this direct final rule action before its effective date by publication of a notice in the **Federal Register**. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants terminating a direct final rulemaking, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 553). Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. A comment recommending a regulation change in addition to those in the rule would not be considered a significant adverse comment unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subjects of a significant adverse comment.

If any significant adverse comments are received during the comment period, FDA will publish, before the effective date of this direct final rule, a document withdrawing the direct final rule. If we withdraw the direct final rule, any comments received will be applied to the proposed rule and will be considered in developing a final rule using the usual notice-and-comment procedures.

If FDA receives no significant adverse comments during the specified comment period, FDA intends to publish a confirmation document, before the effective date of the direct final rule, confirming the effective date.

IV. Analysis of Impacts

A. Review Under Executive Order 12866, the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of the direct final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this direct final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the direct final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze whether a rule may have a significant economic impact on a substantial number of small entities. Because the direct final rule allows for greater flexibility in production facilities and procedures for work with spore-forming microorganisms, it would not result in any increased burden or costs on small entities. Therefore, we certify that the direct final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The Unfunded Mandates Reform Act requires that agencies prepare a written statement under section 202(a) of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation). Because the rule does not impose mandates on State, local, or tribal governments, or the private sector, that will result in an expenditure in any one year of $100 million or more, FDA is not required to perform a cost-benefit analysis according to the Unfunded Mandates Reform Act.

B. Environmental Impact

The agency has determined under 21 CFR 25.31(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

C. Federalism

We have analyzed this direct final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we have concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

V. Paperwork Reduction Act of 1995

This direct final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VI. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this direct final rule. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two paper copies of any written comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 600

Biologics, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 600 is amended as follows:

PART 600—BIOLOGICAL PRODUCTS: GENERAL

■ 1. The authority citation for 21 CFR part 600 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 360i, 371, 374; 42 U.S.C. 216, 262, 263, 263a, 264, 300aa–25.

§ 600.10 [Amended]

■ 2. Section 600.10 *Personnel* is amended in paragraph (c)(3) by removing the words ''spore-bearing'' and adding in their place the words ''spore-forming''.

■ 3. Section 600.11 is amended in paragraph (e)(1) by removing the words ''spore-bearing'' and adding in their place the words ''spore-forming''; in paragraph (e)(2) by removing the words ''spore-bearing'' in the heading and text, and adding in their place the words ''spore-forming''; and by revising paragraph (e)(3) to read as follows:

§ 600.11 Physical establishment, equipment, animals, and care.

* * * * *

(e) * * *

(3) *Work with spore-forming microorganisms.* (i) Manufacturing processes using spore-forming microorganisms conducted in a multiproduct manufacturing site must be performed under appropriate controls to prevent contamination of other products and areas within the site. Prevention of spore contamination can be achieved by using a separate dedicated building or by using process containment if manufacturing is conducted in a multiproduct manufacturing building. All product and personnel movement between the area where the spore-forming microorganisms are manufactured and other manufacturing areas must be conducted under conditions that will prevent the introduction of spores into other areas of the facility.

(ii) If process containment is employed in a multiproduct manufacturing area, procedures must be in place to demonstrate adequate removal of the spore-forming microorganism(s) from the manufacturing area for subsequent manufacture of other products. These procedures must provide for adequate removal or decontamination of the spore-forming microorganisms on and within manufacturing equipment, facilities, and ancillary room items as well as the removal of disposable or product dedicated items from the manufacturing area. Environmental monitoring specific for the spore-forming microorganism(s) must be conducted in adjacent areas during manufacturing operations and in the manufacturing area after completion of cleaning and decontamination.

* * * * *

Dated: December 11, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–31919 Filed 12–29–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9101]

RIN 1545–BC79

Information Reporting Relating to Taxable Stock Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations requiring information reporting by a corporation if control of the corporation is acquired or if the corporation has a recapitalization or other substantial change in capital structure. This document also contains temporary regulations concerning information reporting requirements for brokers with respect to transactions described in section 6043(c). The text of these temporary regulations also serves as the text of proposed regulations set forth in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective December 30, 2003.

Applicability Dates: For dates of applicability, *see* §§ 1.6043–4T(i) and 1.6045–3T(g).

FOR FURTHER INFORMATION CONTACT: Nancy Rose at (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The forms referenced in these regulations have been, or will be, reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 6043(c) provides that if any person acquires control of a corporation, or if there is a recapitalization or other substantial change in capital structure of a corporation, the corporation, when required by the Secretary, shall make a return setting forth the identity of the parties to the transaction, the fees involved, the changes in the capital structure involved, and such other information as the Secretary may require with respect to such transaction.

On November 18, 2002, the IRS published temporary regulations under section 6043(c) (TD 9022). The transactions covered by the reporting requirement were certain acquisitions of control and substantial changes in the capital structure of a corporation. These regulations required a corporation to attach a form to its income tax return describing these transactions and to file information returns with respect to certain shareholders in such transactions. On November 18, 2002, the IRS also published temporary regulations under section 6045, which provided for information reporting with respect to these transactions by brokers (together with the section 6043(c) temporary regulations, the 2002 temporary regulations). The 2002 temporary regulations were applicable to acquisitions of control and substantial changes in capital structure occurring after December 31, 2001, if the reporting corporation or any shareholder was required to recognize gain (if any) as a result of the application of section 367(a) as a result of the transaction.

The text of the 2002 temporary regulations also served as the text of proposed regulations set forth in a cross-referencing notice of proposed rulemaking published in the Proposed Rules section of the same issue of the **Federal Register** (2002 proposed regulations) (REG–143321–02). The provisions of the proposed regulations were proposed to apply with respect to any acquisition of control or substantial change in capital structure occurring after the date on which final regulations would be published in the **Federal Register**. The preamble to the notice of proposed rulemaking invited public comments with respect to the potential for duplicate reporting and with respect to the burden of compliance with the reporting requirements.

The IRS received a number of written public comments with respect to the information reporting requirements set forth in the 2002 temporary and proposed regulations. In addition, the IRS met with representatives of the Information Reporting Program Advisory Committee (IRPAC) and other representatives of the securities industry to discuss their concerns and suggestions for revisions to the regulations.

After considering the issues concerning affected taxpayers, the IRS has decided to revise the 2002 temporary regulations. The revised temporary regulations set forth information reporting rules that will help ensure that brokers and shareholders receive information regarding these corporate transactions, without unduly burdening brokers and other members of the securities industry.

The text of the revised temporary regulations also serves as the text of new proposed regulations (reproposed regulations) set forth in the cross-referencing notice of proposed rulemaking published in the proposed rules section of this issue of the **Federal Register**. The preamble to that notice of proposed rulemaking invites public comments with respect to the revised temporary and reproposed regulations, particularly with respect to the ability of brokers to obtain the information necessary for reporting under revised § 1.6045–3T and proposed § 1.6045–3.

Summary of Comments

The commentators noted certain gaps in the transmission of information under the 2002 temporary and proposed regulations between corporations subject to reporting and brokers. Information reporting by brokers depends upon the effective dissemination of information from the corporation to the reporting community, and broker reporting is difficult to effectuate if there are gaps in the process of transmitting this information.

As provided in the 2002 temporary regulations, a reporting corporation would file Forms 1099–CAP, ''Changes in Corporate Control and Capital Structure'', with respect to its shareholders of record, including brokers, under § 1.6043–4T(b). Brokers who received Forms 1099–CAP would then file Forms 1099–CAP with respect to their customers pursuant to § 1.6045–3T. The commentators pointed out that a large majority of U.S. publicly issued securities are actually held on behalf of brokerage firms through clearing organizations. Pursuant to the 2002 temporary regulations, clearing organizations would receive Forms 1099–CAP from the reporting corporation; however, because clearing organizations are not treated as brokers, they in turn would not be required under § 1.6045–3T to file Forms 1099–CAP with respect to their broker-members. Consequently, brokers (who otherwise had the requirement to file a Form 1099–CAP upon receiving one) would not receive Form 1099–CAP if they held their shares through a clearing organization. In addition, brokers may not be aware of the requirement to report with respect to a particular corporate transaction, or may have difficulty obtaining the information necessary for reporting. Thus, under the 2002 temporary regulations, the actual shareholders of the reporting corporation, the broker's customers, may not receive information returns to assist them in preparing their income tax returns.

To address this issue, commentators suggested an alternative procedure to ensure that brokers receive the required information for reporting and to bridge any potential gaps in the chain of reporting. Commentators recommended that the IRS act as a central repository of information necessary for brokers and issue a publication containing information needed for brokers to satisfy their reporting obligations. Brokers and commercial tax services that publish current developments could access this information, and brokers could use this information in preparing Forms 1099–CAP with respect to their customers. An alternative suggested by commentators was to require the reporting corporation to post essential information for reporting, from its Form 8806, ''Information Return for Acquisition of Control or Substantial Change in Capital Structure'', to an IRS Web site.

Based on the comments, the revised temporary regulations provide in § 1.6043–4T(a)(1)(vi) that reporting corporations may elect on Form 8806 to consent to the publication by the IRS of information necessary for brokers to file information returns with respect to their customers. To provide every corporation with the ability to make this election, the revised temporary regulations require reporting corporations to file Form 8806 even though the corporation may also report the transaction under sections 351, 355, or 368. In order to enable the IRS to publish the information timely, the revised temporary regulations require reporting corporations to file Form 8806 within 45 days after the transaction, and in no event later than January 5 of the year following the calendar year in which the transaction occurs.

The role of clearing organizations was also the subject of comments. Commentators suggested that the regulations use existing processes for distributing information to minimize the cost of and the time required for

implementing reporting by the industry. Those existing processes include the dissemination of information by clearing organizations. Under current practices, important information regarding corporate transactions (including tax information) is disseminated by clearing organizations to their members. The new temporary regulations try to take advantage of this existing information flow by continuing to require corporations to provide a Form 1099–CAP to clearing organizations that are listed as shareholders of record at the time of an acquisition of control or substantial change in capital structure. It is anticipated that clearing organizations will disseminate information obtained from the Form 1099–CAP to their members and that broker-members will use that information (and information obtained from other sources) to satisfy their own reporting obligations under revised § 1.6045–3T. Under the revised temporary regulations, a broker is required to report information if the broker knows or has reason to know, based on readily available information, that there was an acquisition of control or substantial change in capital structure with respect to shares held by the broker on behalf of a customer. If a clearing organization disseminates information identifying an acquisition of control or a substantial change in capital structure to a broker-member, the broker-member has readily available information about the transaction and must satisfy its § 1.6045–3T reporting obligations with respect to the transaction.

The revised temporary regulations provide that a reporting corporation is not required to file Forms 1099–CAP with respect to its shareholders which are clearing organizations, or to furnish Forms 1099–CAP to such clearing organizations, if the corporation makes the election to permit the IRS to publish information regarding the transaction. The IRS' publication of such information pursuant to the corporation's consent will provide readily available information for brokers, who must satisfy their reporting obligations with respect to the transaction.

Commentators also requested that brokers be permitted to use Form 1099–B, ''Proceeds from Broker and Barter Exchange Transactions,'' for reporting under § 1.6045–3T, rather than overhaul their systems to report on Form 1099–CAP. The commentators point out that this would also avoid any confusion stemming from the issuance of both types of forms to the same taxpayer in the same transaction. The revised temporary regulations provide that Form 1099–B should be used by brokers for reporting under § 1.6045–3T. With respect to transactions occurring in 2003, brokers may use either Form 1099–B or 1099–CAP.

Explanation of Provisions

The revised temporary regulations require a domestic corporation involved in certain large taxable transactions to file Form 8806 reporting and describing such transactions. The revised temporary regulations require the filing of Form 8806 within 45 days following an acquisition of control or substantial change in capital structure, as defined in §§ 1.6043–4T(c) and (d), or, if earlier, by January 5th of the year following the calendar year in which such event occurred.

The revised temporary regulations do not change the definition of *acquisition of control* or *substantial change in capital structure* as set forth in the 2002 temporary regulations. An acquisition of control of a corporation is defined as a transaction or series of related transactions in which stock representing control of that corporation is distributed by a second corporation or in which stock representing control of that corporation is acquired (directly or indirectly) by a second corporation and the shareholders of the first corporation receive cash, stock or other property. For these purposes, control is determined in accordance with the first sentence of section 304(c)(1). With certain limitations, the constructive ownership rules of section 318(a) apply to determine ownership. Acquisitions of control within an affiliated group are excepted from this definition, as are acquisitions in which the fair market value of the stock acquired in the transaction or series of related transactions is less than $100,000,000.

A corporation has a substantial change in its capital structure if the corporation in a transaction or series of related transactions (a) undergoes a recapitalization with respect to its stock, (b) redeems its stock, (c) merges, consolidates or otherwise combines with another entity or transfers substantially all of its assets to one or more entities, (d) transfers all or part of its assets to another corporation in a title 11 or similar case and, in pursuance of the plan, distributes stock or securities of that corporation, or (e) changes its identity, form or place of organization. Transactions in which the amount of any cash plus the fair market value of any property (including stock) provided to shareholders of the corporation is less than $100,000,000 are excepted from this definition, as are transactions within an affiliated group.

The revised temporary regulations require a domestic corporation involved in the specified transactions to issue, with respect to each of its shareholders of record, a Form 1099–CAP reporting the amount of any cash plus the fair market value of any property (including certain stock) exchanged in the transaction. Corporations are not required to report the fair market value of any stock provided to a shareholder if the corporation reasonably determines that the receipt of such stock would not cause the shareholder to recognize gain (if any). Corporations also are not required to report amounts distributed to certain exempt recipients. The list of exempt recipients has been expanded to include brokers.

Penalties under section 6652(l) may be imposed for failing to file required returns under section 6043(c) (including failure to file on magnetic media, as required under section 6011(e) and § 1.6011–2). The penalty under section 6652(l) is $500 for each day the failure continues, but the total amount imposed with respect to a return cannot exceed $100,000. The revised temporary regulations provide that the information returns required under these regulations shall be treated as one return for purposes of the section 6652(l) penalty, so that the penalty shall not exceed $500 per day ($100,000 in total) with respect to any acquisition of control or change in capital structure. Further, as provided in section 6652(l), such penalty does not apply if the failure is due to reasonable cause. Until regulations are promulgated under section 6652(l) to set forth specific standards for determining reasonable cause, the IRS will use the reasonable cause standards set forth in § 301.6724–1 as a guideline for determining reasonable cause.

The 2002 temporary regulations under section 6045 required a broker who, as the record holder of stock, received a Form 1099–CAP from a corporation pursuant to the reporting requirements of § 1.6043–4T to file a Form 1099–CAP with respect to the actual owner and furnish such Form 1099–CAP to the actual owner. Under the revised temporary regulations, brokers should not receive Forms 1099–CAP from a corporation and are not required to issue Forms 1099–CAP. Instead, revised § 1.6045–3T requires a broker that knows or has reason to know, based on readily available information, that a transaction described in § 1.6043–4T(c) or (d) has occurred to file an information return reporting the required information with respect to its

customers who are not exempt recipients. In order to allow brokers to use their existing information reporting systems, the new temporary regulations require Form 1099–B, Proceeds from Broker and Barter Exchange Transactions, to be used for such reporting. It is anticipated that brokers will obtain the information regarding the corporate transactions from the IRS website or an IRS publication, from information provided by clearing organizations, as well as from other sources regularly consulted within the industry.

The revised temporary regulations are effective only for acquisitions of control and substantial changes of capital structure that occur after December 31, 2002, and for which the reporting corporation or any shareholder is required to recognize gain (if any) as a result of the application of section 367(a). The cross-referencing proposed regulations published in Proposed Rules section of this issue of the **Federal Register** will apply to all acquisitions of control and substantial changes in capital structure occurring after the date that such regulations are published as final regulations (regardless of whether section 367(a) applies).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these temporary regulations is Nancy L. Rose, Office of Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

■ 2. Section 1.6043–4T is revised to read as follows:

§ 1.6043–4T Information returns relating to certain acquisitions of control and changes in capital structure (temporary).

(a) *Information returns for an acquisition of control or a substantial change in capital structure*—(1) *General rule.* If there is an acquisition of control (as defined in paragraph (c) of this section) or a substantial change in the capital structure (as defined in paragraph (d) of this section) of a domestic corporation (reporting corporation), the reporting corporation must file a completed Form 8806, ''Information Return for Acquisition of Control or Substantial Change in Capital Structure'', in accordance with the instructions to that form. Form 8806 will request the information required in paragraphs (a)(1)(i) through (vi) of this section and any other information specified in the instructions.

(i) *Reporting corporation.* Provide the name, address, and taxpayer identification number (TIN) of the reporting corporation.

(ii) *Common parent, if any, of the reporting corporation.* If the reporting corporation was a subsidiary member of an affiliated group filing a consolidated return immediately prior to the acquisition of control or the substantial change in capital structure, provide the name, address, and TIN of the common parent of that affiliated group.

(iii) *Acquiring corporation.* Provide the name, address and TIN of any corporation that acquired control of the reporting corporation within the meaning of paragraph (c) of this section or combined with or received assets from the reporting corporation pursuant to a substantial change in capital structure within the meaning of paragraph (d) of this section (acquiring corporation). State whether the acquiring corporation is foreign (as defined in section 7701(a)(5)) or is a dual resident corporation (as defined in § 1.1503–2(c)(2)). In either case, state whether the acquiring corporation was newly formed prior to its involvement in the transaction.

(iv) *Common parent, if any, of acquiring corporation.* If the acquiring corporation named in paragraph (a)(1)(iii) of this section was a subsidiary member of an affiliated group filing a consolidated return immediately prior to the acquisition of control or the substantial change in capital structure, provide the name, address, and TIN of the common parent of that affiliated group.

(v) *Information about acquisition of control or substantial change in capital structure.* Provide—

(A) A description of the transaction or transactions that gave rise to the acquisition of control or the substantial change in capital structure of the corporation;

(B) The date or dates of the transaction or transactions that gave rise to the acquisition of control or the substantial change in capital structure;

(C) A description of and a statement of the fair market value of any stock provided to the reporting corporation's shareholders in exchange for their stock if the reporting corporation reasonably determines that the shareholders are not required to recognize gain (if any) from the receipt of such stock for U.S. federal income tax purposes; and

(D) A statement of the amount of cash plus the fair market value of any property (including stock if the reporting corporation reasonably determines that its shareholders would be required to recognize gain (if any) on the receipt of such stock, but excluding stock described in paragraph (a)(1)(v)(C) of this section) provided to the reporting corporation's shareholders in exchange for each share of their stock.

(2) *Consent election.* Form 8806 will provide the reporting corporation with the ability to elect to permit the IRS to publish information that will inform brokers of the transaction and enable brokers to satisfy their reporting obligations under § 1.6045–3T. The information to be published, on the IRS website and/or in an IRS publication, would be limited to the name and address of the corporation, the date of the transaction, a description of the shares affected by the transaction, and the amount of cash and the fair market value of any property (excluding stock described in paragraph (a)(1)(v)(C) of this section) provided to each class of shareholders in exchange for a share.

(3) *Time for making return*—(i) *In general.* Form 8806 must be filed on or before the 45th day following the acquisition of control or substantial change in capital structure of the corporation, or, if earlier, on or before January 5th of the year following the calendar year in which the acquisition of control or substantial change in capital structure occurs.

(ii) *Transition rule.* If an acquisition of control or a substantial change in capital

structure of a corporation occurs after December 31, 2002, and before December 29, 2003, Form 8806 must be filed on or before January 5, 2004.

(4) *Exception where transaction is reported under section 6043(a).* No reporting is required under paragraph (a) of this section with respect to a transaction for which information is required to be reported pursuant to section 6043(a), provided the transaction is properly reported in accordance with that section.

(5) *Exception where shareholders are exempt recipients.* No reporting is required under paragraph (a) of this section if the reporting corporation reasonably determines that all of its shareholders who receive cash, stock or other property pursuant to the acquisition of control or substantial change in capital structure are exempt recipients under paragraph (b)(5) of this section.

(b) *Information returns regarding shareholders*—(1) *General rule.* A corporation that is required to file Form 8806 pursuant to paragraph (a)(1) of this section shall file a return of information on Forms 1096, ''Annual Summary and Transmittal of U.S. Information Returns'', and 1099–CAP, ''Changes in Corporate Control and Capital Structure'', with respect to each shareholder of record in the corporation (before or after the acquisition of control or the substantial change in capital structure) who receives cash, stock, or other property pursuant to the acquisition of control or the substantial change in capital structure and who is not an exempt recipient as defined in paragraph (b)(5) of this section. A corporation is not required to file a Form 1096 or 1099–CAP with respect to a clearing organization if the corporation makes the election described in paragraph (a)(2) of this section.

(2) *Time for making information returns.* Forms 1096 and 1099–CAP must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the acquisition of control or the substantial change in capital structure occurs.

(3) *Contents of return.* A separate Form 1099–CAP must be filed with respect to amounts received by each shareholder (who is not an exempt recipient as defined in paragraph (b)(5) of this section) showing—

(i) The name, address, telephone number and TIN of the reporting corporation;

(ii) The name, address and TIN of the shareholder;

(iii) The number and class of shares in the reporting corporation exchanged by the shareholder;

(iv) The aggregate amount of cash and the fair market value of any stock (other than stock described in paragraph (a)(1)(v)(C) of this section) or other property provided to the shareholder in exchange for its stock; and

(v) Such other information as may be required by the instructions to Form 1099–CAP.

(4) *Furnishing of forms to shareholders.* The Form 1099–CAP filed with respect to each shareholder must be furnished to such shareholder on or before January 31 of the year following the calendar year in which the shareholder receives cash, stock, or other property as part of the acquisition of control or the substantial change in capital structure. The Form 1099–CAP filed with respect to a clearing organization must be furnished to the clearing organization on or before January 5th of the year following the calendar year in which the acquisition of control or substantial change in capital structure occurred. A Form 1099–CAP is not required to be furnished to a clearing organization if the reporting corporation makes the election described in paragraph (a)(2) of this section.

(5) *Exempt recipients.* A corporation is not required to file a Form 1099–CAP pursuant to this paragraph (b) of this section with respect to any of the following shareholders that is not a clearing organization:

(i) Any shareholder who receives solely stock described in paragraph (a)(1)(v)(C) of this section in exchange for its stock in the corporation.

(ii) Any shareholder who is required to recognize gain (if any) as a result of the receipt of cash, stock, or other property if the corporation reasonably determines that the amount of such cash plus the fair market value of such stock and other property does not exceed $1,000. Stock described in paragraph (a)(1)(v)(C) of this section is not taken into account for purposes of this paragraph (b)(5)(ii).

(iii) Any shareholder described in paragraphs (b)(5)(iii)(A) through (M) of this section if the corporation has actual knowledge that the shareholder is described in one of paragraphs (b)(5)(iii)(A) through (M) of this section or if the corporation has a properly completed exemption certificate from the shareholder (as provided in § 31.3406(h)–3 of this chapter). The corporation also may treat a shareholder as described in paragraphs (b)(5)(iii)(A) through (M) of this section based on the applicable indicators described in § 1.6049–4(c)(1)(ii).

(A) A corporation, as described in § 1.6049–4(c)(1)(ii)(A) (except for corporations for which an election under section 1362(a) is in effect).

(B) A tax-exempt organization, as described in § 1.6049–4(c)(1)(ii)(B)(1).

(C) An individual retirement plan, as described in § 1.6049–4(c)(1)(ii)(C).

(D) The United States, as described in § 1.6049–4(c)(1)(ii)(D).

(E) A state, as described in § 1.6049–4(c)(1)(ii)(E).

(F) A foreign government, as described in § 1.6049–4(c)(1)(ii)(F).

(G) An international organization, as described in § 1.6049–4(c)(1)(ii)(G).

(H) A foreign central bank of issue, as described in § 1.6049–4(c)(1)(ii)(H).

(I) A securities or commodities dealer, as described in § 1.6049–4(c)(1)(ii)(I).

(J) A real estate investment trust, as described in § 1.6049–4(c)(1)(ii)(J).

(K) An entity registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1), as described in § 1.6049–4(c)(1)(ii)(K).

(L) A common trust fund, as described in § 1.6049–4(c)(1)(ii)(L).

(M) A financial institution such as a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, industrial loan association or bank, or other similar organization.

(iv) Any shareholder that the corporation, prior to the transaction, associates with documentation upon which the corporation may rely in order to treat payments to the shareholder as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049–5(d)(1) or presumed to be made to a foreign payee under § 1.6049–5(d)(2) or (3). For purposes of this paragraph (b)(5)(iv), the provisions in § 1.6049–5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) shall apply. The provisions of § 1.1441–1 shall apply by using the terms *corporation* and *shareholder* in place of the terms *withholding agent* and *payee* and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Internal Revenue Code. The provisions of § 1.6049–5(d) shall apply by using the terms *corporation* and *shareholder* in place of the terms *payor* and *payee.* Nothing in this paragraph (b)(5)(iv) shall be construed to relieve a corporation of its withholding obligations under section 1441.

(v) Any shareholder if, on January 31 of the year following the calendar year in which the shareholder receives cash, stock, or other property, the corporation did not know and did not have reason to know that the shareholder received such cash, stock, or other property in a transaction or series of related transactions that would result in an acquisition of control or a substantial change in capital structure.

(6) *Coordination with other sections.* In general, no reporting is required under paragraph (b) of this section with respect to amounts that are required to be reported under section 6042 or section 6045, unless the corporation knows or has reason to know that such amounts are not properly reported in accordance with those sections. A corporation must satisfy the requirements under paragraph (b) of this section with respect to any shareholder of record that is a clearing organization.

(c) *Acquisition of control of a corporation*—(1) *In general.* For purposes of this section, an acquisition of control of a corporation (first corporation) occurs if, in a transaction or series of related transactions, either—

(i) Stock representing control of the first corporation is distributed by a second corporation to shareholders of the second corporation and the fair market value of such stock on the date of distribution is $100,000,000 or more; or

(ii) (A) Before an acquisition of stock of the first corporation (directly or indirectly) by a second corporation, the second corporation does not have control of the first corporation;

(B) After the acquisition, the second corporation has control of the first corporation;

(C) The fair market value of the stock acquired in the transaction and in any related transactions as of the date or dates on which such stock was acquired is $100,000,000 or more; and

(D) The shareholders of the first corporation (determined without applying the constructive ownership rule of section 318(a)) receive cash, stock, or other property pursuant to the acquisition.

(2) *Control.* For purposes of this section, control is determined in accordance with the first sentence of section 304(c)(1).

(3) *Constructive ownership.* (i) Except as otherwise provided in this section, the constructive ownership rules of section 318(a) (except for section 318(a)(4), providing for constructive ownership through an option to acquire stock), modified as provided in section 304(c)(3)(B), shall apply for determining whether there has been an acquisition of control.

(ii) The determination of whether there has been an acquisition of control shall be made without regard to whether the person or persons from whom control was acquired retain indirect control of the first corporation under section 318(a).

(iii) For purposes of paragraph (c)(1)(ii) of this section, section 318(a) shall not apply to cause a second corporation to be treated as owning, before an acquisition of stock in a first corporation (directly or indirectly) by the second corporation, any stock that is acquired in the first corporation. For example, if the shareholders of a domestic corporation form a new holding company and then transfer their shares in the domestic corporation to the new holding company, the new holding company shall not be treated as having control of the domestic corporation before the acquisition. The new holding company acquires control of the domestic corporation as a result of the transfer. Similarly, if the shareholders of a domestic parent corporation transfer their shares in the parent corporation to a subsidiary of the parent in exchange for shares in the subsidiary, the subsidiary shall not be treated as having control of the parent before the transaction. The subsidiary acquires control of the parent as a result of the transfer.

(4) *Corporation includes group.* For purposes of this paragraph (c), if two or more corporations act pursuant to a plan or arrangement with respect to acquisitions of stock, such corporations will be treated as one corporation for purposes of this section. Whether two or more corporations act pursuant to a plan or arrangement depends on the facts and circumstances.

(5) *Section 338 election.* For purposes of this paragraph (c), an acquisition of stock of a corporation with respect to which an election under section 338 is made is treated as an acquisition of stock (and not as an acquisition of the assets of such corporation).

(d) *Substantial change in capital structure of a corporation*—(1) *In general.* A corporation has a substantial change in capital structure if it has a change in capital structure (as defined in paragraph (d)(2) of this section) and the amount of any cash and the fair market value of any property (including stock) provided to the shareholders of such corporation pursuant to the change in capital structure, as of the date or dates on which the cash or other property is provided, is $100,000,000 or more.

(2) *Change in capital structure.* For purposes of this section, a corporation has a change in capital structure if the corporation in a transaction or series of transactions—

(i) Undergoes a recapitalization with respect to its stock;

(ii) Redeems its stock (including deemed redemptions);

(iii) Merges, consolidates or otherwise combines with another corporation or transfers all or substantially all of its assets to one or more corporations;

(iv) Transfers all or part of its assets to another corporation in a title 11 or similar case and, in pursuance of the plan, distributes stock or securities of that corporation; or

(v) Changes its identity, form or place of organization.

(e) *Reporting by successor entity.* If a corporation (transferor) transfers all or substantially all of its assets to another entity (transferee) in a transaction that constitutes a substantial change in the capital structure of transferor, transferor must satisfy the reporting obligations in paragraph (a) or (b) of this section. If transferor does not satisfy the reporting obligations in paragraph (a) or (b) of this section, then transferee must satisfy those reporting obligations. If neither transferor nor transferee satisfies the reporting obligations in paragraphs (a) and (b) of this section, then transferor and transferee shall be jointly and severally liable for any applicable penalties (see paragraph (g) of this section).

(f) *Receipt of property.* For purposes of this section, a shareholder is treated as receiving property (or as having property provided to it) pursuant to an acquisition of control or a substantial change in capital structure if a liability of the shareholder is assumed in the transaction and, as a result of the transaction, an amount is realized by the shareholder from the sale or exchange of stock.

(g) *Penalties for failure to file.* For penalties for failure to file as required under this section, see section 6652(l). The information returns required to be filed under paragraphs (a) and (b) of this section shall be treated as one return for purposes of section 6652(l) and, accordingly, the penalty shall not exceed $500 for each day the failure continues (up to a maximum of $100,000) with respect to any acquisition of control or any substantial change in capital structure. Failure to file as required under this section also includes the requirement to file on magnetic media as required by section 6011(e) and § 1.6011–2. In addition, criminal penalties under sections 7203,

7206 and 7207 may apply in appropriate cases.

(h) *Examples.* The following examples illustrate the application of the rules of this section. For purposes of these examples, assume the transaction is not reported under sections 6042, 6043(a) or 6045, unless otherwise specified, and assume that the fair market value of the consideration provided to the shareholders exceeds $100,000,000. The examples are as follows:

Example 1. The shareholders of X, a domestic corporation and parent of an affiliated group, exchange their X stock for stock in Y, a newly formed foreign holding corporation. After the transaction, Y owns all the outstanding X stock. The X shareholders must recognize gain (if any) on the exchange of their stock as a result of the application of section 367(a). Because the transaction results in an acquisition of control of X, X must comply with the rules in paragraphs (a) and (b) of this section. X must file Form 8806 reporting the transaction. X must also file a Form 1099–CAP with respect to each shareholder who is not an exempt recipient showing the fair market value of the Y stock received by that shareholder, and X must furnish a copy of the Form 1099–CAP to that shareholder. If X elects on the Form 8806 to permit the IRS to publish information regarding the transaction, X is not required to file or furnish Forms 1099–CAP with respect to shareholders that are clearing organizations.

Example 2. C, a domestic corporation, and parent of an affiliated group merges into D, an unrelated domestic corporation. Pursuant to the transaction, the C shareholders exchange their C stock for D stock or for a combination of short term notes and D stock. The transaction does not satisfy the requirements of section 368, and the C shareholders must recognize gain (if any) on the exchange. Because the transaction results in a substantial change in the capital structure of C, C (or D as the successor to C) must comply with the rules in paragraphs (a) and (b) of this section. C must file Form 8806. C (or D as the successor to C) also must file a Form 1099–CAP with respect to each shareholder who is not an exempt recipient showing the fair market value of the short term notes and the fair market value of the D stock provided to that shareholder. In addition, C (or D) must furnish a copy of the Form 1099–CAP to that shareholder.

Example 3. (i) The facts are the same as in *Example 2*, except that C reasonably determines that—

(A) The transaction satisfies the requirements of section 368;

(B) The C shareholders who exchange their C stock solely for D stock will not be required to recognize gain (if any) on the exchange; and

(C) The C shareholders who exchange their C stock for a combination of short term notes and D stock will be required to recognize gain (if any) on the exchange solely with respect to the receipt of the short term notes.

(ii) C is required to file Form 8806 under paragraph (a) of this section. C (or D as the successor to C) must also comply with the rules in paragraph (b) of this section. With respect to each shareholder who receives a combination of short term notes and D stock, and who is not an exempt recipient, C (or D) must file a Form 1099–CAP showing the fair market value of the short term notes provided to the shareholder, and C (or D) must furnish a copy of the Form 1099–CAP to that shareholder. The Form 1099–CAP should not show the fair market value of the D stock provided to the shareholder. C and D are not required to file and furnish Forms 1099–CAP with respect to shareholders who receive only D stock in exchange for their C stock.

Example 4. The facts are the same as in *Example 3,* except C hires a transfer agent to effectuate the exchange. The transfer agent is treated as a broker under section 6045 and is required to report the fair market value of the short term notes provided to C's shareholders under § 1.6045–3T. Under paragraph (b)(6) of this section, C and D are not required to file information returns under paragraph (b) of this section with respect to a shareholder of record, unless C or D knows or has reason to know that the transfer agent does not satisfy its information reporting obligation under § 1.6045–3T with respect to that shareholder. Thus, if the transfer agent satisfies its information reporting requirements under § 1.6045–3T with respect to shareholder I, an individual who receives both D stock and short term notes, C and D are not required to file a Form 1099–CAP with respect to I. Conversely, if the transfer agent does not have an information reporting obligation under § 1.6045–3T with respect to one of C's shareholder's of record (for example, a clearing organization that is an exempt recipient under § 1.6045–3T(b)(ii)), or if C or D knows or has reason to know that the transfer agent has not satisfied its information reporting requirement with respect to a shareholder, then C (or D) must provide a Form 1099–CAP to that shareholder.

(i) *Effective date.* This section applies to any acquisition of control and any substantial change in capital structure occurring after December 31, 2001, if the reporting corporation or any shareholder is required to recognize gain (if any) as a result of the application of section 367(a) as a result of the transaction. However, paragraphs (a) through (h) of this section apply to acquisitions of control and substantial changes in capital structure occurring after December 31, 2002, if the reporting corporation or any shareholder is required to recognize gain (if any) as a result of the application of section 367(a) as a result of the transaction. For transactions prior to January 1, 2003, see § 1.6043–4T as published in 26 CFR part 1 (revised as of April 1, 2003). This section expires on November 14, 2005.

■ 3. Section 1.6045–3T is revised to read as follows:

§ 1.6045–3T Information reporting for an acquisition of control or a substantial change in capital structure (temporary).

(a) *In general.* Any broker (as defined in § 1.6045–1(a)(1)) that holds shares on behalf of a customer in a corporation that the broker knows or has reason to know based on readily available information (including, for example, information from a clearing organization or from information published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter)) has engaged in a transaction described in § 1.6043–4T(c) (acquisition of control) or § 1.6043–4T(d) (substantial change in capital structure), shall file a return of information with respect to the customer, unless the customer is an exempt recipient as defined in paragraph (b) of this section.

(b) *Exempt recipients.* A broker is not required to file a return of information under this section with respect to the following customers:

(1) Any customer who receives only cash in exchange for its stock in the corporation, which must be reported by the broker pursuant to § 1.6045–1(a).

(2) Any customer who is an exempt recipient as defined in § 1.6043–4T(b)(5) or § 1.6045–1(c)(3)(i).

(c) *Form, manner and time for making information returns.* The return required by paragraph (a) of this section must be on Forms 1096, ''Annual Summary and Transmittal of U.S. Information Returns'', and 1099–B, ''Proceeds from Broker and Barter Exchange Transactions,'' or on an acceptable substitute statement. Such forms must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the acquisition of control or the substantial change in capital structure occurs.

(d) *Contents of return.* A separate Form 1099–B must be prepared for each customer showing—

(1) The name, address and taxpayer identification number (TIN) of the customer;

(2) The name and address of the corporation which engaged in the transaction described in § 1.6043–4T(c) or (d);

(3) The number and class of shares in the corporation exchanged by the customer;

(4) The aggregate amount of cash and the fair market value of any stock (other than stock described in 1.6043–4T(a)(1)(v)(C)) or other property provided to the customer in exchange for its stock; and

(5) Such other information as may be required by Form 1099–B.

(e) *Furnishing of forms to actual owners.* The Form 1099–B prepared for

each customer must be furnished to the customer on or before January 31 of the year following the calendar year in which the customer receives stock, cash or other property.

(f) *Single Form 1099.* If a broker is required to file a Form 1099–B with respect to a customer under both this § 1.6045–3T and § 1.6045–1(b) with respect to the same transaction, the broker may satisfy the requirements of both sections by filing and furnishing one Form 1099–B that contains all the relevant information, as provided in the instructions to Form 1099–B.

(g) *Effective date.* (1) This section applies with respect to any acquisition of control and any substantial change in capital structure occurring after December 31, 2001, if the reporting corporation or any shareholder is required to recognize gain (if any) as a result of the application of section 367(a) as a result of the transaction. However, paragraphs (a) through (f) of this section apply to acquisitions of control and substantial changes in capital structure occurring after December 31, 2002, if the reporting corporation or any shareholder is required to recognize gain (if any) as a result of the application of section 367(a) as a result of the transaction. For transactions prior to that date, see § 1.6045–3T as published in 26 CFR Part 1 (revised as of April 1, 2003). This section expires on November 14, 2005.

(2) For any acquisition of control or any substantial change in capital structure occurring during the 2003 calendar year, a broker may elect to satisfy the requirements of this section by using Form 1099–CAP in lieu of Form 1099–B.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 12, 2003.

Gregory Jenner,

Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 03–31361 Filed 12–29–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9109]

RIN 1545–AY97

Establishing Defenses to the Imposition of the Accuracy-Related Penalty

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that affect the defenses available to the imposition of the accuracy-related penalty when taxpayers fail to disclose reportable transactions or fail to disclose that they have taken a return position based on the conclusion that a regulation is invalid. The final regulations are intended to promote disclosure of reportable transactions and positions based on the conclusion that a regulation is invalid by narrowing a taxpayer's ability to establish good faith and reasonable cause as a defense. The final regulations also clarify the existing regulations with respect to the facts and circumstances to be considered in determining whether a taxpayer acted with reasonable cause and in good faith.

DATES: *Effective Date:* These regulations are effective December 30, 2003.

Applicability Dates: These regulations apply to returns filed after December 31, 2002, with respect to transactions entered into on or after January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Jamie G. Bernstein at (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1. On December 31, 2002, the IRS and the Treasury Department published in the **Federal Register** (67 FR 79894) proposed amendments to the regulations (REG–126016–01) under sections 6662 and 6664 of the Internal Revenue Code (Code). No public hearing was requested or held. Written and electronic comments responding to the notice of proposed rulemaking were received. After consideration of all the comments, the proposed regulations under section 6662 and 6664 are adopted as amended by this Treasury decision. The revisions are discussed below.

Explanation of Revisions and Summary of Comments

These final regulations generally adopt the provisions of the proposed regulations. The changes to the proposed regulations reflected in these final regulations, as well as comments received, are discussed below.

1. Applicability of Disclosure Regulations Under Section 6011 and Effective Date

These final regulations were proposed to apply to returns filed after December 30, 2002, with respect to transactions entered into on or after January 1, 2003, to coincide with temporary regulations relating to disclosure, promulgated under section 6011 and applicable for transactions entered into on or after January 1, 2003 (the Temporary Disclosure Regulations). The Temporary Disclosure Regulations were published in the **Federal Register** on October 22, 2002. *See* 67 FR 64799 and 67 FR 64840 (October 22, 2002). Final regulations under section 6011 were published on March 4, 2003, and apply to transactions entered into on or after February 28, 2003. *See* 68 FR 10161, 10163 (March 4, 2003) (the Final Disclosure Regulations). The Final Disclosure Regulations define reportable transactions more narrowly than the Temporary Disclosure Regulations. For transactions entered into on or after January 1, 2003, and before February 28, 2003, the taxpayer may apply the Final Disclosure Regulations instead of the Temporary Disclosure Regulations. Revisions throughout these final regulations refer to the definition of reportable transaction in § 1.6011–4(b) or 1.6011–4T(b), as applicable, to accommodate situations in which the Temporary Disclosure Regulations apply to a transaction.

One commentator suggested that the final regulations under sections 6662 and 6664 apply to transactions entered into on or after February 28, 2003, because that date is the effective date for the Final Disclosure Regulations. *See* 68 FR 10161, 10163 (March 4, 2003). The final regulations do not adopt this recommendation. The proposed regulations under sections 6662 and 6664 provided adequate notice that failure to comply with the Temporary or Final Disclosure Regulations could limit the penalty defenses available under sections 6662 and 6664.

2. Applicability of the Reasonable Cause and Good Faith Defense

The proposed regulations prohibited reliance on tax advice to establish a reasonable cause and good faith defense

to the accuracy-related penalties if a taxpayer failed to disclose a reportable transaction pursuant to the Final or Temporary Disclosure Regulations, as applicable. Three commentators suggested that it is inappropriate to preclude a taxpayer from relying on the advice of a tax advisor in circumstances in which the taxpayer does not lack good faith in failing to disclose a reportable transaction. The Treasury Department and the IRS believe that good faith requires taxpayers to be forthcoming and that taxpayers should construe the Final and Temporary Disclosure Regulations broadly in favor of disclosure. Nonetheless, there may be circumstances in which a taxpayer does not lack good faith in failing to disclose a reportable transaction. Accordingly, the final regulations revise the proposed regulations to provide that a taxpayer's failure to disclose a reportable transaction is a strong indication that the taxpayer failed to act in good faith, which would bar relief under section 6664(c).

These final regulations also adopt the requirement in the proposed regulations that a taxpayer may not rely on an opinion or advice that a regulation is invalid to establish that the taxpayer acted with reasonable cause and in good faith unless the taxpayer adequately disclosed its position that the regulation is invalid. One commentator suggested that this provision is inappropriate because it would be difficult for a taxpayer to discern whether its position is contrary to a regulation without consulting with a tax advisor. This suggestion was rejected because the requirement of revised § 1.6664–4(c)(2)(iii) does not apply to situations in which a taxpayer has taken a position that is merely contrary to a regulation, but instead applies to situations in which a taxpayer has taken a return position based on advice or an opinion that a regulation is invalid.

3. Definition of Advice

One commentator suggested that the proposed regulations more clearly define what constitutes professional advice or opinion. Section 1.6664–4(c)(2) defines the term *advice.* Neither the proposed nor the final regulations change the definition of the term advice.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jamie Bernstein, Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

■ 2. Section 1.6662–0 is amended by adding an entry for § 1.6662–2(d)(5) to read as follows:

§ 1.6662–0 Table of contents.

* * * * *

§ 1.6662–2 Accuracy-related penalty.

* * * * *

(d) * * *

(5) Returns filed after December 31, 2002.

* * * * *

■ 3. Section 1.6662–2 is amended by:

■ 1. Revising the first sentence of paragraph (d)(2).

■ 2. Adding new paragraph (d)(5).

The revision and addition read as follows:

§ 1.6662–2 Accuracy-related penalty.

* * * * *

(d) * * * (1) * * *

(2) * * * Except as provided in paragraphs (d)(3), (4) and (5) of this section and the last sentence of this paragraph (d)(2), the provisions of §§ 1.6662–1 through 1.6662–4 and § 1.6662–7 (as revised to reflect the changes made to the accuracy-related penalty by the Omnibus Budget Reconciliation Act of 1993) and of § 1.6662–5 apply to returns the due date of which (determined without regard to extensions of time for filing) is after December 31, 1993. * * *

* * * * *

(5) *For returns filed after December 31, 2002.* Sections 1.6662–3(a), 1.6662–3(b)(2) and 1.6662–3(c)(1) (relating to adequate disclosure) apply to returns filed after December 31, 2002, with respect to transactions entered into on or after January 1, 2003. Except as provided in paragraph (d)(1) of this section, §§ 1.6662–3(a), 1.6662–3(b)(2) and 1.6662–3(c)(1) (as contained in 26 CFR part 1 revised April 1, 2003) apply to returns filed with respect to transactions entered into prior to January 1, 2003.

■ 4. Section 1.6662–3 is amended by revising paragraph (a), the last sentence of paragraph (b)(2), and the first sentence of paragraph (c)(1) to read as follows:

§ 1.6662–3 Negligence or disregard of rules or regulations.

(a) *In general.* If any portion of an underpayment, as defined in section 6664(a) and § 1.6664–2, of any income tax imposed under subtitle A of the Internal Revenue Code that is required to be shown on a return is attributable to negligence or disregard of rules or regulations, there is added to the tax an amount equal to 20 percent of such portion. The penalty for disregarding rules or regulations does not apply, however, if the requirements of paragraph (c)(1) of this section are satisfied and the position in question is adequately disclosed as provided in paragraph (c)(2) of this section (and, if the position relates to a reportable transaction as defined in § 1.6011–4(b) (or § 1.6011–4T(b), as applicable), the transaction is disclosed in accordance with § 1.6011–4 (or § 1.6011–4T, as applicable)), or to the extent that the reasonable cause and good faith exception to this penalty set forth in § 1.6664–4 applies. In addition, if a position with respect to an item (other than with respect to a reportable transaction, as defined in § 1.6011–4(b) or § 1.6011–4T(b), as applicable) is contrary to a revenue ruling or notice (other than a notice of proposed rulemaking) issued by the Internal Revenue Service and published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), this penalty does not apply if the position has a realistic possibility of being sustained on its merits. See § 1.6694–2(b) of the income tax return preparer penalty regulations for a description of the realistic possibility standard.

(b) * * *

(2) * * * Nevertheless, a taxpayer who takes a position (other than with respect to a reportable transaction, as

defined in § 1.6011–4(b) or § 1.6011–4T(b), as applicable) contrary to a revenue ruling or notice has not disregarded the ruling or notice if the contrary position has a realistic possibility of being sustained on its merits.

* * * * *

(c) * * * (1) * * * No penalty under section 6662(b)(1) may be imposed on any portion of an underpayment that is attributable to a position contrary to a rule or regulation if the position is disclosed in accordance with the rules of paragraph (c)(2) of this section (and, if the position relates to a reportable transaction as defined in § 1.6011–4(b) (or § 1.6011–4T(b), as applicable), the transaction is disclosed in accordance with § 1.6011–4 (or § 1.6011–4T, as applicable)) and, in case of a position contrary to a regulation, the position represents a good faith challenge to the validity of the regulation. * * *

* * * * *

§ 1.6662–4 [Amended]

■ 5. Section 1.6662–4(g)(1)(iv) is amended by removing the reference to ''§ 1.6664–4(e)'' and adding the reference ''§ 1.6664–4(f)'' in its place.

■ 6. Section 1.6664–0 is amended by:

■ 1. Adding entries for § 1.6664–1 (b)(2)(i), (b)(2)(ii) and 1.6664–4(c)(1)(iii).

■ 2. Redesignating the entries for § 1.6664–4(d), (e), (f), and (g), as § 1.6664–4(e), (f), (g), and (h), respectively.

■ 3. Adding a new entry for § 1.6664–4(d).

The additions read as follows:

§ 1.6664–0 Table of contents.

* * * * *

§ 1.6664–1 Accuracy-related and fraud penalties, definitions and special rules.

* * * * *

(b) * * *

(2) * * *

(i) For returns due after September 1, 1995.

(ii) For returns filed after December 31, 2002.

* * * * * .

§ 1.6664–4 Reasonable cause and good faith exception to section 6662 penalties.

* * * * *

(c) * * *

(1) * * *

(iii) Reliance on the invalidity of a regulation.

(d) Underpayments attributable to reportable transactions.

* * * * *

■ 7. Section 1.6664–1 is amended by:

■ 1. Redesignating the text of paragraph (b)(2) as (b)(2)(i).

■ 2. Adding a new paragraph heading for newly designated paragraph (b)(2)(i).

■ 3. Adding paragraph (b)(2)(ii).

The revisions and additions are as follows:

§ 1.6664–1 Accuracy-related and fraud penalties; definitions and special rules.

* * * * *

(b) * * * (1) * * *

(2) * * * (i) *For returns due after September 1, 1995.* * * *

(ii) *For returns filed after December 31, 2002.* Sections 1.6664–4(c) (relating to relying on opinion or advice) and (d) (relating to underpayments attributable to reportable transactions) apply to returns filed after December 31, 2002, with respect to transactions entered into on or after January 1, 2003. Except as provided in paragraph (b)(2)(i) of this section, § 1.6664–4 (as contained in 26 CFR part 1 revised April 1, 2003) applies to returns filed with respect to transactions entered into before January 1, 2003.

■ 8. Section 1.6664–4 is amended by:

■ 1. Removing the language ''(g) of this section'' from the last sentence of paragraph (a) and adding the language ''(h) of this section'' in its place.

■ 2. Revising paragraph (c)(1) introductory text and the last sentence of paragraph (c)(1)(i).

■ 3. Adding paragraph (c)(1)(iii).

■ 4. Redesignating paragraphs (d), (e), (f) and (g) as paragraphs (e), (f), (g) and (h), respectively.

■ 5. Adding a new paragraph (d).

■ 6. Removing the language ''(e)'' wherever it appears in newly designated paragraphs (f)(1), (f)(2)(i), (f)(2)(ii), (f)(3), and (f)(4) and adding the language ''(f)'' in its place.

■ 7. Removing the language ''(g)'' wherever it appears in newly designated paragraphs (h)(1), (h)(1)(i), (h)(2), and (h)(3) and adding the language ''(h)'' in its place.

The revisions and additions read as follows:

§ 1.6664–4 Reasonable cause and good faith exception to section 6662 penalties.

* * * * *

(c) *Reliance on opinion or advice*—(1) *Facts and circumstances; minimum requirements.* All facts and circumstances must be taken into account in determining whether a taxpayer has reasonably relied in good faith on advice (including the opinion of a professional tax advisor) as to the treatment of the taxpayer (or any entity, plan, or arrangement) under Federal tax law. For example, the taxpayer's education, sophistication and business experience will be relevant in determining whether the taxpayer's reliance on tax advice was reasonable and made in good faith. In no event will a taxpayer be considered to have reasonably relied in good faith on advice (including an opinion) unless the requirements of this paragraph (c)(1) are satisfied. The fact that these requirements are satisfied, however, will not necessarily establish that the taxpayer reasonably relied on the advice (including the opinion of a tax advisor) in good faith. For example, reliance may not be reasonable or in good faith if the taxpayer knew, or reasonably should have known, that the advisor lacked knowledge in the relevant aspects of Federal tax law.

(i) * * * In addition, the requirements of this paragraph (c)(1) are not satisfied if the taxpayer fails to disclose a fact that it knows, or reasonably should know, to be relevant to the proper tax treatment of an item.

* * * * *

(iii) *Reliance on the invalidity of a regulation.* A taxpayer may not rely on an opinion or advice that a regulation is invalid to establish that the taxpayer acted with reasonable cause and good faith unless the taxpayer adequately disclosed, in accordance with § 1.6662–3(c)(2), the position that the regulation in question is invalid.

(d) *Underpayments attributable to reportable transactions.* If any portion of an underpayment is attributable to a reportable transaction, as defined in § 1.6011–4(b) (or § 1.6011–4T(b), as applicable), then failure by the taxpayer to disclose the transaction in accordance with § 1.6011–4 (or § 1.6011–4T, as applicable) is a strong indication that the taxpayer did not act in good faith with respect to the portion of the underpayment attributable to the reportable transaction.

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 18, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–31899 Filed 12–29–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9108]

RIN 1545–BC76

Confidential Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: These final regulations modify and clarify the rules relating to confidential transactions under the Income Tax Regulations, and make minor conforming changes to the list maintenance rules under the Procedure and Administration Regulations. These regulations affect taxpayers participating in reportable transactions and persons responsible for maintaining and furnishing lists of investors in reportable transactions.

DATES: *Effective Date:* These regulations are effective December 29, 2003.

Applicability Dates: For dates of applicability, see § 1.6011–4(h) and § 301.6112–1.

FOR FURTHER INFORMATION CONTACT: Tara P. Volungis or Charlotte Chyr, 202–622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these regulations have been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control numbers 1545–1685 and 1545–1686.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document amends 26 CFR parts 1 and 301 by modifying and clarifying the rules relating to the disclosure of reportable transactions by certain taxpayers on their Federal income tax returns under section 6011 and by making conforming changes to the rules under section 6112.

On October 17, 2002, the IRS issued temporary and proposed regulations modifying the rules under sections 6011, 6111, and 6112 (TD 9017, REG–103735–00, REG–154117–02, REG–154116–02, REG–154115–02, REG–154429–02, REG–154423–02, REG–154426–02, REG–110311–98; TD 9018, REG–103736–00) (the October 2002 regulations). The October 2002 regulations were published in the **Federal Register** (67 FR 64799, 67 FR 64840; 67 FR 64807, 67 FR 64842) on October 22, 2002. On December 11, 2002, and on January 7, 2003, the IRS and Treasury Department held a public hearing on these regulations. On February 28, 2003, the IRS issued final regulations under sections 6011, 6111, and 6112 (TD 9046) (the February 2003 regulations). The February 2003 regulations were published in the **Federal Register** (68 FR 10161) on March 4, 2003.

Since finalizing the disclosure regulations, the IRS and Treasury Department have received numerous comments concerning the confidentiality filter. The IRS and Treasury Department received requests to exclude certain transactions from the scope of the confidentiality filter, and requests to modify the language of the regulation itself. After reviewing these comments, the IRS and Treasury Department have decided to narrow the confidentiality filter under § 1.6011–4(b)(3).

Explanation of Provisions

Section 1.6011–4(b)(3) provides that certain transactions are identified as confidential transactions. Confidential transactions are reportable transactions that are subject to the disclosure rules under § 1.6011–4 and the list maintenance rules under § 301.6112–1. Currently, a confidential transaction is a transaction that is offered under conditions of confidentiality. The confidentiality filter generally provides a presumption of non-confidentiality if the taxpayer receives written authorization to disclose the tax treatment and tax structure of the transaction.

The IRS and Treasury Department have concluded that the confidentiality filter should be limited to situations in which an advisor is paid a large fee and imposes a limitation on disclosure that protects the confidentiality of the advisor's tax strategies. The IRS and Treasury Department believe that the confidentiality filter should not apply to transactions in which confidentiality is imposed by a party to the transaction acting in such capacity. Accordingly, the confidentiality filter has been narrowed to reflect this policy. Further, the exceptions and presumption language have been removed because the IRS and Treasury Department have concluded that they no longer are necessary under this narrower rule. Conforming changes have been made to the rules under § 301.6112–1.

The IRS and Treasury Department also have made minor clarifying changes under § 1.6011–4. The regulations clarify that a return includes amended returns for purposes of determining when a disclosure must be made. The IRS and Treasury Department will continue to accept comments and will make other changes as appropriate.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined pursuant to 5 U.S.C. 553(b)(B) that notice and public procedure are unnecessary and contrary to the public interest. These final regulations substantially reduce taxpayer compliance burdens by limiting the scope of transactions subject to the disclosure requirements of § 1.6011–4. For the same reason, pursuant to 5 U.S.C. 553(d)(1) and (3) a delayed effective date for these final regulations is not required. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. However, the IRS and Treasury Department welcome comments on whether these final regulations impose additional costs and compliance burdens on small businesses. Any such comments should provide specific information concerning those costs and burdens. In addition, the IRS and Treasury Department will consider holding a public hearing concerning these regulations if there is sufficient interest from affected parties. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Tara P. Volungis and Charlotte Chyr, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Administrative practice and procedure, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

■ **2.** Section 1.6011–4 is amended as follows:
■ 1. Paragraph (b)(3) is revised.
■ 2. Paragraph (e)(1) is amended by removing the second sentence and adding two new sentences in its place.
■ 3. Paragraphs (e)(2)(i) and (h) are revised.

The revisions and additions read as follows:

§ 1.6011–4 Requirement of statement disclosing participation in certain transactions by taxpayers.

* * * * *

(b) * * *

(3) *Confidential transactions*—(i) *In general.* A confidential transaction is a transaction that is offered to a taxpayer under conditions of confidentiality and for which the taxpayer has paid an advisor a minimum fee.

(ii) *Conditions of confidentiality.* A transaction is considered to be offered to a taxpayer under conditions of confidentiality if the advisor who is paid the minimum fee places a limitation on disclosure by the taxpayer of the tax treatment or tax structure of the transaction and the limitation on disclosure protects the confidentiality of that advisor's tax strategies. A transaction is treated as confidential even if the conditions of confidentiality are not legally binding on the taxpayer. A claim that a transaction is proprietary or exclusive is not treated as a limitation on disclosure if the advisor confirms to the taxpayer that there is no limitation on disclosure of the tax treatment or tax structure of the transaction.

(iii) *Minimum fee.* For purposes of this paragraph (b)(3), the minimum fee is:

(A) $250,000 for a transaction if the taxpayer is a corporation.

(B) $50,000 for all other transactions unless the taxpayer is a partnership or trust, all of the owners or beneficiaries of which are corporations (looking through any partners or beneficiaries that are themselves partnerships or trusts), in which case the minimum fee is $250,000.

(iv) *Determination of minimum fee.* For purposes of this paragraph (b)(3), a minimum fee includes all fees for a tax strategy or for services for advice (whether or not tax advice) or for the implementation of a transaction. These fees include consideration in whatever form paid, whether in cash or in kind, for services to analyze the transaction (whether or not related to the tax consequences of the transaction), for services to implement the transaction, for services to document the transaction, and for services to prepare tax returns to the extent that the fees exceed the fees customary for return preparation. For purposes of this paragraph (b)(3), a taxpayer also is treated as paying fees to an advisor if the taxpayer knows or should know that the amount it pays will be paid indirectly to the advisor, such as through a referral fee or fee-sharing arrangement. A fee does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. For example, a fee does not include reasonable charges for the use of capital or the sale or use of property.

(v) *Related parties.* For purposes of this paragraph (b)(3), persons who bear a relationship to each other as described in section 267(b) or 707(b) will be treated as the same person.

(e) * * *

(1) * * * In addition, the disclosure statement for a reportable transaction must be attached to each amended return that reflects a taxpayer's participation in a reportable transaction. A copy of the disclosure statement must be sent to OTSA at the same time that any disclosure statement is first filed by the taxpayer. * * *

(2) * * *

(i) *Listed transactions.* If a transaction becomes a listed transaction after the filing of a taxpayer's tax return (including an amended return) reflecting either tax consequences or a tax strategy described in the published guidance listing the transaction (or a tax benefit derived from tax consequences or a tax strategy described in the published guidance listing the transaction) and before the end of the period of limitations for the final return (whether or not already filed) reflecting the tax consequences, tax strategy, or tax benefit, then a disclosure statement must be filed as an attachment to the taxpayer's tax return next filed after the date the transaction is listed regardless of whether the taxpayer participated in the transaction in that year.

* * * * *

(h) *Effective dates.* This section applies to Federal income tax returns filed after February 28, 2000. However, paragraphs (b)(3), (e)(1), and (e)(2)(i) of this section apply to transactions entered into on or after December 29, 2003. All the rules in this section may be relied upon for transactions entered into on or after January 1, 2003, and before December 29, 2003. Otherwise, the rules that apply with respect to transactions entered into before December 29, 2003, are contained in § 1.6011–4 in effect prior to December 29, 2003, (see 26 CFR part 1 revised as of April 1, 2003).

PART 301—PROCEDURE AND ADMINISTRATION

■ 3. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ 4. § 301.6112–1, paragraph (c)(3)(iii) is amended by revising the first sentence, removing the language ''for advice or implementation'' from the third sentence, and adding two sentences after the third sentence, to read as follows:

§ 301.6112–1 Requirement to prepare, maintain, and furnish lists with respect to potentially abusive tax shelters.

* * * * *

(c) * * *

(3) * * *

(iii) * * * In determining whether the minimum fee threshold is satisfied, all fees for a tax strategy or for services for advice (whether or not tax advice) or for the implementation of a transaction that is a potentially abusive tax shelter are taken into account. * * * A fee does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. For example, a fee does not include reasonable charges for the use of capital or the sale or use of property. * * *

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 18, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–31900 Filed 12–29–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–03–023]

RIN 1625–AA00

Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, MD

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the established safety zone at the Cove Point Liquefied Natural Gas (LNG) Terminal. This is in response to the re-opening of the terminal by Dominion Corporation on July 25, 2003. This safety and security zone is necessary to help ensure public safety and security. The zone will prohibit vessels and persons from entering a well-defined area around the Cove Point LNG Terminal.

DATES: This rule is effective January 29, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–03–023 and are available for inspection or copying at Commander, U. S. Coast Guard Activities, 2401 Hawkins Point Road, Building 70, Port Safety, Security and Waterways Management Branch, Baltimore, Maryland, 21226–1791 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dulani Woods, at Coast Guard Activities Baltimore, Port Safety, Security and Waterways Management Branch, at telephone number (410) 576–2513.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 20, 2003, we published a notice of proposed rulemaking (NPRM) entitled ''Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, Maryland'' in the **Federal Register** [68 FR 13647]. We received five written comments on the proposed rule. On May 15, 2003, we published a notice of public meeting entitled ''Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, Maryland'' in the **Federal Register** [68 FR 26247]. On June 5, 2003, a public meeting was held at the Holiday Inn, Solomons, Maryland. We received a total of 12 written comments and 12 oral comments on the proposed rule.

Background and Purpose

As a result of re-opening of the LNG terminal at Cove Point, MD, the Coast Guard has re-evaluated the safety zone established in 33 CFR 165.502. This safety zone was established during the initial operation of the terminal in 1979 and includes both the terminal and associated LNG vessels. To better manage the safety and security of the LNG terminal, this rule incorporates necessary security provisions and changes the size of the existing safety zone. This rule establishes a combined safety zone and security zone for the LNG terminal at Cove Point.

The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks [67 FR 58317 (September 13, 2002) Continuing national emergency with respect to terrorist attacks], [67 FR 59447 (September 20, 2002) Continuing national emergency with respect to persons who commit, threaten to commit or support terrorism]. The President also has found pursuant to law, including the Act of June 15, 1917, as amended August 9, 1950, by the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the terrorist attacks [E.O. 13273, 67 FR 56215 (September 3, 2002) Security endangered by disturbances in international relations of U.S. and such disturbances continue to endanger such relations]. As such, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Cove Point LNG Terminal. 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. The Coast Guard also has authority to establish security zones pursuant to section 104 of the Maritime Transportation Security Act (MTSA) of November 25, 2002, and by implementing regulations promulgated by the President in subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations.

Discussion of Comments

The Coast Guard received 12 written comments and 12 oral comments on the proposed rule.

Nine comments requested a reduction in the size of the proposed 500-yard zone to 50 or 200 yards. Three comments approved of the size of the proposed 500-yard safety and security zone. One comment stated that the NPRM does not sufficiently address the need for such security provisions. The comment stated that the mere existence of an exclusion zone does ''absolutely nothing'' to further its stated goals, and the mere implementation of a zone does little to impede a ''would be'' terrorist. The commenter does not believe that the terminal is a terrorist target. The commenter further stated that 33 CFR part 6, the Maritime Transportation Security Act, the Magnuson Act, and the Espionage Act do not apply. The Coast Guard has determined (68 FR 39249, July 1, 2003, Implementation of National Security Initiatives) that significant public benefit accrues if a transportation security incident, as defined in the MTSA, is avoided or the effects of a transportation security incident can be reduced.

These public benefits include human lives saved, pollution avoided, and ''public'' infrastructure, such as national landmarks and utilities, protected. The safety and security zone serves the purpose of lowering the risk of a transportation security incident and therefore, is a necessary provision. LNG facilities have been determined to be at high risk for a transportation security incident and therefore are subject to such security and safety regulations.

Six comments addressed the size of the zone as a question of balancing public access for fishing and the need for terminal security. Two comments emphasized the need for balance between fishing and security. Three comments stated that the existing 50-yard onshore/200 yard offshore zone is sufficient for security and that fishing should be allowed when a vessel is not docked at the facility. One comment suggested moving the western border to 250 yards to provide fishing and crabbing opportunities along the 13–32 foot drop-off. The Coast Guard recognizes the need for balance between terminal security and access to the waterway for fishing and other uses. Since the terminal has not been in operation, the Coast Guard has not enforced the current zone under 33 CFR 165.502 [67 FR 70696, November 26, 2002, Safety Zone; Cove Point; Chesapeake Bay, MD, Notice of enforcement of regulation]. Recreational

and commercial vessel operators have been using the area on a regular basis for fishing, passenger tours, and fishing parties.

The reopening of the terminal warrants reevaluation of the current zone, and the increased risk of a transportation security incident warrants the enforcement of the security zone. The Coast Guard has evaluated and weighed the comments it has received regarding this security zone and has addressed the concerns of those who may be affected by it. The purpose of the safety zone is to protect the public from the hazards associated with the cryogenic liquid that is always present at the offshore terminal. The purpose of the security zone is to lower the risk of a potential transportation security incident. The Coast Guard believes that a 500-yard safety and security zone is the appropriate size to provide for both public safety and security of the terminal. In addition, the Coast Guard has coordinated its security evaluation with federal, State, and local agencies prior to the issuance of this rule.

Five comments offered suggestions. Two comments requested that the local community, Coast Guard, and Dominion Corporation come up with an artificial reef somewhere nearby to replace the ''gas docks.'' Another comment stated that security can be managed by painting the charter fleet international orange and letting the charter fleet fish near the docks in the hope that they would defend the docks. Another comment stated that the Coast Guard or Dominion Corporation should provide notice of scheduled LNG vessel arrivals. Another comment suggested marking the zone with buoys. The Coast Guard appreciates these five suggestions, but considers them beyond the scope of this rulemaking.

Discussion of Changes in Rule

The final rule remains the same as the rule we proposed in our NPRM with the exception of the elimination of the paragraph on authority. Since publication of the NPRM, the authorities citation for 33 CFR part 165 has changed. This new authorities citation for the part eliminates the need to cite to 33 U.S.C. 1226 in § 165.502. Therefore we have eliminated the authority paragraph and redesignated the enforcement paragraph as paragraph (c).

Regulatory Evaluation

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

There will be adverse effects on members of the local maritime community that have been using the area as a fishing ground. Since the terminal has not been in operation, the Coast Guard has not enforced the current zone under 33 CFR 165.502 (see notice of enforcement, 67 FR 70696, November 26, 2002). Recreational and commercial vessel operators have been using the area on a regular basis for recreational fishing, commercial fishing, passenger tours, and fishing parties. However, enforcement of the current zone would also prohibit these recreational and commercial vessel operators from using this area.

Eleven comments addressed the potential economic impact of this rule on the local fishing industry. Three comments offered separate business cost estimates as a result of the implementation and enforcement of this exclusion zone. One commenter estimated that each year between May 15 and November 15, 70 boats per day fish at the ''gas docks.'' The commenter further estimated that implementation of this safety and security zone would result in an economic impact to the local economy of $1.986 million for his business alone, and a total economic impact of at least $9 million per year for all vessels fishing there. Additionally, the commenter estimated that a 500-yard zone would totally eliminate fishing around this popular fishing area. By closing this fishing area the commenter believes anglers will place undue fishing pressure on other fishing areas. Another comment cited the Maryland Department of Natural Resources figures that estimate the economic impact of the Cove Point LNG fishery to be $5–$10 million per year. A third comment stated that its business gets half its fishing income from fishing the ''gas docks.'' It is important to note that while this regulation does restrict activities at a specific location, similar activities can still take place outside of the zone and elsewhere throughout the Chesapeake Bay. As a result, this regulation may inconvenience some businesses, but this rule does not constitute a complete cessation of business. Businesses may continue to operate and fish in areas that are not within the safety and security zone. While this makes it difficult for the Coast Guard to accurately determine the level of impact that each business will face, it is unlikely that the cumulative economic impact of this restriction would reach the threshold of a ''significant regulatory action'' ($100,000,000 per year) and therefore a regulatory assessment is not necessary.

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 vessels intending to transit the area surrounding the Cove Point LNG facility. It will also affect anglers intending to fish in the area around the Cove Point LNG facility.

Ten comments stated that this rule would have a significant impact on the local fishing community. Two comments stated that this rule would create an adverse economic impact on 100 small businesses in five surrounding counties. It is likely that this proposed rule would impact a substantial number of small entities; however, it is unlikely that they would be impacted significantly. Therefore, additional guidance to small businesses will not be necessary.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking process. This was accomplished by publishing a notice of proposed rulemaking outlining the Coast Guard's intentions and inviting comments regarding the rule's potential impact to small entities. Additionally, the Coast Guard held a public meeting where it invited owners of small entities to speak out and provide additional and amplifying information to the Coast Guard on the potential impact this rule may have on their small businesses.

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.

The Coast Guard received one comment concerning Unfunded Mandates. The comment stated that this rule is an Unfunded Mandate because the cost to the private sector will be millions of dollars. The Coast Guard has determined that there will be minimal impact on State, local, or tribal governments because representatives of State and local governments infrequently use this area. Furthermore, the impact on State and local governments will be minimal because state and local government representatives can be admitted to the safety and security zone after consultation with the Captain of the Port.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and 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 this rule establishes a safety and security zone.

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 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. Revise § 165.502 to read as follows:

§ 165.502 Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, Maryland.

(a) *Location.* The following area is a safety and security zone: All waters of the Chesapeake Bay, from surface to bottom, encompassed by lines connecting the following points, beginning at 38°24′27″ N, 76°23′42″ W, thence to 38°24′44″ N, 76°23′11″ W, thence to 38°23′55″ N, 76°22′27″ W, thence to 38°23′37″ N, 76°22′58″ W, thence to beginning at 38°24′27″ N, 76°23′42″ W. These coordinates are based upon North American Datum (NAD) 1983. This area is 500 yards in all directions from the Cove Point LNG terminal structure.

(b) *Regulations.* (1) In accordance with the general regulations in §§ 165.23 and 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore, Maryland or his designated representative. Designated representatives include any Coast Guard commissioned, warrant, or petty officer.

(2) Persons desiring to transit the area of the zone may contact the Captain of the Port at telephone number (410) 576–2693 or via VHF Marine Band Radio Channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

(c) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, local, and private agencies.

Dated: December 15, 2003.

Curtis A. Springer,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 03–31787 Filed 12–29–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–03–204]

RIN 1625–AA00

Safety/Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, Maryland

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety/security zone at the Cove Point Liquefied Natural Gas (LNG) Terminal. This is in response to the re-opening of the terminal by Dominion Power in July 2003. This safety and security zone is necessary to help ensure public safety and security. The zone will prohibit vessels and persons from entering a well-defined area of 500 yards in all directions around the Cove Point LNG Terminal.

DATES: This rule is effective from January 6, 2004, through January 28, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD05–03–204] and are available for inspection or copying at Commander, U.S. Coast Guard Activities, 2401 Hawkins Point Road, Building 70, Port Safety, Security and Waterways Management Branch, Baltimore, Maryland 21226–1791 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dulani Woods, at Coast Guard Activities Baltimore, Port Safety, Security and Waterways Management Branch, at telephone number (410) 576–2513.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 20, 2003, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** entitled ''Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, Maryland'' (68 FR 13647). In it we proposed a permanent safety and security zone. And in response to a request for a public meeting, we announced a June 5, 2003 public meeting and reopened the comment period to June 12, 2003. (68 FR 26247, May 15, 2003). On August 1, 2003, we published a temporary final rule (TFR) entitled ''Safety and Security Zone; Cove Point Natural Gas Terminal, Chesapeake Bay, MD,'' in the **Federal Register** (68 FR 45165), that expired on September 26, 2003. On September 26, 2003, we issued a TFR entitled ''Safety/Security Zone; Cove Point Natural Gas Terminal, Chesapeake Bay, MD,'' and published this TFR in the **Federal Register** on October 16, 2003 (68 FR 59538). That temporary final rule will expire January 5, 2004. The final rule is being published elsewhere in this same issue of the **Federal Register** and will become effective January 29, 2004.

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking and under 5 U.S.C. 553(d)(3) for making this rule effective less than 30 days after publication in the **Federal Register**. It took longer to resolve issues related to the final rule than we expected at the time we issued the last TFR. This new TFR is necessary because it would be contrary to public interest not to maintain a temporary safety and security zone until the final rule becomes effective January 29, 2004, at which time this temporary rule will be removed.

Background and Purpose

In preparation for the re-opening of the LNG terminal at Cove Point, MD, the Coast Guard is evaluating the current safety zone established in 33 CFR 165.502. This safety zone was established during the initial operation of the terminal in 1979 and includes both the terminal and associated vessels. To better manage the safety and security of the LNG terminal, this proposed rule incorporates necessary security provisions and changes the size of the zone. This rule establishes a 500 yard combined safety zone and security zone in all directions around the LNG terminal at Cove Point.

Based on the September 11, 2001 terrorist attacks on the World Trade Center buildings in New York, NY and the Pentagon building in Arlington, VA, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Cove Point LNG Terminal. 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. The Coast Guard also has authority to establish security zones pursuant to the Espionage Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) (''Magnuson Act''), section 104 of the Maritime Transportation Security Act of November 25, 2002, and by implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of Title 33 of the Code of Federal Regulations.

Discussion of Rule

This temporary final rule is identical to the previous rules published in the **Federal Register** on August 1, 2003 (68 FR 45165), and October 16, 2003 (68 FR 59538). The Coast Guard was unable to publish an extension to this rule. However, the practical effect of this new temporary final rule is the same and continues the safety and security zone currently in effect.

The Coast Guard is establishing a temporary safety/security zone on specified waters of the Chesapeake Bay near the Cove Point Liquefied Natural Gas Terminal to reduce the potential threat that may be posed by vessels or persons that approach the terminal. The zone will extend 500 yards in all directions from the terminal. The effect will be to prohibit vessels or persons entry into the security zone, unless specifically authorized by the Captain of the Port, Baltimore, Maryland. Federal, state and local agencies may assist the Coast Guard in the enforcement of this rule.

Regulatory Evaluation

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

There may be some adverse effects on the local maritime community that has been using the area as a fishing ground. Since the terminal has not been in operation, the Coast Guard has not enforced the current zone under 33 CFR 165.502. Commercial vessel operators have been using the area on a regular

basis for commercial fishing, passenger tours, and fishing parties. Enforcement of the proposed zone or the current zone would prohibit these commercial vessel operators from using this area.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Chesapeake Bay near the Cove Point LNG Terminal.

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.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and 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 this rule establishes a security zone.

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 record keeping 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. From January 6, 2004, through February 4, 2004, add § 165.T05–204 to read as follows:

§ 165.T05–204 Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, Maryland.

(a) *Location.* The following area is a safety and security zone: All waters of the Chesapeake Bay, from surface to bottom, encompassed by lines connecting the following points, beginning at 38°24′27″ N, 076°23′42″ W, thence to 38°24′44″ N, 076°23′11″ W, thence to 38°23′55″ N, 076°22′27″ W, thence to 38°23′37″ N, 076°22′58″ W, thence to beginning at 38°24′27″ N, 076°23′42″ W. These coordinates are based upon North American Datum (NAD) 1983. This area is 500 yards in all directions from the Cove Point LNG terminal structure.

(b) *Regulations.* (1) In accordance with the general regulations in §§ 165.23

and 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore, Maryland or his designated representative. Designated representatives include any Coast Guard commissioned, warrant, or petty officer.

(2) Persons desiring to transit the area of the zone may contact the Captain of the Port at telephone number (410) 576–2693 or via VHF Marine Band Radio channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

(c) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, local, and private agencies.

Dated: December 15, 2003.

Curtis A. Springer,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 03–31788 Filed 12–29–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 294

RIN 0596–AC04

Special Areas; Roadless Area Conservation; Applicability to the Tongass National Forest, Alaska

AGENCY: Forest Service, USDA.

ACTION: Final rule and record of decision.

SUMMARY: The Department of Agriculture is adopting this final rule to amend regulations concerning the Roadless Area Conservation Rule (hereinafter, referred to as the roadless rule) to temporarily exempt the Tongass National Forest (hereinafter, referred to as the Tongass) from prohibitions against timber harvest, road construction, and reconstruction in inventoried roadless areas. This temporary exemption of the Tongass will be in effect until the Department promulgates a subsequent final rule concerning the application of the roadless rule within the State of Alaska, as announced in the agency's second advance notice of proposed rulemaking published on July 15, 2003 (68 FR 41864).

In *State of Alaska* v. *USDA*, the State of Alaska and other plaintiffs alleged that the roadless rule violated a number of Federal statutes, including the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). Passed overwhelmingly by Congress in 1980, ANILCA sets aside millions of acres in Alaska for the National Park Service, Forest Service, National Monuments, National Wildlife Refuges, and Wilderness Areas with the understanding that sufficient protection and balance would be ensured between protected areas established by the act and multiple-use managed areas. The Alaska lawsuit alleged that USDA violated ANILCA by applying the requirements of the roadless rule to Alaska's national forests. USDA settled the lawsuit by agreeing to publish a proposed rule which, if adopted, would temporarily exempt the Tongass from the application of the roadless rule (July 15, 2003, 68 FR 41865), and to publish a separate advance notice of proposed rulemaking (July 15, 2003, 68 FR 41864) requesting comment on whether to permanently exempt the Tongass and the Chugach National Forests in Alaska from the application of the roadless rule.

Under this final rule, the vast majority of the Tongass remains off limits to development as specified in the 1997 Tongass Forest Plan. Commercial timber harvest will continue to be prohibited on more than 78 percent of the Tongass as required under the existing forest plan. Exempting the Tongass from the application of the roadless rule makes approximately 300,000 roadless acres available for forest management—slightly more than 3 percent of the 9.34 million roadless acres in the Tongass, or 0.5 percent of the total roadless acres nationwide. This rule also leaves intact all old-growth reserves, riparian buffers, beach fringe buffers, and other protections contained in the 1997 Tongass Forest Plan.

The preamble of this rule includes a discussion of the public comments received on the proposed rule published July 15, 2003 (68 FR 41865) and the Department's responses to the comments. This final rule also serves as the record of decision (ROD) for selection of the Tongass Exempt Alternative identified in the November 2000 final environmental impact statement for the roadless rule.

EFFECTIVE DATE: This rule is effective January 29, 2004.

FOR FURTHER INFORMATION: In Washington, DC contact: Dave Barone, Planning Specialist, Ecosystem Management Coordination Staff, Forest Service, USDA, (202) 205–1019; and in Juneau, Alaska contact: Jan Lerum, Regional Planner, Forest Service, USDA, (907) 586–8796.

SUPPLEMENTARY INFORMATION:

Background and Litigation History

On January 12, 2001 (66 FR 3244), the Department published a final roadless rule at Title 36 of the Code of Federal Regulations, part 294 (36 CFR part 294). The roadless rule was a discretionary rule that fundamentally changed the Forest Service's longstanding approach to management of inventoried roadless areas by establishing nationwide prohibitions generally limiting, with some exceptions, timber harvest, road construction, and reconstruction within inventoried roadless areas in national forests. The draft environmental impact statement (DEIS) (May 2000) and final environmental impact statement (FEIS) (November 2000) included alternatives that specifically exempted the Tongass from the roadless rule's prohibitions. As described in the FEIS, the roadless rule was predicted to cause substantial social and economic hardship in communities throughout Southeast Alaska (FEIS Vol. 1, 3–202, 3–326 to 3–352, 3–371 to 3–392). Nonetheless, the final roadless rule's prohibitions were extended to the Tongass.

Since its promulgation, the roadless rule has been the subject of a number of lawsuits in Federal district courts in Idaho, Utah, North Dakota, Wyoming, Alaska, and the District of Columbia. In one of these lawsuits, the U.S. District Court for the District of Idaho issued a nationwide preliminary injunction prohibiting implementation of the roadless rule. The preliminary injunction decision was reversed and remanded by a panel of the Ninth Circuit Court of Appeals. The Ninth Circuit's preliminary ruling held that the Forest Service's preparation of the environmental impact statement for the roadless rule was in conformance with the general statutory requirements of the National Environmental Policy Act (NEPA).

Subsequently, the U.S. District Court for the District of Wyoming held that the Department had violated NEPA and the Wilderness Act in promulgating the roadless rule. As relief, the court directed the roadless rule be set aside and the agency be permanently enjoined from implementing the roadless rule at 36 CFR part 294. An appeal is pending in the Tenth Circuit. Several other cases remain pending in other Federal district courts.

In another lawsuit, the State of Alaska and six other parties alleged that the roadless rule violated the Administrative Procedure Act, National Forest Management Act, National

Environmental Policy Act, Alaska National Interest Lands Conservation Act, Tongass Timber Reform Act, and other laws. In the June 10, 2003, settlement of that lawsuit, the Department committed to publishing a proposed rule with request for comment that would temporarily exempt the Tongass from application of the roadless rule until completion of a rulemaking process to make permanent amendments to the roadless rule. Also pursuant to the settlement agreement, the Department agreed to publish an advance notice of proposed rulemaking (ANPR) to exempt both the Tongass and Chugach National Forests from the application of the roadless rule. The ANPR and the proposed rule were both published in Part II of the **Federal Register** on July 15, 2003 (68 FR 41864). The Department made no representations in the settlement agreement regarding the content or substance of any final rule that might result.

Most Southeast Alaska Communities Are Significantly Impacted by the Roadless Rule

There are 32 communities within the boundary of the Tongass. Most Southeast Alaska communities lack road and utility connections to other communities and to the mainland systems. Because most Southeast Alaska communities are nearly surrounded on land by inventoried roadless areas of the Tongass, the roadless rule significantly limits the ability of communities to develop road and utility connections that almost all other communities in the United States take for granted. Under this final rule, communities in Southeast Alaska can propose road and utility connections across National Forest System land that will benefit their communities. Any such community proposal would be evaluated on its own merits.

In addition, the preponderance of Federal land in Southeast Alaska results in communities being more dependent upon Tongass National Forest lands and having fewer alternative lands to generate jobs and economic activity. The communities of Southeast Alaska are particularly affected by the roadless rule prohibitions. The November 2000 FEIS for the roadless rule estimated that a total of approximately 900 jobs could be lost in the long run in Southeast Alaska due to the application of the roadless rule, including direct job losses in the timber industry as well as indirect job losses in other sectors.

Roadless Areas Are Common, Not Rare, on the Tongass National Forest

The 16.8-million-acre Tongass National Forest in Southeast Alaska is approximately 90 percent roadless and undeveloped. Commercial timber harvest and road construction are already prohibited in the vast majority of the 9.34 million acres of inventoried roadless areas in the Tongass, either through Congressional designation or through the Tongass Forest Plan. Application of the roadless rule to the Tongass is unnecessary to maintain the roadless values of these areas.

Congress has designated 39 percent of the Tongass as Wilderness, National Monument, or other special designations, which prohibit timber harvest and road construction with certain limited exceptions. An additional 39 percent of the Tongass is managed under the Forest Plan to maintain natural settings where timber harvest and road construction are generally not allowed. About 4 percent of the Tongass is designated suitable for commercial timber harvest, with about half of that area contained within inventoried roadless areas. The remaining 18 percent of the Forest is managed for various multiple uses. The Tongass Forest Plan provides high levels of resource protection and has been designed to ensure ecological sustainability over time, while allowing some development to occur that supports communities dependent on the management of National Forest System lands in Southeast Alaska.

In addition, within the State of Alaska as a whole, there is an extensive network of federally protected areas. Alaska has the greatest amount of land and the highest percentage of its land base in conservation reserves of any State. Federal lands comprise 59 percent of the State and 40 percent of Federal lands in Alaska are in conservation system units. The Southeast Alaska region contains 21 million acres of additional protected lands in Glacier Bay National Park and Preserve, and the Wrangell-St. Elias National Park and Preserve.

Different Approaches Considered for the Tongass National Forest

The unique situation of the Tongass has been recognized throughout the Forest Service's process for examining prohibitions in inventoried roadless areas. The process for developing the roadless rule included different options for the Tongass in each stage of the promulgation of the rule and each stage of the environmental impact statement. At each stage, however, the option of exempting the Tongass from the rule's prohibitions was considered in detail.

In February 1999, the agency exempted the Tongass and other Forests with recently revised forest plans from an interim rule prohibiting new road construction. The October 1999 notice of intent to prepare an environmental impact statement for the roadless rule specifically requested comment on whether or not the rule should apply to the Tongass in light of the recent revision of the Tongass Forest Plan and the ongoing economic transition of communities and the timber program in Southeast Alaska. The May 2000 DEIS for the roadless rule proposed not to apply prohibitions on the Tongass, but to determine whether road construction should be prohibited in unroaded portions of inventoried roadless areas as part of the 5-year review of the Tongass Forest Plan.

The preferred alternative was revised in the November 2000 FEIS to include prohibitions on timber harvest, as well as road construction and reconstruction on the Tongass, but with a delay in the effective date of the prohibitions until April 2004. This was one of four Tongass alternatives analyzed in the FEIS, including the Tongass Exempt Alternative, under which the prohibitions of the roadless rule would not apply to the Tongass. The FEIS recognized that the economic and social impacts of including the Tongass in the roadless rule's prohibitions could be of considerable consequence in communities where the forest products industry is a significant component of local economies. The FEIS also noted that if the Tongass were exempt from the roadless rule prohibitions, loss of habitat and species abundance would not pose an unacceptable risk to diversity across the forest.

However, the final January 12, 2001, roadless rule directed an immediate applicability of the nationwide prohibitions on timber harvest, road construction and reconstruction on the Tongass, except for projects that already had a notice of availability of a draft environmental impact statement published in the **Federal Register**.

Why Is USDA Going Forward With This Rulemaking?

This final rule has been developed in light of the factors and issues described in this preamble, including (1) serious concerns about the previously disclosed economic and social hardships that application of the rule's prohibitions would cause in communities throughout Southeast Alaska, (2) comments received on the proposed rule, and (3) litigation over the last two years.

Given the great uncertainty about the implementation of the roadless rule due to the various lawsuits, the Department has decided to adopt this final rule, initiated pursuant to the settlement agreement with the State of Alaska, to temporarily exempt the Tongass National Forest from the prohibitions of the roadless rule. This final rule at § 294.14 allows the Forest to continue to be managed pursuant to the 1997 Tongass Forest Plan, which includes the non-significant amendments, readopted in the February 2003 record of decision (2003 Plan) issued in response to the District Court's remand of the 1997 Plan in *Sierra Club* v. *Rey* (D. Alaska), until the 2003 Plan is revised or further amended. Both documents were developed through balanced and open planning processes, based on years of extensive public involvement and thorough scientific review. The 2003 Tongass Forest Plan provides a full consideration of social, economic, and ecological values in Southeast Alaska. This final rule does not reduce any of the old-growth reserves, riparian buffers, beach fringe buffers, or other standards and guidelines of the 2003 Tongass Forest Plan or in any way impact the protections afforded by the plan. The final rule maintains options for a variety of social and economic uses of the Tongass, which was a key factor in the previous decision to approve the plan in 1997.

The final rule also addresses the important question of whether the rule should apply on the Tongass in the short term if the roadless rule were to be reinstated by court order. The Department has determined that, at least in the short term, the roadless values on the Tongass are sufficiently protected under the Tongass Forest Plan and that the additional restrictions associated with the roadless rule are not required. Further, reliance on the Tongass Forest Plan in the short term does not foreclose options regarding the future rulemaking associated with the permanent, statewide consideration of these issues for Alaska. Indeed, this final rule reflects a conclusion similar to that identified as the preferred alternative in the original proposed roadless rule and draft EIS; that is, not to impose the prohibitions immediately, but to allow for future consideration of the matter when more information may be available.

Finally, the Department fully recognizes the unusual posture of this rulemaking, as it is amending a rule that has been set aside by a Federal court. The Department maintains that such an amendment is contrary neither to law nor to the court's injunction. Instead, it is a reasonable and lawful exercise of the Department's authority to resolve policy questions regarding management of National Forest System land and resources, especially in light of the conflicting judicial determinations. Adopting this final rule reduces the potential for conflicts regardless of the disposition of the various lawsuits.

Changes Between Proposed Rule and Final Rule

Only one substantive change has been made between the proposed rule and the final rule. At § 294.14, the proposed rule stated at paragraph (d) that the temporary exemption of the Tongass would be in effect until the USDA promulgates a revised final roadless area conservation rule, for which the agency sought public comments in the July 10, 2001, advance notice of proposed rulemaking (66 FR 35918). Intervening events necessitate an adjustment, and, therefore, § 294.14 of the final rule now states at paragraph (d) that the temporary exemption of the Tongass National Forest remains in place until the USDA promulgates a final rule concerning applicability of 36 CFR part 294, subpart B within the State of Alaska, as announced in the agency's second advance notice of proposed rulemaking published on July 15, 2003 (68 FR 41864). A minor change also has been made for clarity by adding the word ''road'' before ''reconstruction.''

The Department has previously indicated that it would proceed with the roadless rulemakings, while taking numerous factors into consideration, including the outcomes of ongoing litigation. The Wyoming District Court's setting aside of the roadless rule with the admonition that the Department ''must start over'' represents such a circumstance. Since the roadless rule has been set aside, the Department has determined that the best course of action is to clarify that the duration of this Tongass-specific rulemaking will last until completion of rulemaking efforts associated with the application of the roadless rule in Alaska.

Summary of Public Comments and the Department's Responses

The proposed rule was published in the **Federal Register** on July 15, 2003, for a 30-day public comment period (68 FR 41865). Due to public requests for additional time, the comment period was extended by 19 days for a total of 49 days. The Forest Service received approximately 133,000 comments on the proposed rule. All comments were considered in reaching a decision on the final rule. In addition, appropriate sections of Volume 3 of the November 2000 roadless rule FEIS (Agency Responses to Public Comments) that addressed the Tongass alternatives were also reviewed and considered. A summary of comments and the Department's responses to them are summarized as follows.

General Comments. Virtually all of the Southeast Alaska municipalities that responded to the proposed rule expressed strong support for it. Many noted that Alaska contains more land in protected status than all other States combined, and that applying the roadless rule to the Tongass would foreclose opportunities for sustainable economic development throughout Southeast Alaska. Several respondents asked the Department to discontinue or abandon this rulemaking based on their preference to retain the roadless rule prohibitions for the Tongass. Others argued that it was illegal for USDA to pursue amendments to a rule that has been set aside by a Federal district court.

Respondents expressed different views regarding the roadless rule and its applicability to the Tongass. In general, they took one of two positions: (1) Some saw the exemption of the Tongass as a positive step toward reversing what they consider to be overly restrictive management direction imposed by the roadless rule, and therefore they recommended the exemption; and (2) others wanted the Forest Service to retain the roadless rule as adopted in 2001 because they believed it offers a well-balanced approach to forest management that has received overwhelming public support.

Response. The Department believes that the best course of action is to complete this rulemaking for the Tongass that would govern should the roadless rule come back into effect as a result of the pending litigation.

Environmental Effects of the Proposed Rule. The agency received comments regarding the effects the proposed exemption from the roadless rule would have on the natural resources of the Tongass. Some respondents expressed their view that 70 percent of the highest volume timber stands in Southeast Alaska have been harvested, and exempting the Tongass from the roadless rule would lead to the harvest of most or all of the remainder of such stands. Some regarded the highest volume stands as ''the biological heart of the forest,'' and believed any additional harvest would have severe adverse effects on the environment, especially fish and wildlife habitat. Other respondents stated that the Tongass Forest Plan provides stringent environmental protection measures that

will minimize the effects of timber harvest activities on the other resources of the Tongass.

Response. The Tongass has about 9.4 million acres of old-growth forest, of which about 5 million acres contain trees of commercial size. These 5 million acres are referred to as productive old-growth forest. The Tongass Forest Plan allows no timber harvest on nearly 90 percent of the 5 million acres of existing productive old growth. The agency calculates that, at most, 28 percent of the highest volume stands have been harvested, not the 70 percent as claimed. The Tongass Forest Plan prohibits harvest on the vast majority of the remaining highest volume stands.

Although timber volume has often been used as a proxy for habitat quality, a variety of forest attributes and ecological factors influence habitat quality, with different attributes being important for different species. The Tongass Forest Plan, developed over several years with intensive scientific and public scrutiny, takes these and other factors into consideration in its old-growth habitat conservation strategy. The forest plan includes a system of small, medium, and large old growth reserves, well distributed across the Forest, and a stringent set of measures to protect areas of high quality wildlife habitat, such as areas along streams, rivers, estuaries, and coastline. As explained in the 1997 Tongass Forest Plan FEIS and the 2003 supplemental environmental impact statement (SEIS), good wildlife habitat is abundant on the Tongass, on which 92 percent of the productive old-growth forest that was present in 1954 remains today. Even if timber is harvested for 120 years at the maximum level allowed by the Tongass Forest Plan, 83 percent of the productive old-growth forest that was present on the Tongass in 1954 would remain. Extensive, unmodified natural environments characterize the Tongass and will continue to do so. Even with the exemption of the Tongass from the prohibitions in the roadless rule, old-growth is and will continue to be the predominant vegetative structure on the Tongass.

Desirability of a National Standard for Roadless Protection. Some respondents, including a number of Members of Congress, expressed support for the roadless rule as adopted in January, 2001, which these respondents regard as a landmark national standard that is essential to ensure the long-term protection of roadless values. These respondents maintained that the proposed rule would seriously undermine that national standard by exempting the largest national forest in the country, which contains nearly 16 percent of the acreage protected by the roadless rule. Other respondents stated that the ecological, geographic, and socioeconomic conditions on the Tongass and among the local communities of Southeast Alaska are so different from those on national forests outside of Alaska that any nationwide approach, such as the prohibitions contained in the roadless rule, would necessarily impose undue hardship on the communities of Southeast Alaska.

Response. The agency recognized the unique situation of the Tongass in the discussion of a national roadless policy throughout the development of the EIS for the roadless rule. In addition to the range of policy alternatives considered in the EIS, the agency developed a full range of alternatives specifically applicable to the Tongass, ranging from the Tongass Not Exempt Alternative (selected as part of the final rule in the 2001 record of decision) to the Tongass Exempt Alternative (now proposed for selection). The tradeoffs involved in these alternatives are fully evaluated in the roadless rule EIS. The comments raised no new issues that are not already fully explored in the EIS.

The Tongass has a higher percentage of roadless acres, over 90 percent, than nearly any other national forest except the Chugach National Forest. The Tongass Forest Plan generally prohibits road construction on 74 percent of the roadless acres, which will ensure that the Tongass remains one of the most unroaded and undeveloped national forests in the system. Even if timber were to be harvested at maximum allowable levels for 50 years, at least 80 percent of the currently existing roadless areas will remain essentially in their natural condition after 50 years of implementing the Forest Plan. Roadless areas and their associated values are and will continue to be abundant on the Tongass, even without the prohibitions of the roadless rule. Southeast Alaska is also unique in that 94 percent of the area is Federal land (80 percent Tongass National Forest, 14 percent Glacier Bay National Park), and 6 percent is State, Native Corporation, and private lands.

The impacts of the roadless rule on local communities in the Tongass are particularly serious. Of the 32 communities in the region, 29 are unconnected to the nation's highway system. Most are surrounded by marine waters and undeveloped National Forest System land. The potential for economic development of these communities is closely linked to the ability to build roads and rights of ways for utilities in roadless areas of the National Forest System. Although Federal Aid Highways are permitted under the roadless rule, many other road needs would not be met. This is more important in Southeast Alaska than in most other States that have a much smaller portion of Federal land. Likewise, the timber operators in Southeast Alaska tend to be more dependent on resource development opportunities on National Forest System land than their counterparts in other parts of the country because there are few neighboring alternative supplies of resources for Southeast Alaska.

The agency also recognized the unique situation on the Tongass during the development of the roadless rule, and proposed treating the Tongass differently from other national forests until the final rule was adopted in January 2001. At that time, the Department decided that ensuring lasting protection of roadless values on the Tongass outweighed the attendant socioeconomic losses to local communities. The Department now believes that, considered together, the abundance of roadless values on the Tongass, the protection of roadless values included in the Tongass Forest Plan, and the socioeconomic costs to local communities of applying the roadless rule's prohibitions to the Tongass, all warrant treating the Tongass differently from the national forests outside of Alaska.

Scientific Basis for the Proposed Rule. The agency received comments that there is no scientific basis for exempting the Tongass from the roadless rule, and that the old growth conservation strategy included in the 1997 Tongass Forest Plan is scientifically inadequate. Indeed, some of the scientists who provided input during the development of that plan commented in opposition to exempting the Tongass from the roadless rule. Others noted that the 1997 Forest Plan, developed with over 10 years of intensive public involvement and scientific scrutiny, and embodied an appropriate balance between the ecological, social, and economic components of sustainability.

Response. Science can predict, within certain parameters, the impacts of policy choices, but it cannot tell what policy to adopt. The 1997 Tongass Forest Plan FEIS and roadless rule FEIS describe the impacts of a wide range of possible land management policies. The science underlying these predictions was subject to rigorous peer review. However, ultimately, the role of science is to inform policy makers rather than to make policy.

The Tongass Forest Plan is based on sound science. As an example, the forest

plan includes an old growth habitat conservation strategy, outlined in the response to comments on environmental effects of the proposed rule that is one of the best in the world. The strategy provides habitat to maintain well-distributed, viable populations of old-growth-associated species across the Forest. The strategy also considers development on adjacent State and private lands. Many existing roadless areas were also incorporated into reserves using non-development land use designations. The strategy was scientifically developed and was subjected to independent scientific peer review.

The science consistency review process used in developing the 1997 Tongass Forest Plan is seen as a model for science-based management that has been emulated in other Forest Service planning efforts. Planning is not a process of science, but rather is a process that uses scientific information to assist officials in making decisions. Under the scientific consistency process, the role of science in planning is explicitly defined as requiring that all relevant scientific information available must be considered; scientific information must be understood and correctly interpreted, including the uncertainty regarding that information; and the resource risks associated with the decision must be acknowledged and documented. The 1997 Tongass Forest Plan meets these criteria, as documented in ''Evaluation of the Use of Scientific Information in Developing the 1997 Forest Plan for the Tongass,'' published by the Department's Pacific Northwest Research Station in 1997. Exempting the Tongass from the prohibitions of the roadless rule returns management of the Tongass to the direction contained in a forest plan that has undergone thorough scientific review, which found the Tongass Forest Plan to be consistent with the available science.

Compliance with Executive Order 13175 and Finding of No ''Tribal Implications.'' An Alaska Native community disagreed with the agency's finding that the proposed rule does not have ''Tribal implications'' under Executive Order 13175. The community's comment included concerns about ''catastrophic economic and social losses due to the shutdown of the Tongass,'' and noted that more than 200 timber-related jobs have been lost in that community since the roadless rule was implemented. The comment also outlined Federal law and policy that mandates consideration of Tribal economic well-being.

Response. The agency did not conclude that the roadless policy has ''no impact'' on Tribes, because clearly the loss of jobs and economic opportunity has greatly affected some of them. The stated severe effect on the social and economic fabric of life in Southeast Alaska from the decline in the timber industry is one of the reasons the Department is adopting an exemption to the roadless rule for the Tongass. Exempting the Tongass from the prohibitions in the roadless rule will mean that more options will be available to alleviate some of these impacts. A primary focus of the exemption is to reduce the social and economic impacts to Tribes.

The agency did conclude that the proposed rule to exempt the Tongass from the roadless rule would not impinge on Tribal sovereignty, would not require Tribal expenditures of funds, and would not change the distribution of power between the Federal government and Indian or Alaska Native Tribes. It is under this narrow sense of Executive Order 13175 that the finding of no Tribal implications was made for the proposed rule. For this final rule, the Department has determined that there could be substantial future direct effects to one or more Tribes, and that these effects are anticipated to be positive. A discussion regarding consultation and coordination with Indian Tribal Governments about this final rule in accordance with Executive Order 13175 can be found in the Regulatory Certification section of this preamble.

Volume of Public Comment and Support for the Roadless Rule. Many comments discussed the volume of public comment received over the past 5 years in support of the roadless rule and its application to the Tongass. Some people said that the roadless rule is a landmark conservation policy that has been supported by 2.2 million people, and, therefore the proposed rule ignored the wishes of the vast majority of roadless rule comments supporting protection of roadless areas in all national forests, including Alaska's. Other people noted that nearly all elected officials in Alaska opposed the roadless rule and supported the exemption.

Response. Every comment received is considered for its substance and contribution to informed decisionmaking whether it is one comment repeated by tens of thousands of people or a comment submitted by only one person. The public comment process is not a scientifically valid survey process to determine public opinion. The emphasis in the comment review process is on the content of the comment rather than on the number of times a comment was received. The comment analysis is intended to identify each unique substantive comment relative to the proposed rule to facilitate its consideration in the decisionmaking process. In matters of controversial national policy, it is impossible to please everyone. When those commenting do not see their view reflected in the final decision, they should not conclude that their comments were ignored. All comments are considered, including comments that support and that oppose the proposal. That people do not agree on how public lands should be managed is a historical, as well as modern dilemma faced by resource managers. However, public comment processes, while imperfect, do provide a vital avenue for engaging a wide array of the public in resource management processes and outcomes.

Adequacy of Timber Volume along Existing Roads. The agency received comments regarding the effect of the roadless rule's prohibitions on supplies to forest product industries in Southeast Alaska. Some respondents stated the exemption of the Tongass from the roadless rule was not necessary because the roadless rule FEIS projected 50 million board feet could be harvested annually in the developed areas along the existing road system on the Tongass. Some commented they believed there was an adequate amount of national forest timber currently under contract to keep the forest products industry supplied for a number of years. Other respondents stated the exemption was necessary if forest product industries in Southeast Alaska were to have enough timber volume to maintain their operations.

Response. Only 4 percent of the Tongass is available for commercial timber harvest under the forest plan. About half of this is in inventoried roadless areas. Further reductions in areas available for timber harvest to an already very limited timber supply would have unacceptable social, aesthetic, and environmental impacts. As was disclosed in the roadless rule FEIS, a sustained annual harvest level of 50 million board feet would not support all of the timber processing facilities in the region.

The Tongass Timber Reform Act directs the Secretary of Agriculture to seek to provide a supply of timber from the Tongass, which (1) meets the annual market demand for timber from the forest and (2) meets the market demand from the forest for each planning cycle, consistent with providing for the

multiple use and sustained yield of all renewable forest resources, and subject to appropriations, other applicable law, and the requirements of the National Forest Management Act.

Benchmark harvest levels displayed in the roadless rule FEIS for the Tongass Exempt Alternative were based on a long-term market demand estimate of 124 million board feet (MMBF) per year. The procedure used to derive this figure is documented in a 1997 report by Forest Service economists, which predicted Tongass National Forest timber demand through 2010, relying upon such factors as current processing capacity in the region and the market share of Southeast Alaskan products in their principal markets (Timber Products Output and Timber Harvests in Alaska: Projections for 1997 to 2010. Brooks and Haynes, 1997. Pacific Northwest Research Station). Copies of this report may be obtained at 333 Southwest First Avenue, P.O. Box 3890, Portland, OR 97208–3890. Three different market scenarios (low, medium, and high) were considered, and the 124 MMBF figure represents the average value of the low market scenario estimates for the years 2001 through 2010. Comparable estimates for the medium and high scenarios are 151 and 184 MMBF per year, respectively.

Though the 1999 harvest level, at 146 MMBF, more closely approximates the medium market demand scenario, the roadless rule FEIS chose the low market for its benchmark analysis, and recent developments support this decision. If anything, the low market scenario appears optimistic in light of the 48 MMBF of Tongass National Forest timber harvested in 2001, the 34 MMBF harvested in 2002, and the 51 MMBF harvested in 2003 (fiscal years). At the end of fiscal year 2003, the amount of timber under contract on the Tongass was 193 MMBF, although the agency seeks to provide a sustained flow of timber sale offerings sufficient to maintain a volume under contract equal to 3 years of estimated timber demand. Recently, Congress enacted P.L. 108–108, Department of Interior and Related Agencies Appropriation Act for fiscal year 2004. Section 339 of this Act authorizes cancellation of certain timber sale contracts on the Tongass National Forest and provides that the timber included in such cancelled contracts shall be available for resale by the Secretary of Agriculture. Complete descriptions of the timber scheduling and pipeline process are found in Appendix A of all timber sale project environmental impact statements for the Tongass.

The last three years represent a significant aberration from historical harvest levels. The 1980–2002 average harvest was 269 MMBF, and in no year prior to 2001 did the harvest level fall below 100 MMBF. As recently as 1995, the Tongass National Forest harvests were in excess of 200 MMBF, and the average harvest over the 1995–2002 time period was approximately 120 MMBF. In light of this historical performance, the 124 MMFB low market estimate is not an unreasonable expectation for the coming decade, particularly if the current slump is merely a cyclical downturn. Of course market conditions may continue to deteriorate, and current low or even lower levels of harvest may become the norm. But in this case both the ''negative'' impacts of roading in roadless areas as well as the ''positive'' impacts related to employment would be reduced.

The Department believes that the roadless rule prohibitions operate as an unnecessary and complicating factor limiting where timber harvesting may occur. Accomplishment of social, economic, and biological goals can best be met through the management direction established through the Tongass Forest Plan.

Need for a Supplemental Environmental Impact Statement. Some respondents said a supplemental environmental impact statement (SEIS) is necessary before a decision can be made to exempt the Tongass from the prohibitions in the roadless rule. They suggested that new information or changed circumstances have occurred that have changed the effects disclosed in the roadless rule FEIS, so a supplement is required. The changes most often cited included the set aside of the 1999 record of decision (ROD) for the Tongass Forest Plan and the changes in timber harvest levels and related employment in Southeast Alaska. Others also mentioned the updated roadless area inventory that was completed for the 2003 record of decision on wilderness recommendations and the pending land exchange with Sealaska, an Alaska Native Corporation.

Response. The determination of whether a supplemental EIS is required involves a two-step process. First new information must be identified and, second, an analysis of whether the new information is significant to the proposed action must be completed. The Forest Service has prepared a supplemental information report that describes this process, the analysis completed, and the conclusions reached. This report is available on the World Wide Web/Internet on the Forest Service Roadless Area Conservation Web site at *http://www.roadless.fs.fed.us.*

The conclusion in the supplemental information report is that the identified new information and changed circumstances do not result in significantly different environmental effects from those described in the roadless rule FEIS. Such differences as may exist are not of a scale or intensity to be relevant to the adoption of this final rule or to support selection of another alternative from the roadless rule FEIS. Consequently, the overall decisionmaking picture is not substantially different from what it was in November 2000, when the roadless rule FEIS was completed. The effects of adopting the proposed rule as final have been displayed to the public and thoroughly considered. For all these reasons, no additional environmental analysis is required.

Economic Effects of the Roadless Rule. The agency received many comments regarding the economic effects that the roadless rule has had or would have in Southeast Alaska. People who commented were concerned about the ability of Southeast Alaska to develop a sustainable economy if the Tongass is not exempted from the roadless rule prohibitions. Concerns expressed included the limitation of the development of infrastructure, such as roads and utilities that are taken for granted elsewhere in the United States, the loss of jobs, and the loss of opportunity for Southeast Alaska to grow and develop responsibly. Other people said that any economic benefits from exempting the Tongass from the prohibitions in roadless rule are far smaller than estimated, while the adverse effects to the environment will be far greater.

Response. In the January 2001 record of decision on the roadless rule, the Secretary of Agriculture acknowledged the adverse economic effects to some forest-dependent communities from the prohibitions in the roadless rule. The decision was made to apply the roadless rule to the Tongass even though it was recognized there would be adverse effects to some communities. Due to serious concerns about these previously disclosed economic and social hardships the roadless rule would cause in communities throughout Southeast Alaska, the Department moved forward to reexamine the rule.

The Department has concluded that the social and economic hardships to Southeast Alaska outweigh the potential long-term ecological benefits because the Tongass Forest Plan adequately provides for the ecological sustainability

of the Tongass. Every facet of Southeast Alaska's economy is important, and the potential adverse impacts from application of the roadless rule are not warranted, given the abundance of roadless areas and protections already afforded in the Tongass Forest Plan. Approximately 90 percent of the 16.8 million acres in the Tongass National Forest is roadless and undeveloped. Over three-quarters (78 percent) of these 16.8 million acres are either Congressionally designated or managed under the forest plan as areas where timber harvest and road construction are not allowed. About 4 percent are designated suitable for commercial timber harvest, with about half of that area (300,000 acres) contained within inventoried roadless areas.

As discussed in the roadless rule FEIS (Vol. 1, 3–202, 3–326 to 3–350, 3–371 to 3–392), substantial negative economic effects are anticipated if the roadless rule is applied to the Tongass, which include the potential loss of approximately 900 jobs in Southeast Alaska. With the adoption of this final rule, the potential negative economic effects should not occur in Southeast Alaska. Even if the maximum harvest permissible under the Tongass Forest Plan is actually harvested, at least 80 percent of the currently remaining roadless areas will remain essentially in their natural condition after 50 years of implementing the forest plan. If the Tongass is exempted from the prohibitions in the roadless rule, the nation will still realize long-term ecological benefits because of the large area that will remain undeveloped and unfragmented, with far less social and economic disruption to Southeast Alaska's communities.

Alaska National Interest Lands Conservation Act (ANILCA). Some people said that ANILCA was enacted with the promise that it provided sufficient protection for Alaska land and that no further administrative withdrawals could be allowed without express Congressional approval. Others said that the roadless rule does not violate the provisions in ANILCA.

Response. In passing ANILCA in 1980, Congress established 14 wildernesses totaling 5.5 million acres on the Tongass, and found that this act provided sufficient protection for the national interest in the scenic, natural, cultural, and environmental values on the public lands in Alaska, and at the same time provided adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people. Accordingly, the designation and disposition of the public lands in Alaska pursuant to this act were found to represent a proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition. Congress believed that the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas, had been obviated by provisions in ANILCA.

In 1990, Congress enacted the Tongass Timber Reform Act (TTRA) to amend ANILCA by directing the Secretary of Agriculture, subject to certain limitations, to seek to provide a supply of timber from the Tongass National Forest, which (1) meets the annual market demand for timber and (2) meets the market demand for timber for each planning cycle, consistent with providing for the multiple use and sustained yield of all renewable forest resources, and subject to appropriations, other applicable laws, and the requirements of the National Forest Management Act.

Further, the TTRA designated 5 new wildernesses and 1 wilderness addition on the Tongass, totaling 296,000 acres. The act also designated 12 permanent Land Use Designation (LUD) II areas, totaling 727,765 acres. Congressionally designated LUD II areas are to be managed in a roadless state to retain their wildland characteristics; however, they are less restrictive on access and activities than wilderness, primarily to accommodate recreation and subsistence activities and to provide vital Forest transportation and utility system linkages, if necessary.

These statutes provide important Congressional determinations, findings, and information relating to management of National Forest System lands on the Tongass National Forest, and were considered carefully during this rulemaking. Expressions of legal concerns and support for the various rulemakings have also been considered. This final rule reflects the Department's assessment of how to best implement the letter and spirit of congressional direction along with public values, in light of the abundance of roadless values on the Tongass, the protection of roadless values already included in the Tongass Forest Plan, and the socioeconomic costs to local communities of applying the roadless rule's prohibitions.

Roadless areas are common, not rare, on the Tongass National Forest, and most Southeast Alaska communities are significantly impacted by the roadless rule. The Department believes that exempting the Tongass from the prohibitions in the roadless rule is consistent with congressional direction and intent in the ANILCA and the TTRA legislation.

Adequacy of the Roadless Rule Concerning NEPA and Other Laws. Some people commented that the roadless rule was adopted in violation of NEPA because, according to those commenters, the roadless rule EIS failed to take the hard look that NEPA requires. Other concerns expressed about the roadless rule included alleged violations of the National Forest Management Act, Multiple Use Sustained Yield Act, and Wilderness Act, and concerns that the roadless rule failed to explicitly acknowledge valid and existing access rights to private lands.

Response. The roadless rule continues to be the subject of ongoing litigation in the district courts and one Federal appeals court. Hence, the validity of the roadless rule is still in question. However, the Department believes that application of the roadless rule to the Tongass is inappropriate, regardless of whether the roadless rule is otherwise found to be valid or lawful. Given the pending litigation, the Department believes it is prudent to proceed with a decision on temporarily exempting the Tongass from the prohibitions in the roadless rule.

Effects of the Roadless Rule on Construction of Roads and Utility Corridors. Some people who commented said that because the roadless rule allows construction of Federal Aid Highway projects and roads needed to protect public health and safety, there are no significant limits on the ability of communities to develop road and utility connections in Southeast Alaska. Similarly, they said that utility corridors can be built and maintained without roads by using helicopters, so the opportunities for utility transmissions would not be limited either. Others, including local communities and elected officials, said that the roadless rule would impact the development of the Southeast Alaska Electrical Intertie System that is planned to provide communities throughout the region with clean, reliable, and affordable power.

Response. There is a need to retain opportunities for the communities of Southeast Alaska regarding basic access and utility infrastructure. This is related primarily to road systems, the State ferry system, electrical utility lines, and hydropower opportunities that are on the horizon. This need reflects in part the overall undeveloped nature of the Tongass and the relationship of the 32 communities that are found within its boundaries. Most, if not all, of the

communities are lacking in at least some of the basic access and infrastructure necessary for reasonable services, economic stability, and growth that almost all other communities in the United States have had the opportunity to develop.

The roadless rule permits the construction of Federal Aid Highways only if the Secretary of Agriculture determines that the project is in the public interest and that no other reasonable and prudent alternative exists (36 CFR 294.12). Such a finding may not always be possible for otherwise desirable road projects.

Similarly, although some utility corridors can be constructed and maintained without a road, others may require a road. Even where a utility corridor without a road may be physically possible, it may be more expensive or otherwise less desirable than a utility accompanied by a service road. If the road construction is inexpensive or needed for other reasons, then utility corridors may often adjoin the road because of the ease of access for maintenance and repairs of utility systems. Indeed, most utility corridors in the United States were developed next to a pre-existing road.

The history of road development in Southeast Alaska since statehood is that most State highway additions have been upgraded from roads built to harvest timber. In the last 20 years, this has occurred predominantly on Prince of Wales Island, better connecting the communities of Hollis, Hydaburg, Craig, Klawock, Thorne Bay, Whale Pass, Naukati, Kaasan, and Coffman Cove with all-weather highways. Without the pioneering work done by the Forest Service in building roads to harvest timber, it is unclear whether the State would have undertaken the construction of those road connections. By precluding the construction of roads for timber harvest, the roadless rule reduces future options for similar upgrades, which may be critical to economic survival of many of the smaller communities in Southeast Alaska. Moreover, roads initially developed for timber or other resource management purposes often have value to local communities and sometimes become important access links between communities, even if they are never upgraded as Federal Aid Highways. By exempting the Tongass from the prohibitions in the roadless rule, each utility or transportation proposal can be evaluated on its own merit.

Tongass Roads and Fiscal Considerations. Some people said that because the Tongass has a backlog of road maintenance and fish passage problems, primarily inadequate culverts, it makes no sense to spend money on new roads until these problems are corrected. Others said that the funds the Tongass receives from Congress to prepare timber sales and do roadwork could be better spent on other needs.

Response. The Tongass is currently spending about $2 million per year to correct fish passage barriers and continues to seek funding and opportunities to clear the maintenance backlog. Forest Service roads in Alaska are vital to neighboring communities because most areas have at most an underdeveloped road system. Permanent Forest Service roads (known as classified roads) are often the only roads available to communities and for recreation opportunities. The Alaska Region, with only 3,600 miles of classified Forest Service roads, has the fewest miles of roads of all the regions of the Forest Service, and about one-third of these are closed to motorized use. New roads will be necessary to access sufficient timber to support existing small sawmills. Over the years, standards for construction and maintenance of roads have changed significantly. Roads and stream crossings built today adhere to very high standards designed to protect fisheries, important wetlands, unstable soils, wildlife use and habitats, and other resource values.

Roads on the Tongass are used by the public for a variety of reasons, including recreation, subsistence access, and other personal uses. The roads are also used by the Forest Service in accomplishing work for various resource programs. None of these programs is sufficient to provide for all the road maintenance needs. In the 2003 Tongass Forest-Level Roads Analysis, fish passage and sedimentation maintenance needs were identified as the critical categories of the deferred maintenance cost schedule.

Transportation planning is an integral part of the interdisciplinary process used to develop site-specific projects on the Tongass. The transportation planning process includes collaboration between the agency and local communities to identify the minimum road system that is safe and responsive to public needs while minimizing maintenance costs.

Relationship of This Rule to Other Rulemaking. One commenter read 40 CFR 1506.1 as requiring an EIS for the temporary exemption of the Tongass. The commenter reasoned that because the agency was considering whether to adopt a permanent exemption for the Tongass, the agency may not take any action that tends to prejudice the choice of alternatives on that decision unless reviewed in a separately sufficient, stand-alone EIS. One commenter suggested that the effort the agency might put into preparing site-specific EISs for timber sales in roadless areas under this final rule might prejudice the decision on the advance notice of proposed rulemaking. Others viewed the proposed rule as an emergency rule that has not been adequately justified by the Forest Service, and recommended action be delayed until the permanent exemption is resolved.

Response: The decision to adopt the proposed rule as final is supported by the environmental analysis presented in the roadless rule FEIS, which considered in detail the alternative of exempting the Tongass from the prohibitions of the roadless rule, as well as the analysis and disclosure of alternative management regimes for roadless lands presented in the 1997 Tongass Forest Plan EIS and the 2003 Supplemental EIS. The Department has determined that no additional environmental analysis is warranted. The Supplemental Information Report documenting that decision is available on the World Wide Web/Internet at *http://www.roadless.fs.fed.us.* In any event, the temporary rules on the Tongass and the proposal set forth in the advance notice of proposed rulemaking are separate and have separate utility. The July 15, 2003, advance notice of proposed rulemaking sought comment on whether both forests in Alaska should be exempted permanently from the prohibitions of the roadless rule. This final rule has separate utility in temporarily preventing socioeconomic dislocation in Southeast Alaska while protecting forest resources, regardless of whether the agency ultimately decides to exempt both national forests from the prohibitions of the roadless rule on a permanent basis.

Promulgating this final rule would not prejudice the ultimate decision on the advance notice of proposed rulemaking. An action prejudices the ultimate decision on a proposal when it tends to determine subsequent development or limit alternatives. The preparation of EISs does neither.

Finally, this final rule is not an emergency rule. All the requirements and procedures for public notice and comment established by the Administrative Procedure Act for Federal rulemaking have been met with the publication of the proposed rule with request for comment and with the subsequent publication of this final rule. Emergency rulemaking involves the promulgation of a rule without

providing for notice and public comment prior to adoption, when conditions warrant immediate action. That is not the case with this final rule.

Alternatives Considered

The alternatives considered in making this decision are the Tongass National Forest Alternatives identified in the November 2000 FEIS for the roadless rule, as further described in the rule's record of decision (66 FR 3262). These include the Tongass Not Exempt, Tongass Exempt, Tongass Deferred, and Tongass Selected Areas alternatives. The Tongass Not Exempt Alternative was selected by the Department as set out in the final roadless rule in January 2001, with mitigation explained in that record of decision. The Tongass Exempt Alternative would not apply the prohibitions of the roadless rule to the Tongass. Under the Tongass Deferred Alternative, the decision whether to apply the prohibitions of the roadless rule to the Tongass would be made in 2004 as part of the 5-year review of the Tongass Forest Plan. Under the Tongass Selected Areas Alternative, the prohibitions on road construction and reconstruction would apply only to certain land use designations, where commercial timber harvest would not be allowed by the forest plan. These areas comprise approximately 80 percent of the land in inventoried roadless areas on the Tongass.

The Environmentally Preferable Alternative

Under the National Environmental Policy Act, the agency is required to identify the environmentally preferable alternative (40 CFR 1505.2(b)). This is interpreted to mean the alternative that would cause the least damage to the biological and physical components of the environment, and which best protects, preserves, and enhances historic, cultural, and natural resources (Council on Environmental Quality, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 FR 18026).

The Department concurs in the assessment described in the January 12, 2001, roadless rule record of decision (66 FR 3263) that the environmentally preferable alternative is the portion of Alternative 3 of the roadless rule FEIS combined with the Tongass Not Exempt Alternative, which would apply the roadless rule's prohibitions to the Tongass without delay.

Record of Decision Summary

For the reasons identified in this preamble, the Department has decided to select the Tongass Exempt Alternative described in the roadless rule FEIS, until the Department promulgates a final rule concerning the application of the roadless rule within the State of Alaska, to which the agency sought public comments in the July 15, 2003, second advance notice of proposed rulemaking (68 FR 41864). Until such time, the Department is amending paragraph (d) of § 294.14 of the Roadless Area Conservation Rule set out at 36 CFR part 294 to exempt the Tongass National Forest from prohibitions against timber harvest, road construction, and reconstruction in inventoried roadless areas.

The Tongass Not Exempt Alternative (identified as the environmentally preferable alternative in the previous section) is not selected because the Department now believes that, considered together, the abundance of roadless values on the Tongass, the protection of roadless values included in the Tongass Forest Plan, and the socioeconomic costs and hardships to local communities of applying the roadless rule's prohibitions to the Tongass, outweigh any additional potential long-term ecological benefits; and therefore, warrant treating the Tongass differently from the national forests outside of Alaska.

The Tongass Deferred Alternative is not selected because there is no reason to delay a decision until 2004. On the contrary, a decision is needed now to reduce uncertainty about future timber supplies, which will enable the private sector to make investment decisions needed to prevent further job losses and economic hardship in local communities in Southeast Alaska.

The Tongass Selected Areas Alternative is not selected because it also would ''be of considerable consequence at local levels where the timber industry is a cornerstone of the local economy and where the Forest Service has a strong presence,'' as stated in the roadless rule's record of decision. While these adverse socioeconomic consequences would be less than those under the Tongass Not Exempt Alternative, the roadless rule's record of decision states, ''For most resources, the effects of this alternative would probably not be noticeably different from those under the Tongass Exempt Alternative.'' Accordingly, there is no noticeable environmental benefit to selecting the Tongass Selected Areas Alternative over the Tongass Exempt Alternative that would justify the additional socioeconomic costs.

This decision reflects the facts, as displayed in the FEIS for the roadless rule and the FEIS for the 1997 Tongass Forest Plan that roadless values are plentiful on the Tongass and are well protected by the Tongass Forest Plan. The minor risk of the loss of such values is outweighed by the more certain socioeconomic costs of applying the roadless rule's prohibitions to the Tongass. Imposing those costs on the local communities of Southeast Alaska is unwarranted.

Regulatory Certifications

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order (E.O.) 12866, Regulatory Planning and Review. It has been determined that this is not an economically significant rule. This final rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This final rule will not interfere with an action taken or planned by another agency. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. However, because this final rule raises novel legal or policy issues arising from legal mandates or the President's priorities, it has been designated as significant and, therefore, is subject to Office of Management and Budget (OMB) review in accordance with the principles set forth in E.O. 12866.

A cost-benefit analysis has been conducted on the impact of this final rule and incorporates by reference the detailed regulatory impact analysis prepared for the January 12, 2001, roadless rule, which included the Tongass Exempt Alternative. Much of this analysis was discussed and disclosed in the final environmental impact statement (FEIS) for the roadless rule. A review of the data and information from the original analysis and the information disclosed in the FEIS found that it is still relevant, pertinent, and sufficient in regard to exempting the Tongass from the application of the roadless rule. As documented in the Supplemental Information Report, the Department has concluded that no new information exists today that would significantly alter the results of the original analysis.

Moreover, this final rule has been considered in light of E.O. 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A final regulatory flexibility

analysis conducted on the roadless rule included the effects associated with the Tongass National Forest. The agency solicited comments on the regulatory flexibility analysis for the roadless rule. Although numerous comments were provided that indicated a concern about the roadless rule's impacts on small entities, only a small portion provided data documentation on their status as a small entity and the likely effects of the roadless rule. In many cases, the agency was unable to determine the effects quantitatively, based on comments on the regulatory flexibility analysis. However, all of the businesses in Southeast Alaska engaged in timber harvest and processing of Tongass timber are small businesses. Therefore, this final rule would be expected to have future positive impacts on the small entities in Southeast Alaska due to the increased opportunity to remain viable in the marketplace. This opportunity would be reduced if the prohibitions in the roadless rule are applied to the Tongass.

Therefore, based on the final regulatory flexibility analysis conducted for the roadless rule, which is available electronically on the World Wide Web/Internet on the Forest Service Roadless Area Conservation Web site at *http://www.roadless.fs.fed.us,* a small entities flexibility assessment has been made for this final rule. It has been determined that this action will not have a significant negative economic impact on a substantial number of small entities as defined by SBREFA. This final rule will not impose record keeping requirements; will not affect small entities' competitive position in relation to large entities; and will not affect small entities' cash flow, liquidity, or ability to remain in the market.

Environmental Impact

A draft environmental impact statement (DEIS) was prepared in May 2000 and a final environmental impact statement (FEIS) was prepared in November 2000 in association with promulgation of the roadless area conservation rule (January 12, 2001 (66 FR 3244). The DEIS and FEIS examined in detail sets of Tongass-specific alternatives. In the DEIS, the agency considered alternatives which would not have applied the rule's prohibitions to the Tongass National Forest, but would have required that the agency make a determination as part of the 5-year plan to review whether to prohibit road construction in unroaded portions of inventoried roadless areas. In the FEIS, the Department identified the Tongass Not Exempt as the Preferred Alternative, which would have treated the Tongass National Forest the same as all other national forests, but would have delayed implementation of the rule's prohibitions until April 2004. This delay would have served as a social and economic mitigation measure by providing a transition period for communities most affected by changes in management of inventoried roadless areas in the Tongass. In the final rule published on January 12, 2001, however, the Department selected the Tongass Not Exempt Alternative without any provision for delayed implementation. Therefore, the rule's prohibition applied immediately to inventoried roadless areas on the Tongass, but the rule also allowed road construction, road reconstruction, and the cutting, sale, and removal of timber from inventoried roadless areas on the Tongass where a notice of availability for a DEIS for such activities was published in the **Federal Register** prior to January 12, 2001.

In February 2003, in compliance with a district court's order in *Sierra Club* v. *Rey* (D. Alaska), the Forest Service issued a record of decision and a supplemental environmental impact Statement (SEIS) to the 1997 Tongass Forest Plan that examined the site-specific wilderness and non-wilderness values of the inventoried roadless areas on the Forest as part of the forest planning process. The February 2003 ROD readopted the 1997 Tongass Forest Plan with non-significant amendments as the current forest plan. Congress has prohibited administrative or judicial review of the February 2003 ROD. Section 335 of the 2003 Omnibus Appropriations Act provides that the ROD for the 2003 SEIS for the 1997 Tongass Land Management Plan shall not be reviewed under any Forest Service administrative appeal process, and its adequacy shall not be subject to judicial review by any court in the United States.

Because the 2000 FEIS for the roadless rule included an alternative to exempt the Tongass National Forest from the provisions of the roadless rule, the decision to adopt this final rule may be based on the FEIS, as long as there are no significant changed circumstances or new information relevant to environmental concerns bearing on the proposed action or its impacts that would warrant additional environmental impact analysis. The Forest Service reviewed the circumstances related to this rulemaking and any new information made available since the FEIS was completed; including the SEIS and public comments received on the proposed rule, and documented the results in a Supplemental Information Report (SIR), dated October 2003. The agency concluded—and the Department agrees—that no significant new circumstances or information exist, and that no additional environmental analysis is warranted. The SIR and the FEIS are available on the World Wide Web/Internet on the Forest Service Roadless Area Conservation Web site at *http://www.roadless.fs.fed.us.* The Tongass Forest Plan is available at *http://www.fs.fed.us/r10/tlmp,* and the 2003 SEIS is available at *http://www.tongass-seis.net/.*

No Takings Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12360, and it has been determined that the final rule does not pose the risk of a taking of private property, as the rule is limited to temporarily exempting the applicability of the roadless rule to the Tongass National Forest.

Energy Effects

This final rule has been analyzed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this final rule does not constitute a significant energy action as defined in the Executive order.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. After adoption of this final rule, (1) all State and local laws and regulations that conflict with this rule or that would impede full implementation of this rule will be preempted; (2) no retroactive effect will be given to this final rule; and (3) this final rule would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this final rule on State, local, and Tribal governments and the private sector. This final rule does not compel the expenditure of $100 million or more by any State, local, or Tribal government, or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Federalism

The Department has considered this final rule under the requirements of Executive Order 13132, Federalism. The agency has made an assessment that the rule conforms with the federalism principles set out in this Executive order; would not impose any compliance costs on the States; and would 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. Based on a review of the comments received on the proposed rule, the Department has determined that no additional consultation is needed with State and local governments prior to adopting this final rule, because virtually all comments received from State and local governments supported the proposed rule.

Consultation and Coordination With Indian Tribal Governments

This final rule has Tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Forest Service line officers in the field have contacted Tribes to ensure their awareness of this rulemaking, provide an overview of this final rule, and conduct government-to-government dialog with interested Tribes. A letter from the Alaska Regional Forester (Region 10) was sent on July 15, 2003, to Tribal officials via e-mail notifying them that the proposed rule to temporarily exempt the Tongass from the prohibitions of the roadless rule was published in the **Federal Register** that same day. A follow up informational meeting was requested and held with Sitka Tribal officials. One comment was received on the proposed rule from the Metlakatla Indian Community regarding the catastrophic economic and social losses due to the shutdown of the Tongass was in reference to the roadless rule. This final rule to temporarily exempt the Tongass from the prohibitions of the roadless rule would potentially reduce the social and economic impacts the Tribe noted. Therefore, the Department has determined that there could be substantial future direct effects to one or more Tribes, and that these effects are anticipated to be positive.

Controlling Paperwork Burdens on the Public

This final rule does not contain any record keeping or reporting requirements, or other information collection requirements as defined in 5 CFR part 1320, and therefore imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

Government Paperwork Elimination Act Compliance

The Department of Agriculture is committed to compliance with the Government Paperwork Elimination Act (44 U.S.C 3504), which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

List of Subjects in 36 CFR Part 294

National Forests, Navigation (air), Recreation and recreation areas, Wilderness areas.

■ Therefore, for the reasons set forth in the preamble, the Department of Agriculture is amending part 294 of Title 36 of the Code of Federal Regulations as follows:

PART 294—SPECIAL AREAS

Subpart B—Protection of Inventoried Roadless Areas

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

Authority: 16 U.S.C. 472, 529, 551, 1608, 1613; 23 U.S.C. 201, 205.

■ 2. Revise paragraph (d) of § 294.14 to read as follows:

§ 294.14 Scope and applicability.

* * * * *

(d) Until the USDA promulgates a final rule concerning application of this subpart within the State of Alaska [to which the agency originally sought public comments in the July 15, 2003, second advance notice of proposed rulemaking (68 FR 41864)], this subpart does not apply to road construction, road reconstruction, or the cutting, sale, or removal of timber in inventoried roadless areas on the Tongass National Forest.

* * * * *

Dated: December 23, 2003.

David P. Tenny,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 03–32077 Filed 12–23–03; 4:47 pm]

BILLING CODE 3410–11–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 02–34 and 00–248; FCC 03–154]

Satellite Licensing Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule, announcement of effective date.

SUMMARY: The Commission adopted rule revisions to require use of new satellite and earth station application forms. Certain rules contained new and modified information requirements and were published in the **Federal Register** on November 12, 2003. This document announces the effective date of these published rules.

DATES: The amendments to §§ 25.103, 25.111, 25.114, 25.115, 25.117, 25.118, 25.121, 25.131, 25.141, and part 25, Subpart H, published at 68 FR 63994, November 12, 2003, will become effective March 1, 2004.

FOR FURTHER INFORMATION CONTACT: Steven Spaeth, International Bureau, Satellite Policy Branch, (202)418–1539.

SUPPLEMENTARY INFORMATION: On December 1, 2003, the Office of Management and Budget (OMB) approved the information collection requirement contained in §§ 25.103, 25.111, 25.114, 25.115, 25.117, 25.118, 25.121, 25.131, 25.141, and part 25, Subpart H pursuant to OMB Control No. 3060–0678. Accordingly, the information collection requirement contained in these rules will become effective on March 1, 2004.

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–31968 Filed 12–29–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031126295 3295 01; I.D. 121703A]

Fisheries of the Exclusive Economic Zone off Alaska; Shortraker/Rougheye and Northern Rockfish in the Bering Sea Subarea and ''Other Species'' in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Community Development Quota (CDQ) reserve amounts of shortraker/rougheye rockfish and northern rockfish in the Bering Sea subarea and ''other species'' in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2004 interim CDQ reserve amounts of shortraker/rougheye rockfish, northern rockfish, and ''other species'' in these areas.

DATES: Effective 0001 hrs, Alaska local time (A.l.t.), January 1, 2004, until superseded by the notice of Final 2004 Harvest Specifications of Groundfish for the BSAI, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2004 interim CDQ reserve amounts of shortraker/rougheye rockfish and northern rockfish in the Bering Sea subarea and ''other species'' in the BSAI are 3 metric tons (mt), 2 mt, and 606 mt respectively, as established by the Interim 2004 Harvest Specifications of Groundfish in the BSAI (68 FR 68265, December 8, 2003).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2004 interim CDQ reserve amounts of shortraker/rougheye rockfish and northern rockfish in the Bering Sea subarea and ''other species'' in the BSAI will be necessary as incidental catch to support other anticipated groundfish CDQ fisheries for the 2004 fishing year. Consequently, the Regional Administrator is establishing directed fishing allowances of zero mt. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for CDQ reserve amounts of shortraker/rougheye rockfish and northern rockfish in the Bering Sea subarea and ''other species'' in the BSAI.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the Agency from responding to the most recent fisheries data in a timely fashion and would delay the closure of the interim CDQ reserve amounts of shortraker/rougheye rockfish and northern rockfish in the Bering Sea subarea and ''other species'' in the BSAI.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by section 679.20 and is exempt from review under Executive Order 12866.

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

Dated: December 22, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–32074 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 249
Tuesday, December 30, 2003

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 900

[Docket No. FV03–900–1 EXT]

Proposed Rule To Exempt Organic Producers and Marketers From Assessments for Market Promotion Activities Under Marketing Order Programs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: Notice is hereby given that the comment period on the proposal to exempt producers and marketers from assessments for marketing promotion activities under marketing order programs is extended.

DATES: Comments must be received by February 2, 2004.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237, Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk at the Marketing Order Administration Branch, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237 during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: George Kelhart or Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on compliance with this proposed regulation by contacting: Jay Guerber, Marketing Order Information Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: The proposed rule on the exemption of organic producers and marketers from assessments for market promotion activities under marketing orders was published in the **Federal Register** on December 2, 2003 (68 FR 67381). The proposed rule invited comments through January 2, 2004.

The Executive Director of the Organic Trade Association requested, in consideration of the holiday season, that the comment period be extended thirty days to provide ample time for a thorough review and to ensure that those most likely to be affected by the proposed rule have the opportunity to calculate the impact.

An extension would provide interested persons more time to review and assess the proposed rule's impacts. Therefore, USDA is extending the period in which to file written comments until February 2, 2004. This notice is issued pursuant to the Agricultural Marketing Agreement Act of 1937 and the Farm Security and Rural Investment Act (Pub. L. 107–171).

Authority: 7 U.S.C. 601–674 and 7 U.S.C. 7401.

Dated: December 22, 2003.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 03–31945 Filed 12–23–03; 10:27 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV04–930–1 PR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2003–2004 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on the establishment of final free and restricted percentages for the 2003–2004 crop year. The percentages are 75 percent free and 25 percent restricted and would establish the proportion of cherries from the 2003 crop which may be handled in commercial outlets. The percentages are intended to stabilize supplies and prices, and strengthen market conditions and were recommended by the Cherry Industry Administrative Board (Board), the body which locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

DATES: Comments must be received by January 14, 2004.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moabdocket.clerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *http://www.ams/usda.gov/fv/moab/html.*

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737; telephone: (301)

734–5243, or Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

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

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

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

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This rule would establish final free and restricted percentages for tart cherries for the 2003–2004 crop year, beginning July 1, 2003, through June 30, 2004. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

The order prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. The regulations apply to all handlers of tart cherries that are in the regulated districts. Tart cherries in the free percentage category may be shipped immediately to any market, while restricted percentage tart cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with § 930.59 of the order and § 930.159 of the regulations, or used for exempt purposes (and obtaining diversion credit) under § 930.62 of the order and § 930.162 of the regulations. The regulated Districts for this season are: District one—Northern Michigan; District two—Central Michigan; District three—Southwest Michigan; District seven—Utah; District eight—Washington and District nine—Wisconsin. Districts four, five, and six (New York, Oregon, and Pennsylvania, respectively) would not be regulated for the 2003–2004 season.

The order prescribes under § 930.52 that those districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded six million pounds. A district not meeting the six million-pound requirement shall not be regulated in such crop year. Because this requirement was not met in the districts of Oregon, and Pennsylvania, handlers in those districts would not be subject to volume regulation during the 2003–2004 crop year. Section 930.52 also prescribes that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous five years would be exempt from any volume regulation if, in that year, a restricted percentage is established. Because New York's production is less than 50 percent of the previous 5-year production average, handlers in New York also would not be subject to volume regulation during the 2003–2004 crop year.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. Demand for tart cherries and tart cherry products tends to be relatively stable from year to year. The supply of tart cherries, by contrast, varies greatly from crop year to crop year. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from crop year to crop year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely balanced. The primary purpose of setting free and restricted percentages is to balance supply with demand and reduce large surpluses that may occur.

Section 930.50(a) of the order describes procedures for computing an optimum supply for each crop year. The Board must meet on or about July 1 of each crop year, to review sales data, inventory data, current crop forecasts and market conditions. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years to which is added a desirable carryout inventory not to exceed 20 million pounds or such other amount as may be established with the approval of the Secretary. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year.

The order also provides that on or about July 1 of each crop year, the Board is required to establish preliminary free and restricted percentages. These percentages are computed by deducting the actual carryin inventory from the optimum supply figure (adjusted to raw product equivalent—the actual weight of cherries handled to process into cherry products) and subtracting that figure from the current year's USDA crop forecast. If the resulting number is positive, this represents the estimated over-production, which would be the restricted percentage tonnage. The restricted percentage tonnage is then divided by the sum of the USDA crop forecast or by an average of such other crop estimates for the regulated districts to obtain percentages for the regulated districts. The Board is required to establish a preliminary restricted percentage equal to the quotient, rounded to the nearest whole number, with the complement being the preliminary free tonnage percentage. If the tonnage requirements for the year are more than the USDA crop forecast, the Board is required to establish a preliminary free tonnage percentage of 100 percent and a preliminary restricted percentage of zero. The Board is required to announce the preliminary percentages in accordance with paragraph (h) of § 930.50.

The Board met on June 26, 2003, and computed, for the 2003–2004 crop year, an optimum supply of 180 million

pounds. The Board recommended that the desirable carryout figure be zero pounds. Desirable carryout is the amount of fruit required to be carried into the succeeding crop year and is set by the Board after considering market circumstances and needs. This figure can range from zero to a maximum of 20 million pounds. The Board calculated preliminary free and restricted percentages as follows: The USDA estimate of the crop was 218 million pounds; a 10 million pound carryin added to that estimate results in a total available supply of 228 million pounds. The carryin figure reflects the amount of cherries that handlers actually have in inventory. Subtracting the optimum supply of 180 million pounds from the total estimated available supply results in a surplus of 48 million pounds of tart cherries. The surplus was divided by the production in the regulated districts (205 million pounds) and resulted in a restricted percentage of 23 percent for the 2003–2004 crop year. The free percentage was 77 percent (100 percent minus 23 percent). The Board established these percentages and announced them to the industry as required by the order.

The preliminary percentages were based on the USDA production estimate and the following supply and demand information available at the June meeting for the 2003–2004 year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	180
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the June meeting	180
Preliminary Percentages:	
(4) USDA crop estimate	218
(5) Plus carryin held by handlers as of July 1, 2003	10
(6) Total available supply for current crop year	228
(7) Surplus (item 6 minus item 3)	48
(8) USDA crop estimate for regulated districts	205

Percentages	Free	Restricted
(11) Preliminary percentages (item 7 divided by item 8 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	77	23

Between July 1 and September 15 of each crop year, the Board may modify the preliminary free and restricted percentages by announcing interim free and restricted percentages to adjust to the actual pack occurring in the industry.

The Secretary establishes final free and restricted percentages through the informal rulemaking process. These percentages would make available the tart cherries necessary to achieve the optimum supply figure calculated by the Board. The difference between any final free percentage designated by the Secretary and 100 percent is the final restricted percentage. The Board met on September 12, 2003, to recommend final free and restricted percentages.

The actual production reported by the Board was 222 million pounds, which is a four million pound increase from the USDA crop estimate of 218 million pounds.

A 10 million pound carryin was added to the Board's reported production of 222 million pounds, yielding a total available supply for the current crop year of 232 million pounds. The optimum supply of 180 million pounds was subtracted from the total available supply which resulted in a 52 million pound surplus. The total surplus of 52 million pounds is divided by the 210 million-pound volume of tart cherries produced in the regulated districts. This results in a 25 percent restricted percentage and a corresponding 75 percent free percentage for the regulated districts.

The final percentages are based on the Board's reported production figures and the following supply and demand information available in September for the 2003–2004 crop year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	180
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the October meeting	180
Final Percentages:	
(4) Board reported production	222
(5) Plus carryin held by handlers as of July 1, 2003	10
(6) Tonnage available for current crop year	232
(7) Surplus (item 6 minus item 3)	52
(8) Production in regulated districts	210

Percentages	Free	Restricted
(11) Final Percentages (item 7 divided by item 8 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	75	25

The Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for

volume regulation are approved. This goal would be met by the establishment of a preliminary percentage which releases 100 percent of the optimum supply and the additional release of tart cherries provided under § 930.50(g). This release of tonnage, equal to 10 percent of the average sales of the prior three years sales, is made available to handlers each season. The Board recommended that such release should be made available to handlers the first week of December and the first week of May. Handlers can decide how much of the 10 percent release they would like to receive on the December and May release dates. Once released, such cherries are released for free use by such handler. Approximately 18 million pounds would be made available to handlers this season in accordance with Department Guidelines. This release would be made available to every handler and released to such handler in proportion to its percentage of the total regulated crop handled. If a handler does not take his/her proportionate amount, such amount shall remain in the inventory reserve.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities.

However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

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

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

Board and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members (including small business entities) and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 1998/99 through 2002/03, approximately 91 percent of the U.S. tart cherry crop, or 240.6 million pounds, was processed annually. Of the 240.6 million pounds of tart cherries processed, 55 percent was frozen, 30 percent was canned, and 15 percent was utilized for juice and other products.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. Bearing acreage has declined from a high of 50,050 acres in 1987/88 to 36,900 acres in 2002/03. This represents a 26 percent decrease in total bearing acres. Michigan leads the nation in tart cherry acreage with 70 percent of the total and produces about 75 percent of the U.S. tart cherry crop each year.

The 2003/04 crop is moderate in size at 222.1 million pounds. The largest crop occurred in 1995 with production in the regulated districts reaching a record 395.6 pounds. The price per pound received by tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuations in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices they received often did not come close to covering the costs of production.

The industry demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

Aggregate demand for tart cherries and tart cherry products tends to be relatively stable from year-to-year. Similarly, prices at the retail level show minimal variation. Consumer prices in grocery stores, and particularly in food service markets, largely do not reflect fluctuations in cherry supplies. Retail demand is assumed to be highly inelastic which indicates that price reductions do not result in large increases in the quantity demanded. Most tart cherries are sold to food service outlets and to consumers as pie filling; frozen cherries are sold as an ingredient to manufacturers of pies and cherry desserts. Juice and dried cherries are expanding market outlets for tart cherries.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the ''marketing margin.''

The supply of tart cherries, by contrast, varies greatly. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from year-to-year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely in equilibrium. As a result, grower prices fluctuate widely, reflecting the large swings in annual supplies.

In an effort to stabilize prices, the tart cherry industry uses the volume control

mechanisms under the authority of the Federal marketing order. This authority allows the industry to set free and restricted percentages. These restricted percentages are only applied to states or districts with a 3-year average of production greater than six million pounds.

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is over-supplied with cherries, grower prices decline substantially.

The tart cherry sector uses an industry-wide storage program as a supplemental coordinating mechanism under the Federal marketing order. The primary purpose of the storage program is to warehouse supplies in large crop years in order to supplement supplies in short crop years. The storage approach is feasible because the increase in price—when moving from a large crop to a short crop year—more than offsets the cost for storage, interest, and handling of the stored cherries.

The price that growers' receive for their crop is largely determined by the total production volume and carryin inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of free and restricted percentages for the primary market, and a storage program. The establishment of restricted percentages impacts the production to be marketed in the primary market, while the storage program has an impact on the volume of unsold inventories.

The volume control mechanism used by the cherry industry results in decreased shipments to primary markets. Without volume control the primary markets (domestic) would likely be over-supplied, resulting in lower grower prices.

To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been developed. The econometric model provides a way to see what impacts volume control may have on grower prices. The three districts in Michigan, along with the districts in Utah, Washington, and Wisconsin are the restricted areas for this crop year and their combined total production is 210 million pounds. A 25 percent restriction means 158 million pounds is available to be shipped to primary markets from these three states. Production levels of 7 million pounds for New York, 1.3 million pounds for Oregon, and 3.8 million pounds for Pennsylvania, result in an additional 12.1 million pounds available for primary market shipments.

In addition, USDA requires a 10 percent release from reserves as a market growth factor. This results in an additional 18 million pounds being available for the primary market. The 158 million pounds from Michigan, Utah, Washington, and Wisconsin, the 12 million pounds from the other producing states, the 18 million pound release, and the 10 million pound carryin inventory gives a total of 198 million pounds being available for the primary markets.

The econometric model is used to estimate grower prices with and without regulation. Without the volume controls, the estimated grower price would be approximately $0.36 per pound. With volume controls, the estimated grower price would increase to approximately $0.43 per pound.

The use of volume controls is estimated to have a positive impact on grower's total revenues. Without regulation, growers' total revenues from processed cherries are estimated to be $79.9 million in 2003–2004. In this scenario, production is 222 million pounds and price, without regulation, is estimated to be $0.36 per pound. With regulation, growers' revenues from processed cherries are estimated to be $85.1 million. In this scenario, 198 million pounds are available for the primary markets with an estimated price of $0.43 per pound. Over the past several seasons, growers received approximately $0.10 cents for restricted (diverted) cherries.

The results of econometric analysis are subject to some level of uncertainty. As long as average grower prices are $0.38 per pound or greater, then growers' are better off with the regulation. With a price of $0.38 per pound, the estimated revenues under no regulation would be similar to the revenues with a 25 percent regulation assuming that all the production would be sold and marketed under the no regulation scenario.

It is concluded that the 25 percent volume control would not unduly burden producers, particularly smaller growers. The 25 percent restriction would be applied to the growers in Michigan, Utah, Washington, and Wisconsin. The growers in the other three regulated states will benefit from this restriction. Michigan, New York, and Washington produced over 91 percent of the tart cherry crop during the 2001–2002 crop year.

Recent grower prices have been as high as $0.44 per pound in the 2002–2003 crop year. At current production and yield levels, the cost of production is reported to be $0.43 per pound. Thus, the estimated $0.43 per pound received by growers under the regulation scenario just covers the cost of production. Under the no regulation scenario, estimated grower prices would not cover the total cost of production. Lower yields and production result in higher costs of production. Overhead or fixed costs are spread over lower levels of production which result in higher costs of production per acre. Even in years when no production is harvested, growers face fixed costs of production and additional costs associated with maintaining the orchard for future years of production. The use of volume controls is believed to have little or no effect on consumer prices and will not result in fewer retail sales or sales to food service outlets.

Without the use of volume controls, the industry could be expected to start to build large amounts of unwanted inventories. These inventories have a depressing effect on grower prices. The econometric model shows for every 1 million-pound increase in carryin inventories, a decrease in grower prices of $0.0033 per pound occurs. The use of volume controls allows the industry to supply the primary markets while avoiding the disastrous results of over-supplying these markets. In addition, through volume control, the industry has an additional supply of cherries that can be used to develop secondary markets such as exports and the development of new products. The use of reserve cherries in the production shortened 2002/03 crop year proved to be very useful and beneficial to growers and packers.

In discussing the possibility of marketing percentages for the 2003–2004 crop year, the Board considered the following factors contained in the marketing policy: (1) The estimated total production of tart cherries; (2) the estimated size of the crop to be handled; (3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of the factors resulted in the computation and announcement in September 2003 of the restricted percentages proposed in this rule (75 percent free and 25 percent restricted).

One alternative to this action would be not to have volume regulation this season. Board members stated that no volume regulation would be detrimental to the tart cherry industry due to the size of the 2003–2004 crop. Returns to growers would not cover their costs of production for this season which might cause some to go out of business.

As mentioned earlier, the Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110 percent of the quantity shipped in the prior three years.

The free and restricted percentages proposed to be established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

While the benefits resulting from this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements have been previously approved by OMB and assigned OMB Number 0581–0177.

There are some reporting, recordkeeping, and other compliance requirements under the marketing order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule needs to be in place as soon as possible to achieve its intended purpose of making the optimum supply quantity computed by the Board available to handlers marketing 2003–2004 crop year cherries. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR Part 930 is proposed to be amended as follows:

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

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

Authority: 7 U.S.C. 601–674.

2. Section 930.253 is added to read as follows:

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

§ 930.253 Final free and restricted percentages for the 2003–2004 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2003, which shall be free and restricted, respectively, are designated as follows: Free percentage, 75 percent and restricted percentage, 25 percent.

Dated: December 22, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–31946 Filed 12–29–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1720

RIN 0572–AB83

Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to establish procedures for a guarantee program for cooperatives and other not-for-profit lenders that make loans eligible for assistance under the Rural Electrification Act of 1936 (the RE Act). Criteria for eligibility of lenders and transactions are set forth in the rule together with application procedures. Program participants are required to pay an annual fee for the guarantee. The fee will be credited to the Rural Development Subaccount to provide funds for zero-interest loans and grants pursuant to section 313 of the RE Act. The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), amended the RE Act, by adding section 313A which establishes this program.

DATES: Written comments must be received by RUS or carry a postmark or equivalent no later than March 1, 2004.

ADDRESSES: Written comments should be addressed to Blaine D. Stockton, Assistant Administrator, Electric Program, U.S. Department of Agriculture, Rural Utilities Service, Room 5156 South Building, Stop 1560, 1400 Independence Avenue, SW., Washington, DC 20250–1560. Telephone (202) 720–9545. RUS requires a signed original and three copies of all comments (7 CFR Part 1700). All comments received will be made available for inspection in room 4037 South Building during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patrick R. Sarver, Management Analyst, Electric Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1560, Room 5158, Washington, DC 20250–1560. Telephone number (202) 690–2992, Facsimile (202) 690–0717.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the

Office of Management and Budget (OMB).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all State and local laws and regulations that are in conflict with this proposed rule will be preempted. No retroactive effect will be given to the rule and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), the Administrator of RUS has determined that this proposed rule will not have significant impact on a substantial number of small entities. No small entities meet the statutory criteria for participation in the program that is the subject of this rulemaking.

Information Collection and Recordkeeping Requirements

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (the ''Act''), OMB must approve all ''collection of information'' by RUS. The Act defines ''collection of information'' as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *.'' (44 U.S.C. 3502(3)(A).) RUS has concluded that the reporting requirements contained in this proposed rule will involve less than 10 persons and do not require approval under the provisions of the Act.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402. Telephone: (202) 512–1800.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled ''Department Programs and Activities Excluded from Executive Order 12372,'' (50 FR 47034).

Unfunded Mandates

This proposed rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109–Stat. 48)) for State, local, and tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act Certification

RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Background

The Rural Electrification Act of 1936 (the ''RE Act'') (7 U.S.C. 901 *et. seq.*) authorizes the Secretary of Agriculture (the ''Secretary'') to guarantee and make loans to persons, corporations, states, territories, municipalities, and cooperative, non-profit, or limited-dividend associations for the purpose of furnishing or improving electric and telephone service in rural areas. Responsibility for administering electrification and telecommunications loan and guarantee programs along with other functions the Secretary deemed appropriate have been assigned to the Rural Utilities Service (RUS) under the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6941 *et seq.*). The Administrator of RUS has been delegated responsibility for administrating the programs and activities of RUS, *see* 7 CFR 1700.25.

Section 6101 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171, 116 Stat. 413) (''FSRIA'') amends the RE Act by adding a new section 313A: Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes (7 U.S.C. 940c–1). FSRIA became law on May 13, 2001, and requires the Secretary of Agriculture to promulgate regulations for issuing guarantees under section 313A.

Section 313A of the RE Act provides that under certain specified circumstances, the Secretary shall guarantee payments on bonds or notes issued by cooperative or other lenders organized on a not-for-profit basis. Section 313A provides limits to the amount of a guarantee, the purposes for the guarantee, and the qualifications of eligible lenders seeking a guarantee of a bonds or notes. Section 313A requires that a guarantee be no greater than the principal amount of outstanding loans of the lender for electrification or telephone purposes that have been made concurrently with loans approved for such purposes under the RE Act. The section also provides for charging an annual fee of 30 basis points on the outstanding balance of the guaranteed bonds or notes to lenders that receive a guarantee under section 313A. Proceeds of the fee are required, except in limited circumstances specified in section 313A, to be deposited into the Rural Economic Development Subaccount. From this subaccount, zero interest loans and grants are made to promote rural development programs as described in section 313(b)(2)(B) of the RE Act (7 U.S.C 940c–1(b)(2)(B)).

The FSRIA limits eligibility under this program to not-for-profit third party lenders that make loans for any electrification or telephone purpose eligible for assistance under the Rural Electrification Act of 1936. Currently there are two lenders that meet this eligibility criterion; the National Rural Utilities Cooperative Finance Corporation (CFC) and CoBank.

RUS is proposing new procedures for the guarantee program established by section 313A. In order to produce a comprehensive regulation that will carry out the objectives set forth in the FSRIA, and provide for a program consistent with established RUS guiding principles, RUS discussed program options with other federal agencies, and examined recently established federal guarantee programs. Furthermore, RUS retained the services of an outside consultant with experience in capital markets and establishing federal guarantee programs to assist it in the development of this program.

Requests for section 313A guarantees will be considered according to eligibility requirements and the strength of the lender seeking such a guarantee. A guaranteed lender must demonstrate by sufficient evidence in its application and periodically while any guarantee is in effect, that the guaranteed lender will at all times be able to make timely payments on the bonds or notes being guaranteed.

Program Summary

The rule establishes general standards for issuing a guarantee consistent with statutory requirements. The general standards provide limitations on the bonds and the use of the proceeds.

Eligibility criteria are established according to statute and RUS program requirements. To be eligible to participate in the program, a guaranteed lender must be a bank or other lending institution organized as a private, not-for-profit cooperative association or otherwise on a non-profit basis and be able to demonstrate to the Secretary that it possesses the appropriate expertise, experience and qualifications to make loans for electrification or telephone purposes. To be eligible to receive a guarantee, a guaranteed lender must furnish the Secretary with a certified list of the principal balances of concurrent loans then outstanding evidencing that such aggregate balance is at least equal to the sum of the proposed principal amount of guaranteed bonds to be issued, and any previously issued guaranteed bonds outstanding. Also, the guaranteed bonds to be issued by the guaranteed lender must receive an underlying investment grade rating from a Rating Agency, without regard to the guarantee and the final maturity of the guaranteed bonds may not exceed 15 years.

The rules establish an application process where the applicant is required to submit eligibility data and certifications for on-going review. The application information includes background information, a term sheet summarizing the proposed terms and conditions of the guarantee agreement, a statement as to how the proceeds are to be used and the financial benefit it anticipates deriving from participating in the program, a pro-forma cash flow projection or business plan for the next five years, consolidated financial statements of the guaranteed lender for the previous three years, evidence of having been assigned an investment grade rating on the debt obligations for which it is seeking the guarantee, without regard to the guarantee; and other application documents deemed necessary by the Secretary for the evaluation of applicants.

Each application will be reviewed by the Secretary to determine whether it meets the eligibility requirements. The application is then evaluated based upon the extent to which the proposed provisions indicate the applicant will be able to repay the guaranteed bonds, the adequacy of the proposed provisions to protect the Federal government, the applicant's demonstrated performance of financially sound business practices; the extent to which providing the guarantee to the applicant will help reduce the cost and/or increase the supply of credit to rural America, and the amount of fee income available to be deposited into the Rural Economic Development Subaccount.

After the guarantee is approved, other conditions must be met prior to receiving final endorsement by the Secretary. Bond documents must be executed by the applicant and the applicant must certify to the Secretary that the guaranteed bonds proceeds will be applied to fund eligible new loans under the RE Act, to refinance concurrent loans, or to refinance existing debt instruments of the guaranteed lender used to fund eligible loans. The applicant must also provide a final certified list of concurrent loans and their outstanding balances as of the date the guarantee is issued. Counsel to the applicant must furnish an opinion as to the applicant being legally authorized to issue the guaranteed bonds and enter into the bond documents. No material adverse change can occur between the date of the application and date of execution of the guarantee. The Chairman of the Board and the Chief Executive Officer of the applicant (or other senior management acceptable to the Secretary) must certify acknowledging the applicant's commitment to submit to the Secretary an annual credit assessment of the applicant by a Rating Agency and acknowledging the guaranteed lender's commitment to deliver annual consolidated financial statements audited by an independent certified public accountant for each year during which the guaranteed bonds are outstanding. It should be emphasized that the Secretary will not issue the guarantee if, in the sole judgment of the Secretary, there has occurred a material adverse change in the condition (financial or otherwise) or prospects of the guaranteed lender or its subsidiaries.

The rule establishes an annual fee for the guarantee equal to 30 basis points (0.3 percent) of the amount of the unpaid principal of the guaranteed bond. The fee is deposited into the Rural Economic Development Subaccount maintained under section 313(b)(2)(A) of the RE Act. The Secretary also has the authority to structure the schedule for payment of the annual fee, with the consent of the lender, so that sufficient funds are available to pay the subsidy costs for the guarantee.

As long as any guaranteed bonds remain outstanding, the guaranteed lender agrees to provide the Secretary on an annual basis consolidated financial statements and accompanying footnotes, audited by independent certified public accountants, pro forma projections of the guaranteed lender's balance sheet, income statement, and statement of cash flows over the ensuing five years, a credit assessment issued by a Rating Agency, a review and certification of the security of the government guarantee that is audited by an independent certified public accounting firm or federal banking regulator, a review and certification of the lender's capital adequacy utilizing the capital adequacy standards of FIRREA by a reputable, independent certified public accounting firm or federal banking regulator, and other such information requested by the Secretary. Additionally the bond documents will specify such bond monitoring and financial reporting requirements as deemed appropriate by the Secretary.

Economic Impact

The Guarantees for Bonds and Notes Issued for Electrification and Telephone Purposes Program (the ''Program'') facilitates the continued improvement of electric and telephone service in rural America, by providing Federal loan guarantees on debt issued by non-profit, cooperative and other rural lending institutions (the ''Lenders''). However, by providing bond guarantees under the Program, financial default risk is transferred to the Federal government. Under the most likely scenario, the fees collected from the Lenders would offset all of the expected credit subsidy costs of the Program. As a result, the expected cost to taxpayers would be zero. However, there is a possibility that the Lender could default, which, depending on the timing of the default, could expose the government to a maximum liability of approximately $3 billion. Based on historical experience for unsecured corporate bonds of this quality, the government could be expected to recover at least one-half of the defaulted amounts, making it more likely that the government's maximum exposure is approximately $1.5 billion. The exposure may be even less depending upon the annual appropriation by Congress to fund guarantees through this program.

Without this new program lenders would continue to obtain debt financing at prices that reflect the financial risk of uninsured bonds. The higher rates associated with this financing as compared to Federally guaranteed debt would be passed on to the cooperatives and other borrowers and eventually to the consumers in rural America in the form of higher electric or telephone rates. Under the proposed Rule lenders could refinance outstanding debt at a lower rate and pass the savings in one form or another on to its borrowers

consistent with 1720.4(a)(4) and the statute.

Lenders could alternatively elect to directly pass through to the cooperative borrowers the lower interest rates it obtains under the Program by reducing the rate on a like amount of eligible loans consistent with 1720.4(a)(4) and the statute. Eligible loans consist of either new or existing loans made for electrification or telephone projects that are eligible for assistance under the RE Act and are made concurrently with RUS-funded loans. The Secretary has the authority to require that borrowers seek concurrent loans for up to 30 percent of their request as provided in Section 307 of the RE Act. Using current interest rates as a guideline, lenders with a mid investment grade credit rating are able to issue long-term debt at approximately 2 percent over the comparable term U.S. Treasury bond yield. Similar-term debt guaranteed by the U.S. government is estimated to trade at a yield spread of approximately 0.5 percent over Treasuries. Thus, there is a potential interest rate savings of approximately 1.5 percent for lenders under this guarantee program. However, the 30 basis point average annual fee associated with the guarantees reduces the potential savings. Subtracting out the fee, average interest rate savings of approximately 1.2 percent could still be realized by qualified lenders under the guarantee program.

The Federal government would deposit the annual guarantee fees it charges the Lender, less any portion necessary to pay the subsidy cost, into an account for grants and zero interest rate rural economic development loans under the Rural Economic Development Loan and Grant Program (''REDLG''). Assuming $3 billion of loan guarantees were made under this program, approximately $90 million dollars of investment capital could be infused into the REDLGP over the next 15 years.[1] Past performance indicates that this amount could be leveraged to approximately $265.5 million in total investment in rural America through further investment by private lenders and investors.[2] Using USDA's Economic Research Service multiplier for rural employment, an investment of this size could be expected to generate over 6,000 jobs in rural America.[3]

The RUS program has been very successful over the years in effectively managing the government's risk. This has been accomplished by ensuring that borrowers meet strict financial and engineering requirements. Since the late 1930's the REA and now RUS has administered the Electric and Telecommunications programs which currently hold a cumulative outstanding balance of over $45 billion. During that time the Electric and Telecommunications programs have experienced only ten defaults that required a write-off of debt in the amount of $4.9 billion.

Federal government guarantee programs by their nature expose the taxpayer to financial risk. For the Program, the risks are estimated to be minimal because of the non-competitive nature of many of the businesses for which loans could be made (*e.g.*, electric distribution cooperatives) and the requirement for guarantee recipients to pay an annual fee that offsets expected losses. Steps that will be taken to further reduce risk include stipulating minimum credit ratings without guarantees, establishing sound underwriting criteria, and requiring the participant to demonstrate industry expertise.

FIRREA Requirements

For this program the Federal Government proposes using capital adequacy standards of the banking industry as defined by the Federal Institutions Reform, Recovery and Enforcement Act (FIRREA). FIRREA provides regulatory oversight of all Savings and Loan institutions under the Office of Thrift Supervision. FIRREA contains a number of provisions relating to capital standards and consequences for failure to meet those standards.

The Capital Adequacy standards in FIRREA will be utilized by the Program. The investment grade rating required by the Program statute indicates that applicants must satisfy capital adequacy requirements necessary to meet their payment obligations. As part of the financial covenants in the final guarantee agreement between RUS and the participant, language will be included that is designed to address the capital adequacy standards of FIRREA. These may include financial indicators such as loan loss reserves, debt-to-equity ratios, and times-interest-earned ratios.

FIRREA contains specific language that addresses non-compliance with capital adequacy requirements to limit the institution's ability to grow, restrict its growth to correspond with capital, or submit plans to reach compliance. As part of the financial covenants in the Program legal documents, language will be included to address non-compliance with capital adequacy standards or credit rating downgrades to include specific remedies—such as requiring the obligor to post additional collateral until the capital adequacy standards are met or increases in the interest rates on the guaranteed bonds or notes.

Issues for Public Comment

In this proposed rulemaking RUS is soliciting information from the public on all aspects including terms, limitations and conditions of this program with the goal of attaining the greatest possible public benefits without assuming undue risks for the U.S. Treasury and taxpayers. Furthermore, RUS asks that commenters give consideration to the following questions.

1. A description of the impacts on rural America is presented in the preamble. Is this description complete or are there other concerns with regard to the potential benefits for, or costs to, rural communities, lenders making use of the program, or taxpayers?

2. The proposed rule requires collateral for securitization of a bond under this program as well as the establishment of a bankruptcy remote trust fund capitalized at 5% of the guaranteed amount outstanding. This trust fund would be viewed as a risk-sharing mechanism in light of the government's potential 100% guarantee of an applicant's obligations. The trust fund would establish additional collateral for reimbursement of any advances the government makes on its guarantee. Please comment on this risk-sharing methodology and other methods to protect the guarantor's interests through collateralization.

3. The capital adequacy standards of FIRREA will be utilized by this program. Please comment on the use of FIRREA standards as a model and the use of FIRREA-like restrictions in the event of noncompliance. Please also comment on whether the use of financial triggers is an effective mechanism for protecting the guarantor's interests.

4. The proposed rule does not impose a limitation on the proceeds of the bond or note guaranteed. One consideration for this program is to limit the amount of refinancing to 25% of the amount guaranteed. It is believed that such a

[1] Assumes 20 basis points (.20 percent) of the 30 basis point (.30 percent) guarantee fee is deposited in the REDLG account annually. .20 percent × $3 billion = $6 million × 15 years = $90 million.

[2] Estimated using historical investment leveraged from the flow of funds into the REDLG account where every $1 in investment into the REDLG account leveraged $2.95 in further investment in rural America. Data provided by RBS.

[3] Estimated using the USDA's Economic Research Service multiplier for rural employment, which estimates that for every $1 million in investment, 23 jobs are created nationwide.

limitation would increase new loans for rural areas. Please discuss the benefit and/or detriment to using this type of limitation.

5. The regulation contemplates monitoring compliance with terms of the guarantee through qualified third parties acting as agents for the guarantor but hired by the lender obtaining the guarantee. Does this mechanism provide adequate protection of the guarantor's interest? Are other mechanisms available that present fewer potential conflicts of interest while relying primarily on qualified private sector monitors?

6. Does the program envisioned by the rule adequately minimize the financial risk to taxpayers? If not, what changes should be made to best reduce the risk while still providing the kind of guarantee program envisioned by Congress?

7. Issuance of a guarantee may provide an incentive for recipients to reduce the quality of their lending/management policies and practices. Does the rule adequately ensure that the recipient's management and lending practices are sound, effective, and minimize default risk?

8. Is the accompanying economic analysis for this rule objective and does it provide a reasonably complete assessment of each significant cost and benefit of the rule?

List of Subjects in 7 CFR Part 1720

Electric power, Electric utilities, Loan program—energy, reporting and recordkeeping requirements, Rural areas.

For reasons set out in the preamble, RUS proposes to amend chapter XVII of title 7 of the Code of Federal Regulations by adding a new part 1720 to read as follows:

PART 1720—GUARANTEES FOR BONDS AND NOTES ISSUED FOR ELECTRIFICATION OR TELEPHONE PURPOSES

Sec.

1720.1 Purpose.
1720.2 Background.
1720.3 Definitions.
1720.4 General standards.
1720.5 Eligibility criteria.
1720.6 Application process.
1720.7 Application evaluation.
1720.8 Issuance of the guarantee.
1720.9 Guarantee Agreement.
1720.10 Fees.
1720.11 Servicing.
1720.12 Reporting requirement.
1720.13 Limitations on Guarantees.
1720.14 Nature of guarantee; acceleration of guaranteed bonds.
1720.15 Equal opportunity requirements.

Authority: 7 U.S.C. 901 *et seq;* 7 U.S.C. 940c.

§ 1720.1 Purpose.

This part prescribes regulations implementing a guarantee program for bonds and notes issued for electrification or telephone purposes authorized by section 313A of the Rural Electrification Act of 1936 (7 U.S.C. 940c–1).

§ 1720.2 Background.

The Rural Electrification Act of 1936 (the ''RE Act'') (7 U.S.C. 901 *et. seq.*) authorizes the Secretary to guarantee and make loans to persons, corporations, states, territories, municipalities, and cooperative, non-profit, or limited-dividend associations for the purpose of furnishing or improving electric and telephone service in rural areas. Responsibility for administering electrification and telecommunications loan and guarantee programs along with other functions the Secretary deemed appropriate have been assigned to RUS under the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6941 *et seq.*). The Administrator of RUS has been delegated responsibility for administering the programs and activities of RUS, see 7 CFR § 1700.25. Section 6101 of the Farm Security and Rural Investment Act of 2002 (Pub.L. 107–171) (FSRIA) amended the RE Act to include a new program under section 313A entitled Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes. This measure became law on May 13, 2002, and directs the Secretary of Agriculture to promulgate regulations that carry out the Program.

§ 1720.3 Definitions.

For the purpose of this part:

Administrator means the Administrator of RUS.

Applicant means a bank or other lending institution organized as a private, not-for-profit cooperative association, or otherwise on a non-profit basis, that is applying for RUS to guarantee a bond or note under this part.

Bond Documents means the trust indenture, bond resolution, guarantee, guarantee agreement and all other instruments and documentation pertaining to the issuance of the guaranteed bonds.

Borrower means any organization that has an outstanding loan made or guaranteed by RUS for rural electrification or rural telephony under the RE Act, or that is seeking such financing.

Concurrent Loan means a loan that a guaranteed lender extends to a borrower for up to 30 percent of the cost of an eligible electrification or telephone purpose under the RE Act, concurrently with an insured loan made by the Secretary pursuant to section 307 of the RE Act.

Federal Financing Bank means a government corporation and instrumentality of the United States of America under the general supervision of the Secretary of the Treasury.

Guarantee means the written agreement between the Secretary and a guaranteed bondholder, pursuant to which the Secretary guarantees full repayment of the principal, interest, and call premium, if any, on the guaranteed lender's guaranteed bond.

Guarantee Agreement means the written agreement between the Secretary and the guaranteed lender which sets forth the terms and conditions of the guarantee.

Guaranteed Bond means any bond, note, debenture, or other debt obligation issued by a guaranteed lender on a fixed or variable rate basis, and approved by the Secretary for a guarantee under this part.

Guaranteed Bondholder means any investor in a guaranteed bond.

Guaranteed Lender means an applicant that has been approved for a guarantee under this part.

Investment Grade Rating means a bond rating of ''BBB−'' or higher or ''Baa3'' or higher, or its equivalent, assigned by a rating agency.

Loan means any credit instrument that the guaranteed lender extends to a borrower for any electrification or telephone purpose eligible under the RE Act, including loans as set forth in section 4 of the RE Act for electricity transmission lines and distribution systems (excluding generating facilities) and as set forth in section 201 of the RE Act for telephone lines, facilities and systems.

Loan documents means the loan agreement and all other instruments and documentation between the guaranteed lender and the borrower evidencing the making, disbursing, securing, collecting, or otherwise administering of a loan.

Program means the guarantee program for bonds and notes issued for electrification or telephone purposes authorized by section 313A of the RE Act as amended.

Rating Agency means a bond rating agency identified by the Securities and Exchange Commission as a nationally recognized statistical rating organization.

RE Act means the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) as amended.

RUS means the Rural Utilities Service, an agency of the U.S. Department of Agriculture.

Secretary means the Secretary of Agriculture acting through the Administrator of RUS.

Subsidy Amount means the amount of budget authority sufficient to cover the estimated long-term cost to the Federal government of a guarantee, calculated on a net present value basis, excluding administrative costs and any incidental effects on government receipts or outlays, in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 *et seq.*)

§ 1720.4 General standards.

(a) In accordance with section 313A of the RE Act, a guarantee will be issued by the Secretary only if the Secretary determines, in accordance with the requirements set forth in this part, that:

(1) The proceeds of the guaranteed bonds will be used by the guaranteed lender to make loans to borrowers for electrification or telephone purposes eligible for assistance under this chapter, or to refinance bonds or notes previously issued by the guaranteed lender for such purposes;

(2) At the time the guarantee is executed, the total principal amount of guaranteed bonds outstanding would not exceed the principal amount of outstanding concurrent loans previously made by the guaranteed lender;

(3) The proceeds of the guaranteed bonds will not be used directly or indirectly to fund projects for the generation of electricity; and

(4) The guaranteed lender will not use any amounts obtained from the reduction in funding costs provided by the program to reduce the interest rates borrowers are paying on new or outstanding loans, other than new concurrent loans as provided in 7 CFR part 1710, of this chapter.

(b) The Secretary shall guarantee payments on guaranteed bonds in such form and on such terms and conditions and subject to such covenants, representations, warranties and requirements (including requirements for audits) as determined appropriate for satisfying the requirements of this part. The Secretary shall require the guaranteed lender to enter into a guaranty agreement to evidence its acceptance of the foregoing. Any guarantee issued under this part shall be made in a separate and distinct offering.

§ 1720.5 Eligibility criteria.

(a) To be eligible to participate in the program, a guaranteed lender must be:

(1) a bank or other lending institution organized as a private, not-for-profit cooperative association, or otherwise on a non-profit basis; and

(2) able to demonstrate to the Secretary that it possesses the appropriate expertise, experience, and qualifications to make loans for electrification or telephone purposes.

(b) To be eligible to receive a guarantee, a guaranteed lender's bond must meet the following criteria:

(1) The guaranteed lender must furnish the Secretary with a certified list of the principal balances of concurrent loans then outstanding evidencing that such aggregate balance is at least equal to the sum of the proposed principal amount of guaranteed bonds to be issued, and any previously issued guaranteed bonds outstanding;

(2) The guaranteed bonds to be issued by the guaranteed lender must receive an underlying investment grade rating from a Rating Agency, without regard to the guarantee;

(3) The final maturity of the guaranteed bonds may not exceed 15 years, and

(4) The guaranteed bonds must be issued to the Federal Financing Bank on terms and conditions consistent with Federal Financing Bank lending policy and satisfactory to the Secretary.

(c) During the term of the guarantee, the guaranteed lender must maintain the following:

(1) Establish a bankruptcy remote trust fund capitalized at 5% of the guaranteed amount outstanding; and

(2) As long as the guarantee is in effect, the lender shall not issue cash patronage refunds in excess of five percent of the total patronage refund eligible. Additionally, stock issued as part the patronage refund shall not be redeemable in cash during the term of any part of the guarantee. The lender shall not issue any dividends on any class of stock during the term of any part of the guarantee.

(d) A lending institution's status as an eligible applicant does not assure that the Secretary will issue the guarantee sought in the amount or under the terms requested, or otherwise preclude the Secretary from declining to issue a guarantee.

§ 1720.6 Application process.

(a) Applications shall contain the following:

(1) Background and contact information on the applicant;

(2) A term sheet summarizing the proposed terms and conditions of, and the security pledged to assure the applicant's performance under, the guarantee agreement;

(3) A statement by the applicant as to how it proposes to use the proceeds of the guaranteed bonds, and the financial benefit it anticipates deriving from participating in the program;

(4) A pro-forma cash flow projection or business plan for the next five years, demonstrating that there is reasonable assurance that the applicant will be able to repay the guaranteed bonds in accordance with their terms;

(5) A description of the specific and identifiable loans comprising the collateral or other pledge securing the guaranteed bonds;

(6) Consolidated financial statements of the guaranteed lender for the previous three years that have been audited by an independent certified public accountant, including any associated notes, as well as any interim financial statements and associated notes for the current fiscal year;

(7) Evidence of having been assigned an investment grade rating on the debt obligations for which it is seeking the guarantee, without regard to the guarantee;

(8) A review and certification of the lender's capital adequacy utilizing the capital adequacy standards of FIRREA by a reputable, independent certified public accounting firm or federal banking regulator, and

(9) Such other application documents and submissions deemed necessary by the Secretary for the evaluation of applicants.

(b) The application process occurs as follows:

(1) The applicant submits an application to the Secretary;

(2) The application is screened by RUS pursuant to 7 CFR 1720.7(a) of this part, to ascertain its threshold eligibility for the program;

(3) RUS evaluates the application pursuant to the selection criteria set forth in 7 CFR 1720.7(b) of this part;

(4) If RUS provisionally approves the application, the applicant and RUS negotiate terms and conditions of the bond documents, and

(5) The applicant offers its guaranteed bonds to the Federal Financing Bank, and the Secretary upon approval of the pricing, redemption provisions and other terms of the offering, executes the guarantee.

(c) If requested by the applicant at the time it files its application, the General Counsel of the Department of Agriculture shall provide the Secretary with an opinion regarding the validity and authority of a guarantee issued to

the lender under section 313A of the RE Act.

§ 1720.7 Application evaluation.

(a) *Eligibility screening.* Each application will be reviewed by the Secretary to determine whether it is eligible under 7 CFR 1720.5 of this part, the information required under 7 CFR 1720.6 of this part, is complete, and the proposed guaranteed bond complies with applicable statutes and regulations. The Secretary can at any time reject an application that fails to meet these requirements.

(b) *Evaluation.* Pursuant to paragraph (a) of this section, applications will be subject to a substantive review, on a competitive basis, by the Secretary based upon the following evaluation factors, listed in order of importance:

(1) The extent to which the proposed provisions indicate the applicant will be able to repay the guaranteed bonds;

(2) The adequacy of the proposed provisions to protect the Federal government, based upon items including, but not limited to the nature of the pledged security, the priority of the lien position, if any, pledged by the applicant, and the provision for an orderly retirement of principal such as an amortizing bond structure or an internal sinking fund;

(3) The applicant's demonstrated performance of financially sound business practices;

(4) The extent to which providing the guarantee to the applicant will help reduce the cost and/or increase the supply of credit to rural America, or generate other economic benefits; and

(5) The amount of fee income available to be deposited into the Rural Economic Development Subaccount, maintained under section 313(b)(2)(A) of the RE Act (7 U.S.C. 940c–1(b)(2)(B)), after payment of the subsidy amount.

(c) *Independent Assessment.* Before a guarantee decision is made by the Secretary, the Federal Financing Bank shall review the adequacy of the structure of the note or bond offering and the determination by the Rating Agency, required under 1720.5(b)(2) as to whether the bond or note to be issued would be below investment grade without the guarantee. The Federal Financing Bank will seek Office of Management and Budget's review of its findings prior to submittal of its report to the Secretary.

(d) *Decisions by the Secretary.* The Secretary shall approve or deny applications in a timely manner as such applications are received. The Secretary may limit the number of guarantees made to a maximum of five per year, to ensure a sufficient examination is conducted of applicant requests. RUS shall notify the applicant in writing of the Secretary's approval or denial of an application. Approvals for guarantees shall be conditioned upon compliance with 7 CFR 1720.6 of this part.

§ 1720.8 Issuance of the guarantee.

(a) The following requirements must be met by the applicant prior to the endorsement of a guarantee by the Secretary.

(1) A guarantee agreement suitable in form and substance to the Secretary must be delivered.

(2) Bond documents must be executed by the applicant setting forth the legal provisions relating to the guaranteed bonds, including but not limited to payment dates, interest rates, redemption features, pledged security, additional borrowing terms including an explicit agreement to make payments even if loans made using the proceeds of such bond or note is not repaid to the lender, other financial covenants, and events of default and remedies;

(3) Prior to the issuance of the guarantee, the applicant must certify to the Secretary that the proceeds from the guaranteed bonds will be applied to fund eligible new loans under the RE Act, to refinance concurrent loans, or to refinance existing debt instruments of the guaranteed lender used to fund eligible loans;

(4) The applicant provides a certified list of concurrent loans and their outstanding balances as of the date the guarantee is to be issued;

(5) Counsel to the applicant must furnish an opinion satisfactory to the Secretary as to the applicant being legally authorized to issue the guaranteed bonds and enter into the bond documents;

(6) No material adverse change occurs between the date of the application and date of execution of the guarantee;

(7) The applicant shall provide evidence of an investment grade rating from a Rating Agency for the proposed guaranteed bond without regard to the guarantee; and

(8) Certification by the Chairman of the Board and the Chief Executive Officer of the applicant (or other senior management acceptable to the Secretary), acknowledging the applicant's commitment to submit to the Secretary, an annual credit assessment of the applicant by a Rating Agency, an annual review and certification of the security of the government guarantee that is audited by an independent certified public accounting firm or federal banking regulator, an annual review and certification of the lender's capital adequacy utilizing the capital adequacy standards of FIRREA by a reputable, independent certified public accounting firm or federal banking regulator, the lender's commitment to deliver annual consolidated financial statements audited by an independent certified public accountant each year, during which the guaranteed bonds are outstanding, and other such information requested by the Secretary

(b) The Secretary shall not issue a guarantee if the applicant is unwilling or unable to satisfy all requirements.

§ 1720.9 Guarantee agreement.

(a) The guaranteed lender will be required to sign a guarantee agreement with the Secretary setting forth the terms and conditions upon which the Secretary guarantees the payment of the guaranteed bonds.

(b) The guaranteed bonds shall refer to the guarantee agreement as controlling the terms of the guarantee.

(c) The guarantee agreement shall address the following matters:

(1) Definitions and principles of construction;

(2) The form of guarantee;

(3) Coverage of the guarantee;

(4) Timely demand for payment on the guarantee;

(5) Any prohibited amendments of bond documents or limitations on transfer of the guarantee;

(6) Limitations on acceleration of guaranteed bonds;

(7) Calculation and manner of paying the guarantee fee;

(8) Consequences of revocation of payment on the guaranteed bonds;

(9) Representations and warranties of the guaranteed lender;

(10) Representations and warranties for the holder of the guaranteed bonds;

(11) Claim procedures;

(12) What constitutes a failure by the guaranteed lender to pay;

(13) Demand on RUS;

(14) Assignment to RUS;

(15) Conditions of guarantee which may include requiring the guaranteed lender to adopt measures to ensure adequate capital levels are retained to absorb losses relative to risk in the guaranteed lender's portfolio and requirements on the guaranteed lender to hold additional capital against the risk of default;

(16) Payment by RUS;

(17) RUS payment does not discharge guaranteed lender;

(18) Undertakings for the benefit of the holders of guaranteed bonds, including: Notices, registration, prohibited amendments, prohibited transfers, indemnification, multiple bond issues;

(19) Governing law;

(20) Notices;
(21) Benefit of agreement;
(22) Entirety of agreement;
(23) Amendments and waivers;
(24) Counterparts;
(25) Severability; and
(26) Such other matters as the Secretary believes to be necessary or appropriate.

§ 1720.10 Fees.

(a) *Guarantee fee.* An annual fee equal to 30 basis points (0.3 percent) of the amount of the unpaid principal of the guaranteed bond will be deposited into the Rural Economic Development Subaccount maintained under section 313(b)(2)(A) of the RE Act.

(b) Subject to part (c) of this section, up to one-third of the 30 basis point guarantee fee may be used to fund the subsidy amount of providing guarantees, to the extent not otherwise funded through appropriation actions by Congress.

(c) Notwithstanding subsections (c) and (e)(2) of section 313A of the RE Act, the Secretary shall, with the consent of the lender, structure the schedule for payment of the annual fee, not to exceed an average of 30 basis points per year for the term of the loan, to ensure that sufficient funds are available to pay the subsidy costs for note guarantees.

§ 1720.11 Servicing.

The Secretary, or other agent of the Secretary on his or her behalf, shall have the right to service the guaranteed bond, and periodically inspect the books and accounts of the guaranteed lender to ascertain compliance with the provisions of the RE Act and the bond documents.

§ 1720.12 Reporting requirements.

(a) As long as any guaranteed bonds remain outstanding, the guaranteed lender shall provide the Secretary with the following items each year within 90 days of the guaranteed lender's fiscal year end:

(1) Consolidated financial statements and accompanying footnotes, audited by independent certified public accountants;

(2) A review and certification of the security of the government guarantee, audited by reputable, independent certified public accountants or a federal banking regulator, who in the judgment of the Secretary, has the requisite skills, knowledge, reputation, and experience to properly conduct such a review;

(3) Pro forma projection of the guaranteed lender's balance sheet, income statement, and statement of cash flows over the ensuing five years;

(4) Credit assessment issued by a Rating Agency;

(5) A review and certification of the lender's capital adequacy utilizing the capital adequacy standards of FIRREA by a reputable, independent certified public accounting firm or federal banking regulator, and

(5) Other such information requested by the Secretary.

(b) The bond documents shall specify such bond monitoring and financial reporting requirements as deemed appropriate by the Secretary.

§ 1720.13 Limitations on guarantees.

In a given year the maximum amount of guaranteed bonds that the Secretary may approve will be subject to budget authority, together with receipts authority from projected fee collections from guaranteed lenders, the principle amount of outstanding concurrent loans made by the guaranteed lender, and Congressionally-mandated ceilings on the total amount of credit. The Secretary may also impose other limitations as appropriate to administer this guarantee program.

§ 1720.14 Nature of guarantee; acceleration of guaranteed bonds.

(a) Any guarantee executed by the Secretary under this part shall be an obligation supported by the full faith and credit of the United States and incontestable except for fraud or misrepresentation of which the guaranteed bondholder had actual knowledge at the time it purchased the guaranteed bonds.

(b) Amounts due under the guarantee shall be paid within 30 days of demand by a bondholder, certifying the amount of payment then due and payable.

(c) The guarantee shall be assignable and transferable to any purchaser of guaranteed bonds as provided in the bond documents.

(d) The following actions shall constitute events of default under the terms of the guarantee agreements:

(1) The guaranteed lender failed to make a payment of principal or interest when due on the guaranteed bonds;

(2) The guaranteed bonds were issued in violation of the terms and conditions of the bond documents;

(3) The guarantee fee required by 7 CFR 1720.9 of this part has not been paid;

(4) The guaranteed lender made a misrepresentation to the Secretary in any material respect in connection with the application, the guaranteed bonds, or the reporting requirements listed in 7 CFR 1720.11 of this part; or

(5) The guaranteed lender failed to comply with any material covenant or provision contained in the bond documents.

(e) In the event the guaranteed lender fails to cure such defaults within the notice terms and the timeframe set forth in the bond documents, the Secretary may demand that the guaranteed lender redeem the guaranteed bonds. Such redemption amount will be in an amount equal to the outstanding principal balance, accrued interest to the date of redemption, and prepayment premium, if any. To the extent the Secretary makes any payments under the guarantee, the Secretary shall be deemed the guaranteed bondholder.

(f) To the extent the Secretary makes any payments under the guarantee, the interest rate the government will charge to the guaranteed lender for the period of default shall accrue at an annual rate of the greater of 1.5 times the 91-day Treasury-Bill rate or 200 basis points (2.00%) above the rate on the guaranteed bonds.

(g) Upon guaranteed lender's event of default, under the bond documents, the Secretary shall be entitled to take such other action as is provided for by law or under the bond documents.

§ 1720.15 Equal opportunity requirements.

''Executive Order 12898, ''Environmental Justice.'' To comply with Executive Order 12898, RUS will conduct a Civil Rights Analysis for each guarantee prior to approval. Rural Development Form 2006–28, ''Civil Rights Impact Analysis'', will be used to document compliance in regards to environmental justice.

Dated: December 22, 2003.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 03–31928 Filed 12–29–03; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review′

8 CFR Parts 1001, 1292

[EOIR No. 138P; AG Order 2700–2003]

RIN 1125–AA39

Executive Office for Immigration Review Attorney/Representative Registry

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations pertaining to appearances by attorneys and representatives before the Executive Office for Immigration Review (EOIR). This proposed rule authorizes the Director, EOIR, or his designee to register attorneys and representatives as

a condition of practicing before immigration judges and the Board of Immigration Appeals. The proposed rule also provides that the Director or his designee will establish registration procedures including a requirement for electronic registration, and may administratively suspend from practice before EOIR any practitioner who fails to provide certain registration information.

DATES: Written comments must be submitted on or before March 1, 2004.

ADDRESSES: Please submit written comments to Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041. To ensure proper handling, please reference RIN No. 1125–AA39 on your correspondence. The public may also submit comments electronically to EOIR at *regulations.comments@usdoj.gov.* When submitting comments electronically, you must include RIN No. 1125–AA39 in the subject box.

FOR FURTHER INFORMATION CONTACT: Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041, telephone (703) 305–0470 (not a toll-free call).

SUPPLEMENTARY INFORMATION: This proposed rule would authorize the Director, Executive Office for Immigration Review (''EOIR''), or his designee to register all attorneys and representatives (''practitioners'') entering appearances before immigration judges and the Board of Immigration Appeals (''Board'') as a condition of practicing before EOIR. The Director or his designee also would be authorized under the proposed rule to establish procedures for registration. Following an initial registration period, practitioners would need to include their registration identification (''UserID'') on any new entry of appearance (*i.e.,* the filing of Forms EOIR–27 or EOIR–28).

Reasons for Issuing This Proposed Rule

The Department is updating and integrating its immigration court and Board databases, and designing an electronic case access and filing system, to comply with the Government Paperwork Elimination Act (''GPEA''), to achieve the Department's vision for improved immigration adjudication processing, and to meet the public expectations for electronic government. 44 U.S.C. 3504 note. The GPEA provides that the Office of Management and Budget (''OMB'') must ensure that no later than October 21, 2003, executive agencies provide for the option of electronic submission of information, when practicable, as a substitute for paper.

The practitioner registration process contemplated by the Department for EOIR will initially enable EOIR to distribute a unique UserID to all practitioners. The UserIDs will be a core component in a redesigned case tracking system, ensuring a single, unique identification for each practitioner appearing before immigration judges and the Board. Application of the unique UserID will reduce system errors in scheduling matters and will provide improved notice to practitioners. In conjunction with a UserID, passwords will also be issued to practitioners to permit them to maintain and update registration information electronically (via the Internet) and, in the future, to access the EOIR electronic filing system for submission and retrieval of documents.

Procedures for Registering With EOIR

EOIR will implement an on-line registration process that will be mandatory for practitioners. For practitioners without access to the Internet, a dedicated Practitioner Workstation will be made available at each public EOIR facility, including the immigration courts and Board clerk's office. For the initial registration, practitioners must complete an electronic registration that includes the following information: Full name, date of birth, last four digits of social security number, mailing addresses, and e-mail address. Only one e-mail address will be permitted; however, multiple mailing addresses may be used by practitioners with multiple office locations. Registrants will also be required to submit limited background data, such as bar admissions (for attorneys) and the recognized organization with which the individual is associated (for accredited representatives), in order to demonstrate that they meet the regulatory requirements for authorization to practice before EOIR.

Upon completion of the registration process, the EOIR registration system will send a password and a verification of registration to the practitioner's e-mail address. Registrants who have completed only the initial registration requirements (full name, date of birth, last four digits of social security number, mailing addresses, and e-mail address) will be prompted electronically to complete registration. In such cases, both e-mail and mail notices will be generated to the addresses entered in the initial registration, allowing a two-week deadline for completing the full registration process.

Required Registrants

All attorneys and representatives, as defined by 8 CFR 1001.1(f) and (j), will be required to register with EOIR as a condition of representing individuals before the immigration judges and the Board. Law firms or other similar entities will not be issued a UserID. Practitioners working on behalf of a law firm (including attorneys, law graduates, and law students) or other entity (such as accredited representatives employed by recognized organizations) must individually register with EOIR.

Registration Deadline

Using a number of media, EOIR will provide practitioners with advance notice of the deadline for registering and obtaining a UserID. During the transition period to the newly integrated EOIR case management system, procedures will be in place to permit practitioners to associate existing cases with their new UserID and password. The Department contemplates that the full development of the system will take substantial time, and the system will be activated initially to permit an ''open season'' for registration before making compliance with registration requirements mandatory. Therefore, EOIR will provide a minimum of 60 days advance publicity of the availability of the system before adherence to the registration system's requirements will become mandatory for practitioners.

Practitioners Who Do Not Have an E-Mail Address

An e-mail address will be a required field in the Registration Form. If an e-mail address is not entered, a registration system prompt will request that practitioners re-enter their e-mail address. A second system prompt will ask if the practitioner possesses an e-mail address. If the practitioner does not have an e-mail address, a message will be displayed that the system will send the notice automatically to the practitioner's physical address using the United States Post Office's e-mail postal addressing capabilities. EOIR will assume the cost of mailing this notice.

Entry of Appearance Requires a UserID

After the effective date of the final registration regulation, practitioners will be required to have a UserID to file an Entry of Appearance in a case. If a practitioner appears in person at any public office of EOIR to file an Entry of Appearance but does not have a UserID, the staff will direct the practitioner to a

Practitioner Workstation in the public area of the Board's clerk's office or the immigration court on which he or she may register and receive a UserID.

The practitioner will enter all information he or she has available and will be permitted to choose a UserID. The registration system will accept the full or initial registration data, and send the practitioner an e-mail message containing a password.

If an unregistered practitioner mails an Entry of Appearance to the Board clerk's office or immigration court, with or without other documents (pleadings, etc.), the clerk's office or court staff may reject the Entry of Appearance and return it for completion of the registration process. The clerk's office staff will process any accompanying documents as if they had been filed by the unregistered practitioner's client acting on his or her own behalf.

Failure To Register or Failure To Complete the Registration Process

Practitioners who fail to register will not be allowed to represent clients before the immigration judges or the Board.

Practitioners who only complete an initial registration will be notified by e-mail (or United States mail, if appropriate) of the two-week deadline for completing registration. If registration is not completed by that deadline, a second notice setting an additional two-week deadline will be sent to the same practitioner address(es), warning of administrative suspension from practice before EOIR if registration is not completed timely. A third notice will inform the practitioner that his or her right to practice before immigration judges and the Board has been suspended administratively until registration is completed. Copies of this notice will be sent to all identifiable clients with matters before EOIR. Additionally, the practitioner's UserID and password that EOIR provided during initial registration will be deactivated.

Extraordinary Circumstances

After the effective date of the final regulation, and under extraordinary and rare circumstances, an immigration judge may permit an unregistered practitioner to appear at a single hearing by registering before the immigration judge. For example, an unregistered practitioner unfamiliar with immigration practice before immigration judges and the Board, or an unregistered practitioner hired immediately before a hearing commences, may be permitted to appear before an immigration judge. However, the immigration judge must secure the required practitioner's registration information on the record proceedings, in addition to the practitioner's Notice of Appearance on Form EOIR–28. The immigration judge will also instruct the practitioner to register on-line immediately after the hearing. At the time the Form EOIR–28 information that is received during the hearing is entered into the case management information system, the EOIR staff will inquire of the system whether the practitioner has completed registration pursuant to the immigration judge's instructions. If not, EOIR staff will enter into the database the practitioner's information previously secured by the immigration judge. The system will then create a permanent UserID for the practitioner, using an algorithm based on last name and first name, and assign a password. An e-mail message will notify the practitioner of the UserID and password. As previously noted, a practitioner without an e-mail address will be notified at the practitioner's physical address using the United States Post Office's e-mail postal addressing capabilities. Thereafter, the practitioner will be able to modify the password but not the UserID.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

As described more fully below in the Executive Order 12866 certification, the Department estimates that approximately 26,000 attorneys and representatives will electronically register. It is not known how many of these attorneys and representatives are ''small entities'' as defined by the Regulatory Flexibility Act. There is no fee to register. Consequently, the Department believes the costs to practitioners to electronically register with EOIR will be nominal.

Practitioners will greatly benefit under this registration process by paving the way to future access to an electronic EOIR case access and filing system. Moreover, the future ability to electronically file a Notice of Appearance will reduce the practitioner's costs.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The proposed rule is considered by the Department of Justice to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, the regulation has been submitted to the Office of Management and Budget for review.

The rule establishes procedures for attorneys and representatives to enroll formally with EOIR as a condition of representing aliens before immigration judges and the Board. Requiring practitioners to register electronically with EOIR is a necessary precursor to implementing an electronic case access and filing system.

Under the registration process, EOIR will be able to determine whether a practitioner is authorized to represent aliens before immigration judges or the Board. EOIR will also distribute to each authorized registrant a unique EOIR UserID and password that will permit future access to an electronic filing system for submission and retrieval of information and documents pertaining to administrative immigration proceedings.

An on-line registration process will be required for practitioner registration. For practitioners without access to the Internet, a dedicated Practitioner Workstation will be made available at each public facility of EOIR.

For the initial registration, practitioners must complete an electronic registration in which they must provide the following information: full name, date of birth, last four digits of social security number, mailing addresses, and e-mail address. Registrants will also be required to submit limited background data, such as bar admissions (for attorneys) and the

recognized organization with which the individual is associated (for accredited representatives).

The Department estimates that approximately 26,000 attorneys and representatives will electronically register, a process that will take approximately 10 minutes for each registrant. There is no fee to register. Consequently, the Department believes the costs to practitioners to electronically register with EOIR will be nominal.

Practitioners will greatly benefit under this registration process by paving the way to future access to an electronic EOIR case access and filing system. The future system will allow practitioners to electronically submit and retrieve information pertaining to administrative immigration proceedings.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Paperwork Reduction Act

The United States Department of Justice has submitted a request for approval of a new information collection instrument to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995. The proposed new information collection is published in this document to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days in conjunction with the proposed rule. This process is in accordance with 5 CFR. 1320.10.

If you have any comments, especially on the estimated public burden or associated response time, or suggestions, or need a copy of the proposed new information collection instrument with instructions or additional information, please contact the Department as noted above. Written comments and suggestions from the public and affected agencies concerning the proposed new information collection instrument are encouraged.

Your comments should address one or more of the following four points: (1) 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) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) how the Department could enhance the quality, utility, and clarity of the information to be collected; and (4) how the Department could 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).

The new information collection instrument sponsored by the Department will apply to practitioners and has been designated as ''Practitioner Registration Before the Executive Office for Immigration Review.'' The new collection will be administered through electronic means exclusively (Internet and/or dedicated terminals at EOIR locations).

The collected information will be used to (1) determine whether or not a responding attorney or representative, as defined by 8 CFR 1001.1(f) and (j) (as amended herein), meets the regulatory criteria to be authorized to represent aliens before EOIR (Board of Immigration Appeals or immigration judges) and (2) distribute a unique EOIR UserId and password to each registrant that will permit future access to an electronic EOIR filing system for submission and retrieval of information and documents pertaining to administrative immigration proceedings.

The Department estimates an average response time for the new information collection instrument at 10 minutes per response, with a total number of respondents at 26,000 individuals. The total public burden associated with the new collection is 4,333 burden hours.

List of Subjects

8 CFR Part 1001

Administrative practice and procedure, Aliens, Definitions, Immigration, Legal Services, Organization and functions (Government agencies).

8 CFR Part 1292

Administrative practice and procedure, Immigration, Lawyers, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, 8 CFR Parts 1001 and 1003 are proposed to be amended as follows:

PART 1001—DEFINITIONS

1. The authority citation for part 1001 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103; 6 U.S.C. 521, 522; 8 CFR part 2.

2. In § 1001.1, revise paragraphs (f) and (j) to read as follows:

§ 1001.1 Definitions.

* * * * *

(f) The term *attorney* means any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia, and is not under any order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting him in the practice of law, and who is registered to practice with the Executive Office for Immigration Review pursuant to 8 CFR 1292.1.

* * * * *

(j) The term *representative* means a person who is entitled to represent others as provided in 8 CFR 1292.1(a)(2), (3), (4), (5), (6), and 1292.1(b) and who is registered to practice with the Executive Office for Immigration Review pursuant to 8 CFR 1292.1.

* * * * *

PART 1292—REPRESENTATIVES AND APPEARANCES

3. The authority citation for part 1292 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1302, 1359; 6 U.S.C. 521, 522.

4. Section 1292.1 is amended by adding a new paragraph (f) to read as follows:

§ 1292.1 Representation of others.

* * * * *

(f) *Registration requirement for attorneys and representatives.* The Director or his designee is authorized to register, and establish procedures for registering, attorneys and representatives, as defined by 8 CFR 1001.1(f) and (j), as a condition of practice before immigration judges or the Board of Immigration Appeals. Such registration procedures will include a requirement for electronic registration. The Director or his designee may administratively suspend from practice before the immigration judges and the Board any attorney or representative who fails to provide the following required registration information: practitioner name, address(es), date-of-birth, last four digits of social security number, e-mail address (if applicable) and bar admission information (if applicable). After such a system has been established, an immigration judge may, under extraordinary and rare circumstances, permit an unregistered practitioner to appear at one, and only one, hearing if the immigration judge first acquires from the attorney or representative, on the record, the required registration information. An unregistered practitioner who is permitted to appear at a hearing in such circumstances shall complete the electronic registration process immediately after the hearing at which he or she is permitted to appear.

Dated: December 22, 2003.

John Ashcroft,

Attorney General.

[FR Doc. 03–32019 Filed 12–29–03; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 40

[Docket No. 03–27]

FEDERAL RESERVE SYSTEM

12 CFR Part 216

[Docket No. R–1173]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 332

RIN 3064–AC77

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 573

[Docket No. 2003–62]

RIN 1550–AB86

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 716

FEDERAL TRADE COMMISSION

16 CFR Part 313

RIN 3084–AA94 Project No. 034815

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 160

RIN 3038–AC04

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 248

[Release Nos. 34–48966, IA–2206, IC–26316; File No. S7–30–03]

RIN 3235–AJ06

Interagency Proposal to Consider Alternative Forms of Privacy Notices Under the Gramm-Leach-Bliley Act

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Office of Thrift Supervision, Treasury (OTS); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); National Credit Union Administration (NCUA); Federal Trade Commission (FTC); Commodity Futures Trading Commission (CFTC); and Securities and Exchange Commission (SEC).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The OCC, OTS, Board, FDIC, NCUA, FTC, CFTC, and SEC (the Agencies) are requesting comment on whether the Agencies should consider amending the regulations that implement sections 502 and 503 of the Gramm-Leach-Bliley Act (GLB Act) to allow or require financial institutions to provide alternative types of privacy notices, such as a short privacy notice, that would be easier for consumers to understand.

DATES: Comments must be submitted on or before March 29, 2004.

ADDRESSES: Because the Agencies will jointly review all of the comments submitted, interested parties may send comments to any of the Agencies and need not send comments (or copies) to all of the Agencies. Commenters that submit trade secrets or confidential commercial or financial information may request confidential treatment of that information in accordance with the Freedom of Information Act (5 U.S.C. 552) and the Agencies' respective regulations regarding availability of information. Because paper mail in the Washington area and at the Agencies is subject to delay, please consider submitting your comments by e-mail. Commenters are encouraged to use the title ''Alternative Forms of Privacy Notices'' to facilitate the organization and distribution of comments among the Agencies. Interested parties are invited to submit written comments to:

Office of the Comptroller of the Currency: Public Information Room, Office of the Comptroller of the Currency, 250 E Street, SW., Mail stop 1–5, Washington, DC 20219, Attention: Docket No. 03–27, Fax number (202) 874–4448 or Internet address: *regs.comments@occ.treas.gov.* Comments may be inspected and photocopied at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect the comments by calling (202) 874–5043.

Office of Thrift Supervision: Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2003–62. *Delivery:* Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2003–62. *Facsimiles:* Send facsimile transmissions to FAX Number (202) 906–6518, Attention: No. 2003–62. *E-*

Mail: Send e-mails to *regs.comments@ots.treas.gov,* Attention: No. 2003–62 and include your name and telephone number. Due to temporary disruptions in mail service in the Washington, DC area, commenters are encouraged to send comments by fax or e-mail, if possible. *Availability of comments:* OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Please identify the materials you would like to inspect to assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the business day after the date we receive a request.

Board of Governors of the Federal Reserve System: Comments should refer to Docket No. R–1173 and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. 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 a.m. and 5 p.m. on weekdays pursuant to section 261.12, except as provided in section 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

Federal Deposit Insurance Corporation: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/Executive Secretary Section, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments also may be mailed electronically to *comments@fdic.gov.* Comments may be hand delivered to the guard station at the rear of the 17th Street building (located on F Street) on business days between 7 a.m. and 5 p.m.; Fax Number (202) 898–3838. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9 a.m. and 5 p.m. on business days.

National Credit Union Administration: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. You are encouraged to fax comments to (703) 518–6319 or email comments to *regcomments@ncua.gov.* Whatever method you choose, please send comments by one method only.

Federal Trade Commission: Comments should refer to ''Alternative Forms of Privacy Notices, Project No. P034815.'' Comments filed in paper form should be mailed or delivered to: Federal Trade Commission/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) should be sent to: *GLBnotices@ftc.gov.* If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] Regardless of the form in which they are filed, the Commission will consider all timely comments, and will make the comments available (with confidential material redacted) for public inspection and copying at the Commission's principal office and on the Commission Web site at *www.ftc.gov.* As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site.

Commodity Futures Trading Commission: Comments should be directed to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418–5528 or by e-mail to *secretary@cftc.gov.*

Securities and Exchange Commission: To help us process and review your comments more 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, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–30–03. This file number should be included on the subject line if e-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549. All comments received will be posted on the Commission's Internet Web site (*http://www.sec.gov*) and made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.[2]

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must also be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

FOR FURTHER INFORMATION CONTACT:

OCC: Amy Friend, Assistant Chief Counsel, (202) 874–5200; Stephen Van Meter, Assistant Director, Community and Consumer Law Division, (202) 874–5750; or Heidi Thomas, Special Counsel, Legislative and Regulatory Activities Division, (202) 874–5090.

OTS: Elizabeth C. Baltierra, Program Analyst (Compliance) Compliance Policy, (202) 906–6540; or Paul Robin, Special Counsel, Regulations and Legislation Division, (202) 906–6648.

Board: Thomas E. Scanlon, Counsel, Legal Division, (202) 452–3594; Minh-Duc T. Le or Ky Tran-Trong, Senior Attorneys, Division of Consumer and Community Affairs, (202) 452–3667.

FDIC: April A. Breslaw, Chief, Compliance Section, (202) 898–6609; David P. Lafleur, Policy Analyst, Division of Supervision and Consumer Protection, (202) 898–6569; Ruth R. Amberg, Senior Counsel, (202) 898–3736, or Robert A. Patrick, Counsel, Legal Division, (202) 898–3757.

NCUA: Regina Metz, Staff Attorney, (703) 518–6561, or Ross Kendall, Staff Attorney, Office of General Counsel, (703) 518–6562.

FTC: Toby Milgrom Levin, Senior Attorney, (202) 326–3713, or Loretta Garrison, Senior Attorney, (202) 326–3043.

CFTC: Laura Richards, Senior Assistant General Counsel, (202) 418–5126, or David B. Jacobsohn, Counsel, (202) 418–5161, Office of the General Counsel.

SEC: Brian Baysinger, Special Counsel, Office of Chief Counsel, Division of Market Regulation, (202) 942–0073; or Penelope Saltzman, Senior Counsel, Division of Investment Management, (202) 942–0690.

SUPPLEMENTARY INFORMATION:

I. Background

Subtitle A of title V of the GLB Act, captioned Disclosure of Nonpublic

[2] The FDIC and SEC do not edit personal, identifying information such as names or e-mail addresses from electronic submissions. Submit only information you wish to make publicly available.

Personal Information (codified at 15 U.S.C. 6801 *et seq.*), requires each financial institution to provide a notice of its privacy policies and practices to its consumer customers. In general, the privacy notices must describe a financial institution's policies and practices with respect to disclosing nonpublic personal information about a consumer to both affiliated and nonaffiliated third parties and provide a consumer a reasonable opportunity to direct the institution not to share nonpublic personal information about the consumer with nonaffiliated third parties. The privacy notice must also provide, where applicable under the Fair Credit Reporting Act (FCRA), a notice and an opportunity for a consumer to opt out of the sharing of certain information among affiliates.[3]

The Agencies have published consistent final regulations that implement the privacy provisions of the GLB Act (collectively referred to as ''the privacy rule'').[4] The privacy rule requires a financial institution to include in its privacy notices specific items of information, such as the categories of nonpublic personal information that the institution collects and the categories of third parties to which the institution may disclose the information. The rule contains sample clauses that institutions may use in privacy notices. The rule does not, however, prescribe any specific format or standardized wording for these notices. Instead, institutions may design their own notices based on their individual practices provided they are consistent with the law and meet the ''clear and conspicuous'' standard in the rule.

Financial institutions first were required to distribute privacy notices to their customers by July 1, 2001. Many privacy notices in this initial effort were long and complex. Moreover, because the privacy rule allows institutions flexibility in designing their privacy notices, notices have been difficult to compare, even among financial institutions with identical privacy policies.

In response to broad-based concerns expressed by representatives of financial institutions, consumers, privacy advocates, and Members of Congress, the Agencies conducted a workshop in December 2001 to provide a forum to consider how financial institutions could provide more useful privacy notices to consumers. The workshop featured panel presentations by financial institutions, consumer advocates, and communications experts, and highlighted key communication principles to improve the notices. A number of institutions, particularly those with complex information-sharing practices, described the challenges they faced in explaining their practices and the choices available to consumers in a simple fashion while meeting all of the legal requirements for notice. Some institutions described results of consumer testing and efforts to make their privacy notices clearer and more useful to consumers.

A number of financial institutions have since sought to improve their notices. Additionally, some industry groups have been working to formulate short, consumer-friendly notices that could accompany the longer, legally mandated notices under the rule. The Agencies applaud the efforts by consumer advocates and industry to improve privacy notices to make them more readable and useful to consumers.

To encourage and facilitate the efforts already underway, the Agencies are considering proposing amendments to the privacy rule to provide for privacy notices that are more understandable and useful to consumers. The Agencies believe that this effort could benefit significantly from the breadth and depth of experience that many institutions have gained over the past two years in designing privacy notices, as well as the expertise of communications experts and the input of consumer organizations and comments from the public. Accordingly, the Agencies seek comment on a wide range of issues associated with the format, elements, and language used in privacy notices that would make the notices more accessible, readable, and useful. The Agencies also solicit examples of forms, model clauses, and other information, such as applicable research that has been conducted in this area, that may provide concrete illustrations or evidence to assist the Agencies in considering whether and how to develop various proposals.[5]

Some of the terms and examples used in this Advance Notice of Proposed Rulemaking (ANPR) and sample notices are not suitable for credit unions, which have an organizational and operational structure that is different than other financial institutions. For example, the term *customer*, in the context of credit unions, generally will mean *member*, and while credit unions may form subsidiaries, they do not establish corporate affiliations like other financial institutions. Nevertheless, because of the predominance of issues that are common to all types of financial institutions, the NCUA believes its participation is important at this ANPR stage, whether or not it ultimately determines to publish a separate, but consistent and comparable, rule for credit unions.

Based on the information collected for this ANPR, including information collected through independent research conducted by the Agencies, the Agencies will determine whether to propose changes to the privacy rule and, if so, will seek further public comment on specific proposals. The Agencies expect that consumer testing would be a key component in the development of any specific proposals.

II. General Considerations for Improving Privacy Notices

The Agencies are considering developing a range of alternative proposals for public comment to improve the privacy notices that financial institutions must provide to consumers under the GLB Act. The primary matter the Agencies are now considering is whether to develop a model privacy notice that would be short and simple. In order to illustrate, generally, this type of short notice and to spur specific suggestions for additional ideas that the Agencies should consider, a few of the potential alternative approaches are summarized below. These alternatives are also intended to help frame a number of important questions beyond the design of a short notice, such as whether all financial institutions should be required to use the same form of notice and whether a short notice could be a substitute for or should be a supplement to a longer, more detailed notice. The sample notices included in the appendices do not reflect a determination by the Agencies that any of these notices would be satisfactory under the privacy rule or for any particular financial institution. The Agencies note that these alternatives have not been developed as a result of specific research or consumer testing and are not being proposed for

[3] 15 U.S.C. 1681a(d)(2)(A)(iii) (FCRA); 15 U.S.C. 6803(b)(4) (GLB Act).

[4] 12 CFR part 40 (OCC); 12 CFR part 216 (Board); 12 CFR part 332 (FDIC); 12 CFR part 573 (OTS); 12 CFR part 716 (NCUA); 16 CFR part 313 (FTC); 17 CFR part 160 (CFTC); and 17 CFR part 248 (SEC).

[5] As stated above, the Agencies will jointly review all of the comments submitted, including those comments submitted to only one agency. Commenters may request confidential treatment of any trade secrets and commercial or financial information that is privileged or confidential information provided to the Agencies in accordance with the Freedom of Information Act (5 U.S.C. 552) and the Agencies' respective regulations regarding availability of information. 12 CFR part 4, subparts B and C (OCC); 12 CFR part 505 (OTS); 12 CFR part 261, subparts A and B (Board); 12 CFR part 309 (FDIC); 12 CFR 792.29 (NCUA); 16 CFR 4.10 (FTC); 17 CFR 145.9 (Petition for Confidential Treatment) (CFTC); 17 CFR part 200, subpart D (SEC).

adoption. The Agencies specifically invite suggestions for other approaches to improve the readability and usefulness of privacy notices as set out in section III.

As an initial matter, the Agencies request comment on whether to pursue the development of a short privacy notice. The Agencies note that, should they do so, there are several ways the Agencies could exercise their authority for developing a short notice, and the Agencies have not settled on any single approach. The Agencies could, for example, explore whether an interagency interpretation of the privacy rule, perhaps with model forms or language, would promote the development of privacy notices that are more understandable and useful to consumers. Similarly, the Agencies could develop a set of guidelines or best practices that would enable financial institutions to improve their privacy notices, or the Agencies could propose amendments to the privacy rule. The Agencies request comment on what approaches would be most useful to consumers while taking into consideration the burden on financial institutions.

The Agencies have identified the following approaches to simplify the privacy notices for consideration by commenters. One approach would be for the Agencies to develop a specific format and standardized language for a short notice that highlights key elements of an institution's privacy policy. For instance, a short notice could describe the types of nonpublic personal information an institution collects, the institution's policies for sharing that information with third parties, and a description of how consumers can opt out of information sharing. Like a nutrition label, a standardized notice would permit consumers easily to compare these elements of the privacy policies of different institutions and to become familiar with the standardized format and text. This type of form could include a description of how the consumer could obtain a longer, detailed privacy notice or be provided in combination with a longer, detailed privacy notice. An example illustrating this kind of format and language for a short notice appears in Appendix A.

In a similar approach, the Agencies could develop a short notice with a specific format and standardized language that would be designed to address all of the relevant elements listed in the GLB Act and the privacy rule. Such a notice would permit consumers to compare all relevant elements listed under federal law of the privacy policies of different institutions. However, since information sharing practices may vary, a financial institution may need flexibility in describing the categories of affiliated and nonaffiliated parties to whom it discloses nonpublic personal information. An example illustrating this kind of format and language appears in Appendix B and the categories of parties that may be modified by a financial institution appear in brackets.

Another approach to simplifying privacy notices would involve establishing a standardized format for privacy notices, but allowing financial institutions to provide their own descriptions of their privacy policies and practices. This potential approach may simplify privacy notices and make them more accessible for consumers, yet would permit each financial institution to tailor the language in the notice to suit its own privacy policies and practices. An example of a standardized format is included in Appendix C. Alternatively, the Agencies could prescribe standardized language that a financial institution would use to design its own notice without a format specified by the privacy rule. Standardized language may facilitate comparisons among financial institutions' policies and describe key consumer rights so that consumers could become familiar with circumstances under which information about them may be disclosed to third parties.

Another approach would be to focus attention on the consumer's right to opt out of disclosures available under the institution's privacy policies. For example, the opt-out notice could be provided by itself, with a statement that the institution's privacy policy is available on request. Alternatively, a description of the consumer's opt out right and how it could be exercised could be provided on the first page of a financial institution's privacy notice. The Agencies could prescribe the language, and its placement so as to ensure prominence and readability, but not require any further standardization of privacy notices. An example of this type of notice is included in Appendix D.

Detailed descriptions of ways to improve privacy notices, such as examples of language that may be used, illustrations of formats, and references to the particular requirements of the privacy rule that may need to be amended, will assist the Agencies in learning about and evaluating particular proposals. This ANPR outlines several potential approaches. The Agencies invite comment on the advantages and disadvantages of these approaches. Also, the Agencies request comment on any other approach the Agencies should consider.

III. Request for Comments

Any change in the privacy rule to provide for short notices raises a number of issues. In addition to comment on the various approaches discussed above or illustrated in the appendices, the Agencies request comment and supporting research and documentation on other matters that may be raised by the implementation of a short privacy notice. In particular, the Agencies invite comment on the following questions and supporting documentation where available:

A. Goals of a Privacy Notice

1. What should be the goals of a privacy notice? What goals are most important?

2. Should the Agencies pursue the development of a short notice to achieve these goals?

3. Are there any special issues for the Agencies to consider in developing a short privacy notice that may arise from potential differences between federal and state law requirements?

4. In what ways should a privacy notice be useful to a consumer? Please identify those ways that are the most or least important.

a. To permit ready comparison among different institutions' privacy policies?

b. To provide sufficient information to make an informed decision about whether to opt out?

c. To highlight the consumer's right to opt out?

d. To provide convenient mechanisms for the consumer to opt out?

e. To provide a mechanism for the consumer to opt out in the same medium used to provide the privacy notice?

f. Other ways?

B. Elements of a Privacy Notice

1. What are the key elements of a privacy policy that a short notice should contain?

2. Are these key elements the same from the perspective of institutions and consumers? If not, explain the differences and why.

3. Is there an optimal number of elements (beyond which would be too many) to include in a short notice?

4. Should a short privacy notice contain, at a minimum, all of the relevant elements listed in the GLB Act and the privacy rule? If not, should it include a statement advising the consumer that an institution's complete privacy policy will be provided upon request?

5. Should certain elements, such as a description of a consumer's opt-out rights (if applicable), be given prominence or be presented in a certain order?

6. Should statements describing information sharing practices not subject to a consumer's right to opt-out, such as whether a financial institution discloses information to nonaffiliated financial institutions under joint marketing agreements for financial products or services, be highlighted in the short notice?

C. Language of a Privacy Notice

1. Are there particular ''privacy'' terms or words that consumers readily understand that should be included in a short notice? Should any terms or language currently used in notices be avoided?

2. Should a financial institution be required to use standardized clauses in a short notice?

3. Rather than using standardized language, should a financial institution be permitted to develop its own language in a short notice so long as the short notice incorporates specified items of information?

D. Format of a Privacy Notice

1. Should the Agencies develop a standardized graphic design for a short notice that financial institutions would use? If so, what graphic design would be most suitable for the format of a short notice?

2. Based on experiences with the current privacy notices or tests that have been conducted in this area, what alternative forms of notice are likely to be useful to consumers and/or to financial institutions?

3. Is there a suggested length for a short privacy notice? Is there a suggested length for phrases or sentences within a short notice?

4. Are there suggestions for overall design of the notice, including layout, use of color, graphic devices, font(s), and size(s) of the text in the notice?

5. If a financial institution does not disclose information to third parties that would be subject to a consumer's right to opt out (under either the FCRA or the GLB Act), what form should the privacy notice take?

6. Should an institution be allowed to modify its short privacy notice to include elements that may be required under state laws? If so, then how can a short notice be designed to include those elements?

E. Mandatory or Permissible Aspects of a Privacy Notice

1. Should use of a short notice be mandatory for all financial institutions?

2. Should use of standardized language and/or format for a short notice be mandatory for all financial institutions? Or should each institution be permitted to create its own short notice following agency guidelines?

3. If a short notice is standardized, should only part(s) of the notice be mandatory, and, if so, what part(s)? Or should all of a standardized short notice be mandatory?

4. If use of standardized part(s), such as standardized clauses, is not required, should the Agencies create a safe harbor from administrative enforcement for financial institutions that use the standardized parts in their notices (or a whole, standardized notice)?

5. Should an institution be required or permitted to deliver both a short notice and a long notice?

6. Financial institutions that generally do not share information with third parties—such as those that do not have any affiliates and do not share information in a manner that is subject to a consumer's right to opt out under the FCRA or the GLB Act and do not engage in joint marketing agreements—currently may have abbreviated and simple notices. If a short notice is mandated, should the Agencies make an exception to allow these institutions to continue to use the simple, abbreviated notices they currently use? Alternatively, should the Agencies prescribe a special short notice for these institutions to use?

7. Some financial institutions offer consumers choices to opt out of information-sharing arrangements that are not mandated by either the FCRA or the GLB Act, such as the ability to opt out of an institution's own marketing or joint marketing arrangements with nonaffiliated financial institutions for financial products or services. If a short notice is mandated, should the Agencies allow these institutions to include in the short notice information about these additional choices to opt out?

8. Should the Agencies allow financial institutions to include other information that relates to their privacy policies and practices in their short notices? For instance, should a financial institution that shares information with affiliates for marketing purposes only if a customer opts in to the sharing be permitted to include this information in a short notice?

F. Costs and Benefits of a Short Notice

With respect to consumers or financial institutions, or both:

1. What are the costs and benefits of providing a short notice and how do they compare with the requirements under the current privacy rule?

2. How, if at all, do the costs and benefits of a short notice depend on:

a. Whether the notice is mandatory or permissible?

b. Whether the format of the notice is standardized? On whether the language is standardized?

c. Whether the use of a short notice requires financial institutions to make supplemental privacy information available upon request?

G. Additional Information

1. Are there any models or samples of notices that work particularly well with consumers that the Agencies should consider? Provide any samples and research or supporting documentation.

2. Provide the results and supporting research or documentation of any consumer testing that has been conducted in this area.

3. What processes or types of consumer testing should the Agencies use to evaluate standardized terms or language, formats for notices, and short notices?

4. If the Agencies adopt an alternative form of notice, should consumer education accompany introduction of the new type of notice? If so, what type of consumer education would be effective?

IV. Conclusion

In the event that the Agencies decide to proceed, the Agencies expect to do so through proposed rulemaking. In addition to evaluating the comments submitted in response to this ANPR, the Agencies contemplate that consumer testing would be an important element of the development of any alternative type of privacy notice.

By Order of the Board of Directors.

Dated at Washington, DC, this 2nd day of December, 2003. Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

By the National Credit Union Administration Board on December 18, 2003.

Becky Baker,

Secretary of the Board.

Dated: December 22, 2003.

By the Securities and Exchange Commission.

Margaret H. McFarland,

Deputy Secretary.

Dated: December 8, 2003.

By the Office of Thrift Supervision,

James E. Gilleran,

Director.

Dated: December 18, 2003.

Jean A. Webb,

Secretary of the Commodity Futures Trading Commission.

Dated: November 14, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

Dated: December 17, 2003.

By Direction of the Commission.

Donald S. Clark,

Secretary.

By order of the Board of Governors of the Federal Reserve System, December 22, 2003.

Jennifer J. Johnson,

Secretary of the Board.

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P; 7535–01–P; 6750–01–P; 6351–01–P; 8010–01–P

Appendix A

Important Privacy Information

WE MAY COLLECT INFORMATION ABOUT YOU FROM—	
• Your account, including your transactions and payment history	YES
• Applications you file with us	YES
• Credit reports we obtain about you	YES
• Other sources as described in our complete privacy notice	YES
We maintain physical, electronic, and procedural safeguards that comply with federal standards to protect your personal information.	

WE USE INFORMATION ABOUT YOU TO OFFER OUR PRODUCTS AND SERVICES TO YOU	YES

WE SHARE INFORMATION ABOUT YOU WITH—	
• **Companies in our corporate family** so that they may offer their products and services to you or for other purposes.	YES
(1) We share information from your credit reports, financial or personal information from your applications, or information from other sources as described in our complete privacy notice. *If you wish us to stop sharing this information, follow the instruction in the attached opt out form.*	YES
(2) We share identifying information, such as your name and address, or information about our transactions or experiences with you such as your payment history with us.	YES
• **Unrelated companies or persons** so that they may offer their products and services to you or for other purposes. *If you wish us to stop this information sharing, follow the instruction in the attached opt out form.*	YES
• **Unrelated financial companies** that work with us to jointly offer you additional financial products and services.	YES
• **Any company or person** under limited circumstances specified by law, such as to process your transactions, prevent fraud, or respond to judicial process.	YES

Appendix A

YOU CAN OBTAIN A COPY OF OUR COMPLETE PRIVACY NOTICE
by calling us toll-free at 877-###-#### or contacting us at
www.websiteaddress.com, or writing to us at
Financial Institution, 2003 Opt Out Hwy, Elgin, TX 75258.

Please cut here.

OPT OUT SELECTIONS

If you wish us to stop sharing information you can tell us by:

- calling us toll-free at 877-###-#### or
- contacting us at www.websiteaddress.com; or
- providing us with your name,

_____

and your address,

_____

checking the blanks that apply to you, and mailing this form to us at:

Financial Institution
2003 Opt Out Hwy.
Elgin, TX 75258

___ Do not share information about me with companies in your corporate family from my credit reports, financial or personal information from my applications, or information from other sources.

___ Do not share information about me with unrelated companies or persons so that they may offer their products or services to me or for other purposes.

IF YOU ALREADY HAVE NOTIFIED US ABOUT YOUR PRIVACY CHOICES, THEN YOU NEED NOT CONTACT US AGAIN.

Appendix B

Privacy Policy & Opt Out Election Form

(This notice applies to your account relationships with Financial Institution and our family of companies--our affiliates and their subsidiaries)

We May Collect Information About You From:	
• Your account, including your transactions and payment history, with us, our affiliates, or others,	Yes
• Applications you file with us,	Yes
• Credit reports we obtain about you, and	Yes
• Other sources.	Yes
We maintain physical, electronic, and procedural safeguards that comply with federal standards to protect your personal information.	
We May Share All of the Information We Collect About You With:	
• **Companies in our corporate family,** such as our [securities broker-dealer and our credit card bank], so that they may offer their products and services to you or for other purposes.	Yes
(1) We share information from your credit reports, financial or personal information from your applications, or information from other sources.	Yes
If yes, and you wish us to stop sharing this information, follow the instructions in the Opt Out Election Form.	
(2) We share identifying information, such as your name and address, or information about our transactions or experiences with you, such as your payment history with us.	Yes
• **Unrelated companies or persons,** such as [mortgage bankers, insurance agents, and retailers] so that they may offer their products and services to you or for other purposes.	Yes
• We may continue to share this information, even if you are no longer our customer.	Yes
If yes, and you wish us to stop sharing this information, follow the instructions in the Opt Out Election Form.	
• **Unrelated companies** that work on our behalf to offer you additional products and services or financial institutions, such as [insurance companies and securities firms], with whom we have joint marketing agreements.	Yes
• **Any company or person** under limited circumstances specified by law, such as to process your transactions, prevent fraud, or respond to judicial process.	Yes

Opt Out Election Form

If you wish us to stop sharing your information, please contact us by:

- Calling us toll-free at 877-###-####; or
- Visiting our website at www.websiteaddress.com; or
- Filling out this form and mailing it to: Financial Institution
  2003 Opt Out Hwy.
  Elgin, TX 75258

Check the blanks that apply to you

_____ Do not share information about me or any joint account holder with companies in your corporate family from my credit reports, financial or personal information from my applications, or information from other sources.

_____ Do not share information about me or any joint account holder with unrelated companies or persons so that they may offer their products or services to me or for other purposes.

Name _____

Address _____

_____

If you already have notified us about your privacy choices, then you need not contact us again.

APPENDIX C

PRIVACY NOTICE

WHO WE ARE
[Describe here the institutions to whom this privacy notice applies.]

INFORMATION COLLECTION
[Describe here the information you collect.]

INFORMATION SHARED
[Describe here the information you disclose to third parties.]

YOUR PREFERENCES
[Describe here the choices that a consumer has, if any, to opt out of disclosures.]

IMPORTANT INFORMATION
[Describe here other information that is important to your consumers.]

HOW TO CONTACT US
[Describe here how a consumer can obtain a copy of your complete privacy policy.]

INFORMATION SHARING OPT-OUT FORM

Your Privacy Choices

You may instruct us not to share your personal information with our related companies and other nonrelated companies for marketing purposes. If you choose to tell us that you do not want us to share your personal information, please check the appropriate box or boxes below, fill in the requested identifying information, and send this completed form to the address below.

☐ Limit the information about me that you share with nonrelated companies.

☐ Limit the information about me that you share with related companies from my credit reports, financial or personal information from my applications, or information from other sources.

Your Name

Your Address

City State Zip

Account Type Account Number

If you checked any of the boxes above, please mail this form in a stamped envelope to

Institution name
[Address]

[You may also inform us of your privacy choices by calling us toll-free at 800-XXX-XXXX or by contacting us at our website address which is _____.]

Please read the rest of this notice for an explanation of our information sharing practices.

[FR Doc. 03–31992 Filed 12–29–03; 8:45 am]

BILLING CODE 4810–33–C; 6210–01–C; 6714–01–C; 6720–01–C; 7535–01–C; 6750–01–C; 6351–01–C; 8010–01–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–39–AD]

RIN 2120–AA64

Airworthiness Directives; GARMIN International Inc. GTX 330 Mode S Transponders and GTX 330D Diversity Mode S Transponders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain GARMIN International Inc. GTX 330/GTX 330D Mode S transponders. This proposed AD would require you to install GTX 330/330D Software Upgrade Version 3.03. This proposed AD is the result of observations that the GTX 330 and GTX 330D may detect, from other aircraft, the S1 (suppression) interrogating pulse below the Minimum Trigger Level (MTL) and, in some circumstances, not reply. The GTX 330/330D should still reply even if it detects

S1 interrogating pulses below the MTL. We are issuing this proposed AD to prevent interrogating aircraft from possibly receiving inaccurate replies due to suppression from aircraft equipped with the GTX 330/330D Mode S Transponders when the pulses are below the MTL. The inaccurate replies could result in reduced vertical separation or unsafe TCAS resolution advisories.

DATES: We must receive any comments on this proposed AD by February 3, 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–39–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–39–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 GARMIN International Inc., 1200 East 151st Street, Olathe, KS 66062, 913–397–8200.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–39–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: Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4134; facsimile: 316–946–4107; email address: *roger.souter@faa.gov.*

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–39–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

What Events Have Caused This Proposed AD?

The GTX 330/GTX 330D may detect from other aircraft the S1 (suppression) interrogating pulse below the MTL and, in some circumstances, does not reply. The GTX 330/330D should still reply even if it detects S1 interrogating pulses below the MTL. GARMIN International Inc. suspected the suppression problem after observation between GARMIN company aircraft that were equipped with the GTX 330 and Ryan Traffic and Collision Alert Device (TCAD). Engineering bench tests and test flights confirmed that this suppression problem existed.

What Are The Consequences If the Condition Is Not Corrected?

Interrogating aircraft could possibly receive inaccurate replies due to suppression from aircraft equipped with the GTX 330/330D Mode S Transponders when the pulses are below the MTL. The inaccurate replies could result in reduced vertical separation or unsafe TCAS resolution advisories.

Is There Service Information That Applies To This Subject?

GARMIN International Inc. has issued the Software Service Bulletin No.: 0304, Rev B, dated June 12, 2003.

What Are the Provisions of This Service Information?

The service bulletin includes:

—Modification instructions for upgrading to software version 3.03 and

—A listing of parts required to perform the modification.

FAA's Determination and Requirements of This Proposed AD

What Has FAA Decided?

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing AD action.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

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 1300 airplanes in the U.S. registry.

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

GARMIN International Inc. will cover all workhours and parts cost associated with this modification under warranty. The proposed AD would not impose any cost upon the owners/operators of any airplane that has the GTX 330/330D Software Upgrade to Version 3.03 installed.

Compliance Time of This Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is within 30 days after the effective date of the AD.

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-In-Service (TIS)?

The unsafe condition exists or could develop on airplanes equipped with the affected equipment regardless of airplane operation. For example, the unsafe condition has the same chance of occurring on an airplane with 50 hours TIS as it does on one with 5,000 hours TIS. Therefore, we are presenting the compliance time of the proposed AD in calendar time instead of 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–39–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 adding the following new airworthiness directive (AD):

GARMIN International Inc.: Docket No. 2003–CE–39–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 February 3, 2004.

What Other ADs Are Affected By This Action?

(b) None.

What Products Are Affected by This AD?

(c) This AD affects GARMIN International Inc. GTX 330/330D Mode S transponders that are installed on, but not limited to, the following airplanes, certificated in any category:

Manufacturer	Model
(1) Aermacchi S.p.A.	S.205–18/F, S.205–18/R, S.205–20/R, S.205–22/R, S208, S.208A, F.260, F.260B, F.260C, F.260D, F.260E, F.260F, S.211A.
(2) Aeronautica Macchi S.p.A.	AL 60, AL 60–B, AL 60–F5, AL 60–C5, AM–3.
(3) Aerostar Aircraft Corporation	PA–60–600 (Aerostar 600), PA–60–601 (Aerostar 601), PA–60–601P (Aerostar 601P), PA–60–602P (Aerostar 602P), PA–60–700P (Aerostar 700P), 360, 400.
(4) Alexandria Aircraft, LLC	14–19, 14–19–2, 14–19–3, 14–19–3A, 17–30, 17–31, 17–31TC, 17–30A, 17–31A, 17–31ATC.
(5) Alliance Aircraft Group LLC	15A, 20, H–250, H–295 (USAFU–10D), HT–295, H391 (USAFYL–24), H391B, H–395 (USAFL–28A or U–10B), H–395A, H–700, H–800, HST–550, HST–550A (USAF AU–24A), 500.
(6) American Champion Aircraft Corp.	402, 7GCA, 7GCB, 7KC, 7GCBA, 7GCAA, 7GCBC, 7KCAB, 8KCAB, 8GCBC.
(7) Sky International Inc.	A–1, A–1A, A–1B, S–1S, S–1T, S–2, S–2A, S–2S, S–2C.
(8) B–N Group Ltd.	BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–8, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, N–2B–26, BN–2B–27, BN–2T, BN–2T–4R, BN–2A MK.III, BN2A MK. III–2, BN2A MK. 111–3.
(9) Bellanca	14–13, 14–13–2, 14–13–3, 14–13–3W.
(10) Bombardier Inc.	(Otter) DHC–3, DHC–6–1, DHC–6–100, DHC–6–200, DHC–6–300.

Manufacturer	Model
(11) Cessna Aircraft	170, 170A, 170B, 172, 172A, 172B, 172C, 172D, 172E, 172F (USAF T–41A), 172G, 172H (USAF T041A), 172I, 172K, 172L, 172M, 172N, 172P, 172Q, 172R, 172S, 172RG, P172D, R172E (USAF T–41 B) (USAF T–41 C AND D), R172F (USAF T–41 D), R175G, R172H (USAF T–41 D), R172J, R172K, 175, 175A, 175B, 175C, 177, 177A, 177B, 177RG, 180, 180A, 180B, 180C, 180D, 180E, 180F, 180G, 180H, 180J, 180K, 182, 182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R, 182S, 182T, R182, T182, TR182, T182T, 185, 185A, 185B, 185C, 185D, 185E, A185E, A185F, 190, (LC–126A, B, C) 195, 195A, 195B, 210, 210A, 210B, 210C, 210D, 210E, 210F, T210F, 210G, T210G, 210H, T210H, 210J, T210J, 210K, T210K, 210L, T210L, 210M, T210M, 210N, P210N, T210N, 210R, P210R, T210R, 210–5 (205), 210–5A (205A), 206, P206, P206A, P206B, P206C, P206D, P206E, TP206A, TP206B, TP206C, TU206D, TU206E, TU206F, TU206G, 206H, T206H, 207, 207A, T207, T207A, 208, 208A, 208B, 310, 310A (USAF U–3A), 310B, 310C, 310D, 310E (USAF U–3B), 310F, 310G, 310H, E310H, 310I, 310J, 310J–1, E310J, 310K, 310L, 310N, 310P, T310P, 310Q, T310Q, 310R, T310R, 320, 320A, 320B, 320C, 320D, 320E, 320F, 320–1, 335, 340, 340A, 336, 337, 337A (USAF 02B), 337B, T337B, 337C, 337E, T337E, T337C, 337D, T337D, M337B (USAF 02A), 337F, T337F, T337G, 337G, 337H, P337H, T337H, T337H–SP, 401, 401A, 401B, 402, 402A, 402B, 402C, 411, 411A, 414, 414A, 421, 421A, 421B, 421C, 425, 404, 406, 441.
(12) Cirrus Design Corporation	SR20, SR22.
(13) Commander Aircraft Company	112, 112TC, 112B, 112TCA, 114, 114A, 114B, 114TC.
(14) de Havilland Inc.	DHC–2 Mk. I, DHC–2 Mk.II, DHC–2 Mk. III.
(15) Dynac Aerospace Corporation	(Volaire) 10, (Volaire) 10A, (Aero Commander) 100, (Aero Commander) 100A, (Aero Commander) 100–180.
(16) Diamond Aircraft Industries	DA–20 A1, DA20–C1, DA 40.
(17) Empressa Brasileira de Aeronautica S.A. EMBRAER	EMB–110P1, EMB–110P2.
(18) Extra Flugzeugbau Gmbh	A300, EA300L, EA300S, EA300/200, EA–400.
(19) Fairchild Aircraft Corporation	SA26–T, SA26–AT, SA226–T, SA226–AT, SA226–T(B), SA227–AT, SA227–TT, SA226–TC, SA227–AC (C–26A), SA227–CC, SA227–DC (C–26B).
(20) Global Amphibians, LLC	Colonial C–1, Colonial C–2, Lake LA–4, Lake LA–4A, Lake LA–4P, Lake LA–4–200, Lake Model 250.
(21) Grob-Werke	G115, G115A, G115B, G115C, G115C2, G115D, G115D2, G115EG, G120A.
(22) Lancair Company	LC40–550FG.
(23) LanShe Aerospace, LLC	MAC–125C, MAC–145, MAC–145A, MAC–145B.
(24) Learjet Inc.	23.
(25) Lockheed Aircraft Corporation	18.
(26) Luscombe Aircraft Corporation	11A, 11E.
(27) Maule Aerospace Technology, Inc.	Bee Dee M–4, M–4, M–4C, M–4S, M–4T, M–4180C, M–4–180S, M–4–180T, M–4–210, M–4–210C, M–4–210S, M–4–210T, M–4–220, M–4–220S, M–4–220T, M–5–180C, M–5–200, M–5–210C, M–5–210TC, M–5–220C, M–5–235C, M–6–180, M–6–235, M–7–235, MX–7–235, MX–7–180, MX–7–420, MXT–7–180, MT–7–235, M–8–235, MX–7–160, MXT–7–160, MX–7–180A, MXT–7–180A, MX–7–180B, M–7–235B, M–7–235A, M–7–235C, MX–7–180C, M–7–260, MT–7–260, M–7–260C, M–7–420AC, MX–7–160C, MX–7–180AC, M–7–420A, MT–7–420.
(28) Mitsubishi Heavy Industries, Ltd	MU–2B–25, MU–2B–35, MU–2B–26, MU–2B–36, MU–2B–26A, MU–2B–36A, MU–2B–40, MU–2B–60, MU–2B, MU–2B–20, MU–2B–20, MU–2B–15.
(29) Mooney Airplane Company, Inc	M20, M20A, M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K, M20L, M20M, M20R, M20S, M22.
(30) Moravan a.s.	Z–242L, Z–143L.
(31) Navion Aircraft Company, Ltd.	NAVION, Navion (L–17A), Navion (L17B), Navion (L–17C), Navion B, Navion D, Navion E, Navion F, Navion G, Navion H.

Manufacturer	Model
(32) New Piper Aircraft, Inc	PA–12, PA–12S, PA–18, PA–18S, PA–18 ''105'' (Special), PA–18S ''105'' (Special), PA–18A, PA–18 ''125'' (Army L–21A), PA–18S ''125,'' PA–18AS ''125',' PA–18 ''135'' (Army L–21B), PA–18A ''135,'' PA–18S ''135,'' PA–18 ''150,'' PA–18A ''150,'' PA–18S ''150,'' PA–18AS ''150,'' PA–19 (Army L–18B), PA–19S, PA–20, PA–20S, PA–20 ''115,'' PA–20S ''115,'' PA–20, ''135,'' PA–20S ''135,'' PA–22, PA–22–108, PA–22–135, PA–22S–135, PA–22–150, PA–22S–150, PA–22–160, PA–22S–160, PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–24, PA–24–250, PA–24–260, PA–24–400, PA–28–140, PA–28–150, PA–28–151, PA–28–160, PA–28–161, PA–28–180, PA–28–235, PA–28S–160, PA-28R–180, PA–28S–180, PA–28–181, PA–28R–200, PA-28R–201, PA–28R–201T, PA–28RT–201, PA–28RT–201T, PA–28–201T, PA–28–236, PA–30, PA–39, PA–40, PA-31P, PA–31T, PA–31T1, PA–31T2, PA–31T3, PA–31P-350, PA–32–260, PA–32–300, PA–32S–300, PA–32R–300, PA–32RT–300, PA–32RT–300T, PA–32R–301 (SP), PA-32R–301 (HP), PA–32R–301T, PA–32–301, PA–32–301T, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42-720, PA–42–1000, PA–42–720R, PA–44–180, PA–44–180T, PA–46–310P, PA–46–350P, PA–46–500TP
(33) Ostmecklenburgische Flugzeugbau GmgH	OMF–100–160.
(34) Piaggio Aero Industries S.p.A.	P–180.
(35) Pilatus Aircraft Ltd.	PILATUS PC–12, PILATUS PC–12/45, PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PA–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, PC–6/C1–H2, PC–7.
(36) Prop-Jets, Inc.	200, 200A, 200B, 200C, 200D, 400.
(37) Panstwowe Zakladv Lotnicze (PZL)	PZL–104 WILGA 80, PZL–104M WILGA 2000, PZL–WARSZAWA, PZL–KOLIBER 150A, PZL–KOLIBER 160A.
(38) PZL WSK/Mielec Obrsk	PZL M20 03, PZL M26 01.
(39) Raytheon	35–33, 35-A33, 35-B33, 35-C33, 35-C33A, E33, E33A, E33C, F33, F33A, F33C, G33, H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, 36, A36, A36TC, B36TC, 35, A35, B35, C35, D35, E35, F35, G35, 35R, F90, 76, 200, 200C, 200CT, 200T, A200, B200, B200C, B200CT, B200T, 300, 300LW, B300, B300C, 1900, 1900C, 1900D, A100–1 (U–21J), A200 (C–12A), A200 (C–12C), A200C (UC–12B), A200CT (C–12D), A200CT (FWC–12D), A200CT (RC–12D), A200CT (C–12F), A200CT (RC–12G), A200CT (RC–12H), A200CT (RC–12K), A200CT (RC–12P), A200CT (RC–12Q), B200C (C–12F), B200C (UC–12F), B200C (UC–12M), B200C (C–12R), 1900C (C–12J), 65, A65, A65–8200, 65–80, 65–A80, 65A80–8800, 65–B80, 65–88, 65–A90, 70, B90, C90, C90A, E90, H90, 65–A90–1, 65–A90–2, 65–A90–3, 65–A90–4, 95, B95, B95A, D95A, E95, 95–55, 95–A55, 95–B55, 95–B55A, 95–B55B (T–42A), 95–C55, 95–C55A, D55, D55A, E55, E55A, 56TC, A56TC, 58, 58A, 58P, 58PA, 58TC, 58TCA, 99, 99A, 99A (FACH), A99, A99A, B99, C99, 100, A100 (U–21F), A100A, A100C, B100, 2000, 3000, 390, 19A, B19, M19A, 23, A23, A23A, A23–19, A23–24, B23, C23, A24, A24R, B24R, C24R, 60, A60, B60, 18D, A18A, A18D, S18D, SA18A, SA18D, 3N, 3NM, 3TM, JRB–6, D18C, D18S, E18S, RC–45J (SNB–5P), E18S–9700, G18S, H18, C–45G, TC–45G, C–45H, TC–45H, TC–45J, UC–45J (SNB–5), 50 (L–23A), B50 (L–23B), C50, D50 (L–23E), D50A, D50B, D50C, D50E–5990, E50 (L–23D, RL–23D), F50, G50, H50, J50, 45 (YT–34), A45 (T–34A or B–45), D45 (T–34B).
(40) Rockwell International Corporation	BC–1A, AT–6 (SNJ–2), AT–6A (SNJ–3), AT–6B, AT–6C (SNJ–4), AT–6D (SNJ–5), AT–6F (SNF–6), SNJ–7, T–6G, NOMAD NA–260.
(41) Short Brothers & Harland Ltd.	SC–7 Series 2, SC–7 Series 3.
(42) Slingsby Aviation Ltd	T67M260, T67M260–T3A.
(43) SOCATA—Group Aerospatiale	TB9, TB10, TB20, TB21, TB200, TBM 700, M.S. 760, M.S. 760 A, M.S. 760 B, Rallye 100S, Rallye 150ST, Rallye 150T, Rallye 235E, Rallye 235C, MS 880B, MS 885, MS 894A, MS 893A, MS 892A–150, MS 892E–150, MS 893E, MS 894E, GA–7.
(44) Tiger Aircraft LLC	AA–1, AA–1A, AA–1B, AA–1C, AA–5, AA–5A, AA–5B, AG–5B.
(45) Twin Commander Aircraft Corporation	500, 500–A, 500–B, 500–U, 500–S, 520, 560, 560–A, 560–E, 560F, 680, 680E, 680F, 680FL, 680FL(P), 680T, 680V, 680W, 681, 685, 690, 690A, 690B, 690C, 690D, 695, 695A, 695B, 720, 700.
(46) Univair Aircraft Corporation	108, 108–1, 108–2, 108–3, 108–5.
(47) Vulcanair S.p.A.	P68, P68B, P68C, P68C–TC, P68 ''Observer,'' P68 ''Observer 2,'' P68TC ''Observer,'' AP68TP300 ''Spartacus,'' AP68TP 600 ''Viator.''
(48) Zenair Ltd.	CH2000.

What Is the Unsafe Condition Presented in This AD?

(d) The actions specified in this AD are intended to prevent interrogating aircraft from possibly receiving inaccurate replies, due to suppression, from aircraft equipped with the GTX 330/330D Mode S Transponders when the pulses are below the Minimum Trigger Level (MTL). The inaccurate replies could result in reduced vertical separation or unsafe TCAS resolution advisories.

What Must I Do To Address This Problem?

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

Action	Compliance	Procedures
Install GTX 330/330D software upgrade to version 3.03.	Install the software upgrade within 30 days after the effective date of this AD, unless already accomplished.	Follow GARMIN International Inc. Service Bulletin No.: 0304, Rev B, dated June 12, 2003.

How Do I Get Copies of the Documents Referenced in This AD?

(g) You may get copies of the documents referenced in this AD from GARMIN International Inc. 1200 East 151st Street, Olathe, KS 66062. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on December 19, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31978 Filed 12–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 600

[Docket No. 2003N–0528]

Revision of the Requirements For Spore-Forming Microorganisms; Companion to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations by providing options to the existing requirement for separate, dedicated facilities and equipment for work with spore-forming microorganisms. FDA is proposing this amendment due to advances in facility, system, and equipment design and in sterilization technologies that would allow work with spore-forming microorganisms to be performed in multiproduct manufacturing areas. We are amending the regulations because the existing requirement for always using separate, dedicated facilities and equipment for work with spore forming microorganisms is no longer necessary. We are taking this action as part of our continuing effort to reduce the burden of unnecessary regulations on industry and to revise outdated regulations without diminishing public health protection. This proposed rule is a companion document to the direct final rule published elsewhere in this issue of the **Federal Register**. We are taking this action because the proposed changes are noncontroversial and we do not anticipate any significant adverse comments. If we receive any significant adverse comments that warrant terminating the direct final rule, we will consider such comments on the proposed rule in developing the final rule.

DATES: Submit written comments on or before March 15, 2004.

ADDRESSES: Submit written or electronic comments on the proposed rule to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the **Federal Register**. This companion proposed rule provides the procedural framework to finalize the rule in the event that the direct final rule receives any adverse comment and is withdrawn. The comment period for this companion proposed rule runs concurrently with the comment period for the direct final rule. Any comments received under this companion rule will also be considered as comments regarding the direct final rule. We are publishing the direct final rule because the rule contains noncontroversial changes, and we do not anticipate that it will receive any significant adverse comments.

An adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants terminating a direct final rulemaking, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. A comment recommending a rule change in addition to the rule would not be considered a significant adverse comment unless the comment states why the rule would be ineffective without additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not subjects of significant adverse comments.

If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, we will publish a confirmation document, before the effective date of the direct final rule, confirming that the direct final rule will go into effect on June 1, 2004. Additional information about direct rulemaking procedures is set forth in a guidance published in the **Federal Register** of November 21, 1997 (62 FR 62466).

Spore-forming microorganisms are used in the production of certain biological products. These microorganisms may be used as source material for further manufacture into final products used in the prevention, treatment or cure of a disease or condition of human beings. By their very nature, these microorganisms pose a great challenge to manufacturers. Bacteria produce spores as a means to survive adverse environmental

conditions, while some fungi use them as a form of reproduction. Spores show great resistance to high temperature, freezing, dryness, antibacterial agents, radiation, and toxic chemicals. Under favorable conditions, spores can germinate into actively growing bacteria and fungi. Many of these spore-forming microorganisms are pathogenic to humans and have been implicated in causing morbidity and mortality. To ensure the safety of a biological product manufactured in a facility in which spore-forming microorganisms are present, these microorganisms must be kept under tight control to avoid the release of spores into the manufacturing atmosphere and potential contamination of other products.

Due to the unique survival properties of spore-forming microorganisms, current FDA regulations require that work with these microorganisms be conducted separately from manufacturing operations for other products. (Currently, FDA regulations use the term ''spore-bearing'' microorganisms. In this rulemaking, we are proposing to revise these regulations to use the term ''spore-forming'' because it is a more commonly used term. For the purposes of these regulations, spore-forming microorganisms include both the spore and vegetative cells.) Under § 600.11(e)(3) (21 CFR 600.11(e)(3)), all work with spore-forming microorganisms must be performed in an entirely separate building, or in a completely walled-off portion of a building if that portion is constructed so as to prevent contamination of other areas and if entrances to such portion are independent of the remainder of the building. Section 600.11(e)(3) further requires that all vessels, apparatus, and equipment used for spore-forming microorganisms be permanently identified and reserved exclusively for use with those organisms. This provision also states that any materials destined for further manufacturing may be removed from this area only under conditions that will prevent the introduction of spores into other manufacturing areas.

In accordance with Executive Order 12866, which directs Federal agencies to review their regulations and eliminate or modify those that are outdated or otherwise in need of reform, we are revising § 600.11(e)(3) to allow greater manufacturing flexibility regarding work with spore-forming microorganisms. The revisions provide that work with spore-forming microorganisms may be performed in multiproduct manufacturing areas when appropriate controls to prevent contamination of other products and areas exist. We recognize that advances in facility, system, and equipment design and in sterilization technologies have increased the ability of manufacturers to control and analyze the manufacture of biological products and the equipment used in their manufacture. The use of appropriate controls and procedures and processes provide an adequate degree of confidence that a product meets the expected levels of safety and purity. Areas of special concern, such as containment, contamination with pathogenic and/or toxic agents, sterilization, and disinfection can be addressed using currently available and required procedures and processes.

This proposed rule does not apply to spore-forming microorganisms used for testing of biological products to determine the growth-promoting qualities of test media used to ensure the sterility of each lot of product or as biological indicators for validation of steam sterilization cycles. The rule also does not change the requirements for those products set forth in § 600.11(e)(2) and 21 CFR 610.12.

II. Highlights of the Proposed Rule

We are proposing to amend our regulations involving spore-forming microorganisms as set forth below.

A. Work With Spore-Forming Microorganisms

We are revising § 600.11(e)(3) to provide greater flexibility in production facilities and procedures for work with spore-forming microorganisms.

Revised § 600.11(e)(3)(i) states that manufacturing processes using spore-forming microorganisms conducted in a multiproduct manufacturing site must be performed under appropriate controls to prevent contamination of other products and areas within the site. We regard a manufacturing site as an entire complex of buildings, connected or separate, that belongs to one entity engaged in the manufacture of any one product or multiple products. An area within a manufacturing site is a specified location within a facility (physical structure) associated with the manufacturing of any one product or multiple products. Revised § 600.11(e)(3)(i) further states that prevention of spore contamination can be achieved by using a separate, dedicated building or, if manufacturing is conducted in a multiproduct manufacturing building, by using process containment. Finally, revised § 600.11(e)(3)(i) states that all product and personnel movement between the area where the spore-forming microorganisms are manufactured and other manufacturing areas must be conducted under conditions that will prevent the introduction of spores into other areas of the facility.

Revised § 600.11(e)(3)(ii) states that if process containment is employed in a multiproduct manufacturing area, procedures must be in place to demonstrate adequate removal of the spore-forming microorganism(s) from the manufacturing area for subsequent manufacture of other products. Revised § 600.11(e)(3)(ii) further states that these procedures must provide for adequate removal or decontamination of the spore-forming microorganisms on and within manufacturing equipment, facilities, and ancillary room items as well as the removal of disposable or product dedicated items from the manufacturing area. Finally, revised § 600.11(e)(3)(ii) states that environmental monitoring specific for the spore-forming microorganism(s) must be conducted in adjacent areas during manufacturing operations and in the manufacturing area after completion of cleaning and decontamination.

Under revised § 600.11(e)(3(ii), processing and propagation of spore-forming microorganisms must be conducted in areas and using systems that are not used for any other purpose at the same time. Prior to processing and propagation of any organism, procedures must be designed and in place to prevent contamination with pathogenic and/or toxic agents, as well as to decontaminate, sterilize and/or disinfect, as appropriate, all affected areas and systems. It is important to demonstrate control over and containment of spore-forming microorganisms during their propagation and processing in order to prevent contamination of the product. Products derived from spore-forming microorganisms should not be removed from designated areas unless this can be done in a manner that prevents contamination of other products. These containment procedures will provide a level of assurance that products made using spore-forming microorganism remain safe, pure, and of high quality.

The agency anticipates developing a guidance document to assist manufacturers in complying with these more flexible provisions on work with spore-forming microorganisms.

B. Substitution of ''Spore-Forming'' for ''Spore-Bearing''

As noted previously in this document, we are replacing the term ''spore-bearing'' in our regulations with the term ''spore-forming'' because the latter has become the more commonly used term to describe these microorganisms.

Accordingly, in addition to § 600.11(e)(3), we are revising §§ 600.10(c)(3) (21 CFR 600.10(c)(3)) and 600.11(e)(1) and (e)(2) by substituting the term ''spore-forming'' for the term ''spore-bearing''.

III. Analysis of Impacts

A. Review Under Executive Order 12866, the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this proposal is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive order and is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze whether a rule may have a significant economic impact on a substantial number of small entities. Because the proposed rule allows for greater flexibility in production facilities and procedures for work with spore-forming microorganisms, it would not result in any increased burden or costs on small entities. Therefore, FDA certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities, and no further analysis is required under the Regulatory Flexibility Act.

The Unfunded Mandates Reform Act requires that agencies prepare a written statement under section 202(a) of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation). Because the rule does not impose mandates on State, local, or tribal governments, or the private sector, that will result in an expenditure in any one year of $100 million or more, FDA is not required to perform a cost-benefit analysis according to the Unfunded Mandates Reform Act.

B. Environmental Impact

The agency determined under 21 CFR 25.31(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

C. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we have concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

IV. The Paperwork Reduction Act of 1995

This proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

V. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this proposal. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 600

Biologics, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 600 be amended as follows:

PART 600—BIOLOGICAL PRODUCTS: GENERAL

1. The authority citation for 21 CFR part 600 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 360i, 371, 374; 42 U.S.C. 216, 262, 263, 263a, 264, 300aa–25.

§ 600.10 [Amended]

2. Section 600.10 *Personnel* is amended in paragraph (c)(3) by removing the words ''spore-bearing'' and adding in their place the words ''spore-forming''.

3. Section 600.11 is amended in paragraph (e)(1) by removing the words ''spore-bearing'' and adding in their place the words ''spore-forming''; in paragraph (e)(2) by removing the words ''spore-bearing'' in the heading and text, and adding in their place the words ''spore-forming''; and by revising paragraph (e)(3) to read as follows:

§ 600.11 Physical establishment, equipment, animals, and care.

* * * * *

(e) * * *

(3) *Work with spore-forming microorganisms.* (i) Manufacturing processes using spore-forming microorganisms conducted in a multiproduct manufacturing site must be performed under appropriate controls to prevent contamination of other products and areas within the site. Prevention of spore contamination can be achieved by using a separate dedicated building or by using process containment if manufacturing is conducted in a multiproduct manufacturing building. All product and personnel movement between the area where the spore-forming microorganisms are manufactured and other manufacturing areas must be conducted under conditions that will prevent the introduction of spores into other areas of the facility.

(ii) If process containment is employed in a multiproduct manufacturing area, procedures must be in place to demonstrate adequate removal of the spore-forming microorganism(s) from the manufacturing area for subsequent manufacture of other products. These procedures must provide for adequate removal or decontamination of the spore-forming microorganisms on and within manufacturing equipment, facilities, and ancillary room items as well as the removal of disposable or product dedicated items from the manufacturing area. Environmental monitoring specific for the spore-forming microorganism(s) must be conducted in adjacent areas during

manufacturing operations and in the manufacturing area after completion of cleaning and decontamination.

* * * * *

Dated: December 11, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–31918 Filed 12–29–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–143321–02; REG–156232–03]

RIN 1545–BB60; RIN 1545–BC80

Information Reporting Relating to Taxable Stock Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of previous proposed rules; notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: This document withdraws proposed regulations published in the **Federal Register** on November 18, 2002 (REG–143321–02). In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to information reporting relating to taxable stock transactions. This document contains proposed regulations under section 6043(c) requiring information reporting by a corporation if control of the corporation is acquired or if the corporation has a recapitalization or other substantial change in capital structure. This document also contains proposed regulations under section 6045 concerning information reporting requirements for brokers with respect to transactions described in section 6043(c). The text of the temporary regulations serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by March 29, 2004. Outlines of topics to be discussed at the public hearing scheduled for March 31, 2004, at 10 a.m., must be received by March 10, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–156232–03), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–156232–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at www.irs.gov/regs. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Nancy L. Rose (202) 622–4910; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Robin Jones at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The forms referenced in these regulations have been, or will be, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document withdraws the Notice of Proposed Rulemaking (REG–143321–02) that was published in the **Federal Register** on November 18, 2002 (67 FR 65496). Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR Part 1) relating to sections 6043 and 6045. The temporary regulations set forth information reporting requirements relating to acquisitions of control and substantial changes in capital structure. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments and these proposed regulations.

On November 18, 2002, the IRS published temporary regulations under section 6043(c) (TD 9022). The transactions covered by the reporting requirement were certain acquisitions of control and substantial changes in the capital structure of a corporation. These regulations required a corporation to attach a form to its income tax return describing these transactions and to file information returns with respect to certain shareholders in such transactions. On November 18, 2002, the IRS also published temporary regulations under section 6045, which provided for information reporting with respect to these transactions by brokers (together with the section 6043(c) temporary regulations, the ''2002 temporary regulations''. The 2002 temporary regulations were effective for acquisitions of control and substantial changes in capital structure occurring after December 31, 2001, if the reporting corporation or any shareholder was required to recognize gain (if any) as a result of the application of section 367(a) as a result of the transaction.

The text of the 2002 temporary regulations also served as the text of proposed regulations set forth in a cross-referencing notice of proposed rulemaking published in the Proposed Rules section of the same issue of the **Federal Register** (2002 proposed regulations) (REG–143321–02). The provisions of the proposed regulations were proposed to be effective with respect to any acquisition of control or substantial change in capital structure occurring after the date on which final regulations would be published in the **Federal Register**. The preamble to the notice of proposed rulemaking invited public comments with respect to the potential for duplicate reporting and with respect to the burden of compliance with the reporting requirements.

The IRS received a number of written public comments with respect to the information reporting requirements set forth in the 2002 temporary and proposed regulations. In addition, the IRS met with representatives of the Information Reporting Program Advisory Committee (IRPAC) and other representatives of the securities industry to discuss their concerns and suggestions for revisions to the regulations.

After considering the issues concerning affected taxpayers, the IRS has decided to revise the 2002 temporary regulations. The revised temporary regulations set forth information reporting rules that will help ensure that brokers and shareholders receive information regarding these corporate transactions, without unduly burdening brokers and other members of the securities industry. The text of the revised

temporary regulations also serves as the text of these proposed regulations (reproposed regulations).

Summary of Comments and Explanation of Provisions

The commentators noted certain gaps in the transmission of information under the 2002 temporary and proposed regulations between corporations subject to reporting and brokers. Information reporting by brokers depends upon the effective dissemination of information from the corporation to the reporting community, and broker reporting is difficult to effectuate if there are gaps in the process of transmitting this information.

As provided in the 2002 temporary and proposed regulations, a reporting corporation would file Forms 1099–CAP, ''Changes in Corporate Control and Capital Structure'', with respect to its shareholders of record, including brokers, under § 1.6043–4T(b) and proposed § 1.6043–4(b). Brokers who received Forms 1099–CAP would then file Forms 1099–CAP with respect to their customers pursuant to § 1.6045–3T and proposed § 1.6045–3. The commentators pointed out that a large majority of U.S. publicly issued securities are actually held on behalf of brokerage firms through clearing organizations. Pursuant to the 2002 temporary and proposed regulations, clearing organizations would receive Forms 1099–CAP from the reporting corporation; however, because clearing organizations are not treated as brokers, they in turn would not be required under § 1.6045–3T and reproposed § 1.6045–3 to file Forms 1099–CAP with respect to their broker-members. Consequently, brokers (who had the requirement to file a Form 1099–CAP upon receiving one) would not receive Form 1099–CAP if they held their shares through a clearing organization. In addition, brokers may not be aware of the requirement to report with respect to a particular corporate transaction, or may have difficulty obtaining the information necessary for reporting. Thus, under the 2002 temporary and proposed regulations, the actual shareholders of the reporting corporation, the broker's customers, may not receive information returns to assist them in preparing their income tax returns.

To address this issue, commentators suggested an alternative procedure to ensure that brokers receive the required information for reporting and to bridge any potential gaps in the chain of reporting. Commentators recommended that the IRS act as a central repository of information necessary for brokers and issue a publication containing information needed for brokers to satisfy their reporting obligations. Brokers and commercial tax services that publish current developments could access this information, and brokers could use this information in preparing Forms 1099–CAP with respect to their customers. An alternative suggested by commentators was to require the reporting corporation to post essential information for reporting, from its Form 8806, ''Information Return for Acquisition of Control or Substantial Change in Capital Structure,'' to an IRS Web site.

Based on the comments, revised § 1.6043–4T(a)(1)(vi) and reproposed § 1.6043–4(a)(1)(vi) provide that reporting corporations may elect on Form 8806 to consent to the publication by the IRS of information necessary for brokers to file information returns with respect to their customers. To provide every corporation with the ability to make this election, the revised temporary regulations require reporting corporations to file Form 8806 even though the corporation may also report the transaction under sections 351, 355, or 368. In order to enable the IRS to publish the information timely, the revised temporary regulations require reporting corporations to file Form 8806 within 45 days after the transaction, and in no event later than January 5 of the year following the calendar year in which the transaction occurs.

The role of clearing organizations was also the subject of comments. Commentators suggested that the regulations utilize existing processes for distributing information to minimize the cost of and the time required for implementing reporting by the industry. Those existing processes include the dissemination of information by clearing organizations. Under current practices, important information regarding corporate transactions (including tax information) is disseminated by clearing organizations to their members. The revised temporary and reproposed regulations try to take advantage of this existing information flow by continuing to require corporations to provide a Form 1099–CAP to clearing organizations that are listed as shareholders of record at the time of an acquisition of control or substantial change in capital structure. It is anticipated that clearing organizations will disseminate information obtained from the Form 1099–CAP to their members and that broker-members will use that information (and information obtained from other sources) to satisfy their own reporting obligations under section § 1.6045–3T and reproposed § 1.6045–3. Under the revised regulations, a broker is required to report information if the broker knows or has reason to know, based on readily available information, that there was an acquisition of control or substantial change in capital structure with respect to shares held by the broker on behalf of a customer. If a clearing organization disseminates information identifying an acquisition of control or a substantial change in capital structure to a broker-member, the broker-member has readily available information about the transaction and must satisfy its reporting obligations under § 1.6045–3T and reproposed § 1.6045–3 with respect to the transaction.

The revised temporary and reproposed regulations provide that a reporting corporation is not required to file Forms 1099–CAP with respect to its shareholders which are clearing organizations, or to furnish Forms 1099–CAP to such clearing organizations, if the corporation makes the election to permit the IRS to publish information regarding the transaction. The IRS' publication of such information pursuant to the corporation's consent will provide readily available information for brokers, who must satisfy their reporting obligations with respect to the transaction.

Commentators also requested that brokers be permitted to utilize Form 1099–B for reporting under § 1.6045–3T and reproposed § 1.6045–3, rather than overhaul their systems to report on Form 1099–CAP. The commentators point out that this would also avoid any confusion stemming from the issuance of both types of forms to the same taxpayer in the same transaction. The revised temporary regulations and reproposed regulations provide that Form 1099–B should be used by brokers for reporting under § 1.6045–3T and reproposed § 1.6045–3. With respect to transactions occurring in 2003, brokers may use either Form 1099–B or 1099–CAP.

Proposed Effective Date

The provisions of these regulations are proposed to be applicable for any acquisition of control and change in capital structure occurring after the date on which these regulations are published in the **Federal Register** as final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section

553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing has been scheduled for March 31, 2004, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by March 10, 2004. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for reviewing outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of this notice of proposed rulemaking is Nancy L. Rose, Office of Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of a Previous Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking published in the **Federal Register** on November 18, 2002 (REG–143321–02) is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

2. Section 1.6043–4 is added to read as follows:

§ 1.6043–4 Information returns relating to certain acquisitions of control and changes in capital structure.

[The text of proposed § 1.6043–4 is the same as the text of § 1.6043–4T published elsewhere in this issue of the **Federal Register**]

3. Section 1.6045–3 is added to read as follows:

§ 1.6045–3 Information reporting for acquisitions of control or substantial changes in capital structure.

[The text of proposed § 1.6045–3 is the same as the text of § 1.6045–3T published elsewhere in this issue of the **Federal Register**]

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–31362 Filed 12–29–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 90

[OJP Docket No. 1378]

RIN 1121–AA67

STOP Violence Against Women Formula Grant Program and STOP Violence Against Indian Women Discretionary Grant Program: Clarification of Match Requirement

AGENCY: Office on Violence Against Women, Office of Justice Programs, Department of Justice.

ACTION: Notice of proposed rule.

SUMMARY: This rule proposed to amend the regulations for the STOP (Services—Training—Officers—Prosecutors) Violence Against Women Formula Grant Program and the STOP Violence Against Indian Women Discretionary Grant Program in 28 CFR 90.17 and 90.55, respectively, to clarify the statutory provision in 42 U.S.C. 3796gg–1(f) requiring that each STOP fund grantee provide matching funds in an amount no less than 25% of the total costs of the projects described in the application for funds.

DATES: Written comments should be submitted by January 29, 2004.

ADDRESSES: Please send written comments, by U.S. mail, to: Marnie Shiels, Attorney-Advisor, Office on Violence Against Women, Office of Justice Programs, 810 7th Street, NW., Washington, DC 20531; or by e-mail, to: *OVWRegs@ojp.usdoj.gov.* To ensure proper handling, please reference OJP No. 1378 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Marnie Shiels, Attorney-Advisor, Office on Violence Against Women, Office of Justice Programs, 810 7th Street, NW., Washington, DC 20531, telephone: (202) 307–6026.

SUPPLEMENTARY INFORMATION: The STOP and STOP Violence Against Indian Women (VAIW) Programs are codified at 42 U.S.C. 3796gg *et seq.* The final rule for these programs, 28 CFR Part 90 (Subparts B and C), was promulgated on April 18, 1995. The STOP grants are awarded to states and territories to develop and strengthen the criminal justice system's response to violence against women and to support and enhance services for victims. The STOP VAIW grants are intended to develop and strengthen tribal law enforcement and prosecution efforts to combat violence against Indian women and to develop and enhance services for victims of such crimes.

Because this is a technical amendment to clarify the matching requirement within the authorizing statute, the deadline for written comments is 30-days from the date of publication of this proposed rule in the **Federal Register**.

Statutory Match Requirement

The STOP statute, 42 U.S.C. 3796gg–1(f), provides: ''The Federal share of a grant made under [these grant programs] may not exceed 75 percent of the total costs of the projects described in the application submitted.'' In accordance with the statutory matching funds requirement, States and Indian tribal governments receiving funds under these two programs must ensure that only 75 percent of their total budget for the grant project comes from STOP grant funds. The purpose of requiring STOP formula fund grantees to provide a 25%

match is to augment the resources available to the project from grant funds and to foster the dedication of State, local, and community resources to the purposes of the project. States and tribal governments must calculate ''matching funds'' based on their entire grant awards, including amounts that they are allowed to allocate for administrative expenses or indirect costs. (In the case of American Samoa, Guam, the Virgin Islands, and the Northern Mariana Islands, the requirement for matching funds (up to $200,000) is waived pursuant to 48 U.S.C. 1469a(d).)

Grantees may satisfy this match requirement with either cash or in-kind services and may require sub-grantees to provide all or part of the match. The costs of activities counted as matching funds must be directly related to the project goals and objectives. For Indian tribes, as provided in 42 U.S.C. 3796gg–1(g), appropriations for the activities of any agency of an Indian tribal government or of the Bureau of Indian Affairs performing law enforcement functions on any Indian lands may be used to provide the match. The Office of Justice Programs Financial Guide, Part III, Chapter 3, provides information on additional sources of matching funds.

By statute, grantees under the STOP Violence Against Women Formula Grant Program and the STOP Violence Against Indian Women Discretionary Grant Program are required to provide a 25% match—or 25% of the total funds associated with the project being funded. (Thus, OVW provides only 75% of the total funding for each project.) The current regulations prohibit state and Indian tribal government grantees from passing on any portion of the 25% match requirement to any subgrantees who are nonprofit, non-governmental victim services programs, even though the statute contains no such prohibition. The revised rule will conform OJP regulations to the statute by permitting grantees to require that those subgrantees provide a portion of the overall 25% match that is required for the project.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Office of Justice Programs has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Cost/Benefit Assessment

This proposed rule is a technical amendment that clarifies the match requirement for entities awarded funds under the STOP Violence Against Women Formula Grant Program and the STOP Violence Against Indian Women Discretionary Grant Programs. The only cost of this proposed rule is thus borne by grantees for whom the benefit of receiving funds outweighs any cost imposed by the matching funds requirement.

Executive Order 13132

This regulation 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. This proposed rule is a technical amendment that clarifies the match requirement for entities awarded funds under the STOP Violence Against Women Formula Grant Program and the STOP Violence Against Indian Women Discretionary Grant Programs, but has no effect on other funds granted to states. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Office of Justice Programs, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reason: This proposed rule is a technical amendment that clarifies the match requirement for entities awarded funds under the STOP Violence Against Women Formula Grant Program and the STOP Violence Against Indian Women Discretionary Grant Programs, but has no effect on other funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete in domestic and export markets.

List of Subjects in 28 CFR Part 91

Grant programs, Judicial administration.

For the reason set forth in the preamble, the Office of Justice Programs proposes to amend 28 CFR Chapter I as follows:

PART 90—VIOLENCE AGAINST WOMEN

Subpart B—The STOP (Services—Training—Officers—Prosecutors) Violence Against Women Formula Grant Program

1. The authority citation for Part 90, subparts B and C, continues to read as follows:

Authority: 42 U.S.C. 3796gg *et seq.*

2. Paragraph (c) of § 90.17 is proposed to be revised to read as follows:

§ 90.17 Matching requirements.

* * * * *

(c) The match expenditures must be committed for each funded project under the grant, including administrative and indirect costs, and cannot be derived from other Federal funds.

* * * * *

Subpart C—Indian Tribal Governments Discretionary Program

3. Paragraph (c) of § 90.55 is proposed to be revised to read as follows:

§ 90.55 Matching requirements.

* * * * *

(c) The match expenditures must be committed for each funded project under the grant, including administrative and indirect costs, and, as provided in 42 U.S.C. § 3796gg–1(g), may be derived from appropriations for the activities of any agency of an Indian tribal government or of the Bureau of Indian Affairs performing law enforcement functions on any Indian lands.

* * * * *

Dated: December 22, 2003.

Diane M. Stuart,

Director, Office on Violence Against Women.

[FR Doc. 03–32017 Filed 12–29–03; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 10

[REG–122379–02]

RIN 1545–BA70

Regulations Governing Practice Before the Internal Revenue Service

AGENCY: Office of the Secretary, Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This notice proposes modifications of the regulations governing practice before the Internal Revenue Service (Circular 230). These regulations affect individuals who are eligible to practice before the IRS. The proposed modifications set forth best practices for tax advisors providing advice to taxpayers relating to Federal tax issues or submissions to the IRS and modify the standards for certain tax shelter opinions. This document also provides notice of a public hearing regarding the proposed regulations.

DATES: *Comments:* Written or electronically generated comments must be received by February 13, 2004.

Public Hearing: Outlines of topics to be discussed at the public hearing scheduled for February 18, 2004, in the Auditorium of the Internal Revenue Building at 1111 Constitution Avenue, NW., Washington, DC 20224, must be received by February 11, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–122379–02), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–122379–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at: *www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning issues for comment, Heather L. Dostaler or Bridget E. Tombul at (202) 622–4940; concerning submissions of comments, Guy Traynor of the Publications and Regulations Branch at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by March 1, 2004. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the Office of Professional Responsibility, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proper collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information (disclosure requirements) in these proposed regulations are in § 10.35(d). Section 10.35(d) requires a practitioner providing a tax shelter opinion to make certain disclosures in the beginning of marketed tax shelter opinions, limited scope opinions and opinions that fail to conclude at a confidence level of at least more likely than not. In addition, certain relationships between the practitioner and a person promoting or marketing a tax shelter must be disclosed. A practitioner may be required to make one or more disclosure at the beginning of an opinion. The collection of this material helps to ensure that taxpayers who receive a tax shelter opinion are informed of any facts or circumstances that might limit the taxpayer's use of the opinion. The collection of information is mandatory.

Estimated total annual disclosure burden is 13,333 hours.

Estimated annual burden per disclosing practitioner varies from 5 to 10 minutes, depending on individual circumstances, with an estimated average of 8 minutes.

Estimated number of disclosing practitioners is 100,000.

Estimated annual frequency of responses is on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103 of the Internal Revenue Code.

Background

Section 330 of title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Treasury Department. The Secretary has published the regulations in Circular 230 (31 CFR part 10). On February 23, 1984, the regulations were amended to provide standards for tax shelter opinions (49 FR 6719). On May 5, 2000, an advance notice of proposed rulemaking was published (65 FR 30375) which requested comments regarding amendments to the standards of practice governing tax shelters and other general matters. On January 12, 2001, a notice of proposed rulemaking (66 FR 3276) was published that proposed amendments to the regulations relating to practice before the Internal Revenue Service in general and addressing tax shelter opinions in particular. On July 26, 2002, final regulations (67 FR 48760) were issued incorporating only the non-tax shelter related matters. The IRS and the Treasury Department announced that regulations governing standards for tax shelter opinions would be proposed again at a later date.

This document proposes new proposed amendments to the standards governing tax shelter opinions and withdraws proposed amendments to §§ 10.33, 10.35 and 10.36 of the regulations governing practice before the IRS that were published in 2001. See 66 FR 3276 (Jan. 12, 2001).

Explanation of Provisions

Tax advisors play an increasingly important role in the Federal tax system, which is founded on principles of voluntary compliance. The tax system is

best served when the public has confidence in the honesty and integrity of the professionals providing tax advice. To restore, promote, and maintain the public's confidence in those individuals and firms, these proposed regulations set forth best practices applicable to all tax advisors. These regulations also amend the mandatory requirements for practitioners who provide certain tax shelter opinions. These regulations are limited to practice before the IRS and do not alter or supplant other ethical standards applicable to practitioners.

The standards set forth in these proposed regulations differ from the January 12, 2001 proposed regulations in several ways. First, § 10.33 prescribes best practices for all tax advisors. Second, § 10.35 combines and modifies the standards applicable to marketed and more likely than not tax shelter opinions in former § 10.33 (tax shelter opinions used to market tax shelters) and former § 10.35 (more likely than not tax shelter opinions) of the January 12, 2001 proposed regulations. Third, these regulations revise proposed § 10.36, which provides procedures for ensuring compliance with §§ 10.33 and 10.35. Finally, provisions relating to advisory committees to the Office of Professional Responsibility are provided in new § 10.37. The Treasury Department and the IRS will publish conforming amendments to §§ 10.22 and 10.52 in a separate notice of proposed rulemaking.

Best Practices

To ensure the integrity of the tax system, tax professionals should adhere to best practices when providing advice or assisting their clients in the preparation of a submission to the IRS. Section 10.33 describes the best practices to be observed by all tax advisors in providing clients with the highest quality representation. These best practices include: (1) Communicating clearly with the client regarding the terms of the engagement and the form and scope of the advice or assistance to be rendered; (2) establishing the relevant facts, including evaluating the reasonableness of any assumptions or representations; (3) relating applicable law, including potentially applicable judicial doctrines, to the relevant facts; (4) arriving at a conclusion supported by the law and the facts; (5) advising the client regarding the import of the conclusions reached; and (6) acting fairly and with integrity in practice before the IRS.

Standards for Certain Tax Shelter Opinions

Section 10.35 prescribes requirements for practitioners providing *more likely than not* and *marketed* tax shelter opinions. A more likely than not tax shelter opinion is a tax shelter opinion that reaches a conclusion of at least more likely than not with respect to one or more material Federal tax issue(s). A marketed tax shelter opinion is a tax shelter opinion, including a more likely than not tax shelter opinion, that a practitioner knows, or has reason to know, will be used or referred to by a person other than the practitioner (or a person who is a member of, associated with, or employed by the practitioner's firm) in promoting, marketing or recommending a tax shelter to one or more taxpayers.

Definition of Tax Shelter Opinion

These proposed regulations retain the definition of *tax shelter* proposed in January 2001 by applying the definition found in section 6662 to all taxes under the Internal Revenue Code. A number of commentators expressed concern that this definition is overly broad, encompasses routine tax matters, and is difficult to administer by practitioners and the IRS. After careful consideration of these issues, the Treasury Department and the IRS have determined that the definition in the proposed regulations best defines the scope of these regulations. Section 10.35 has been modified, however, to address commentators' concerns by excluding from the definition of a tax shelter opinion preliminary advice provided pursuant to an engagement in which the practitioner is expected subsequently to provide an opinion that satisfies the requirements of this section. In addition, under § 10.35(a)(3)(ii), a practitioner may provide an opinion that is limited to some, but not all, material Federal tax issues that may be relevant to the treatment of a tax shelter item if the taxpayer and the practitioner agree to limit the scope of the opinion. Such a limited scope opinion cannot be a marketed tax shelter opinion, and all limited scope opinions must contain the appropriate disclosures described below.

Requirements for Tax Shelter Opinions

The requirements for all more likely than not and marketed tax shelter opinions include: (1) Identifying and considering all relevant facts and not relying on any unreasonable factual assumptions or representations; (2) relating the applicable law (including potentially applicable judicial doctrines) to the relevant facts and not relying on any unreasonable legal assumptions, representations or conclusions; (3) considering all material Federal tax issues and reaching a conclusion, supported by the facts and the law, with respect to each material Federal tax issue; and (4) providing an overall conclusion as to the Federal tax treatment of the tax shelter item or items and the reasons for that conclusion.

In addition to the exception to the requirements for limited scope opinions discussed above, in the case of a marketed tax shelter opinion, a practitioner is not expected to identify and ascertain facts peculiar to a taxpayer to whom the transaction is marketed, but the opinion must include the appropriate disclosure described below. Moreover, if a practitioner is unable to reach a conclusion with respect to one or more material Federal tax issue(s) or to reach an overall conclusion in a tax shelter opinion, the opinion must state that the practitioner is unable to reach a conclusion with respect to those issues or to reach an overall conclusion and describe the reasons that the practitioner is unable to reach such a conclusion. If the practitioner fails to reach a conclusion at a confidence level of at least more likely than not with respect to one or more material Federal tax issue(s), the opinion must include the appropriate disclosures described below.

Required Disclosures

Section 10.35(d) provides disclosures that are required to be made in the beginning of marketed tax shelter opinions, limited scope opinions, and opinions that fail to reach a conclusion at a confidence level of at least more likely than not. In addition, certain relationships between the practitioner and a person promoting or marketing a tax shelter must be disclosed. A practitioner may be required to make more than one of the disclosures described below.

1. Relationship Between Practitioner and Promoter

Under § 10.35(d)(1), a practitioner must disclose if the practitioner has a compensation arrangement with any person (other than the client for whom the opinion is prepared) with respect to the promoting, marketing or recommending of a tax shelter discussed in the opinion. A practitioner also must disclose if there is any referral agreement between the practitioner and any person (other than the client for whom the opinion is prepared) engaged in the promoting, marketing or

recommending of the tax shelter discussed in the opinion.

2. Marketed Tax Shelter Opinion

Under § 10.35(d)(2), a practitioner must disclose that a marketed opinion may not be sufficient for a taxpayer to use for the purpose of avoiding penalties under section 6662(d) of the Code. The practitioner also must state that taxpayers should seek advice from their own tax advisors.

3. Limited Scope Opinion

Under § 10.35(d)(3), a practitioner must disclose in a limited scope opinion that additional issue(s) may exist that could affect the Federal tax treatment of the tax shelter addressed in the opinion, that the opinion does not consider or reach a conclusion with respect to those additional issues and that the opinion was not written, and cannot be used by the recipient, for the purpose of avoiding penalties under section 6662(d) of the Code with respect to those issues outside the scope of the opinion.

4. Opinions That Fail To Reach a Conclusion at a Confidence Level of at Least More Likely Than Not

Under § 10.35(d)(4), a practitioner must disclose that the opinion fails to reach a conclusion at a confidence level of at least more likely than not with respect to one or more material Federal tax issue(s) addressed by the opinion and that the opinion was not written, and cannot be used by the recipient, for the purpose of avoiding penalties under section 6662(d) of the Code with respect to such issue(s).

Procedures To Ensure Compliance

Section 10.36 provides that tax advisors with responsibility for overseeing a firm's practice before the IRS should take reasonable steps to ensure that the firm's procedures for all members, associates, and employees are consistent with the best practices described in § 10.33. In the case of tax shelter opinions, a practitioner with this oversight responsibility must take reasonable steps to ensure that the firm has adequate procedures in effect for purposes of complying with § 10.35.

Advisory Committees on the Integrity of Tax Professionals

Section 10.37 authorizes the Director of the Office of Professional Responsibility to establish one or more advisory committees composed of at least five individuals authorized to practice before the IRS. Under procedures prescribed by the Director and at the request of the Director, an advisory committee may review and make recommendations regarding professional standards or best practices for tax advisors or may advise the Director whether a practitioner may have violated §§ 10.35 or 10.36.

Proposed Effective Date

These regulations are proposed to apply on the date that final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Persons authorized to practice before the IRS have long been required to comply with certain standards of conduct. The added disclosure requirements for tax shelter opinions imposed by these regulations will not have a significant economic impact on a substantial number of small entities because, as previously noted, the estimated burden of disclosures is minimal. This is because practitioners have the information needed to determine whether some of the disclosures are required before the opinion is prepared and for the other disclosures the regulations provide practitioners with the language to be included in the opinion. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before the regulations are adopted as final regulations, consideration will be given to any written comments and electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

The public hearing is scheduled for February 18, 2004, at 10 a.m., and will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. All visitors must present photo identification to enter the building. Visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by February 13, 2004, and submit an outline of the topics to be discussed and the time to be devoted to each topic by February 11, 2004. A period of 10 minutes will be allocated to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of the regulations are Heather L. Dostaler, Bridget E. Tombul, and Brinton T. Warren of the Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division, but other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 31 CFR Part 10

Accountants, Administrative practice and procedure, Appraisers, Enrolled actuaries, Lawyers, Reporting and recordkeeping requirements, Taxes.

Proposed Amendments to the Regulations

Accordingly, 31 CFR part 10 is proposed to be amended as follows:

1. The authority citation for subtitle A, part 10 continues to read as follows:

Authority: Sec. 3, 23 Stat. 258, secs. 2–12, 60 Stat. 237 *et seq.*; 5 U.S.C. 301, 500, 551–559; 31 U.S.C. 330; Reorg. Plan No. 26 of 1950, 15 FR 4935, 64 Stat. 1280, 3 CFR, 1949–1953 Comp., P. 1017.

2. Section 10.33 is revised to read as follows:

§ 10.33 Best practices for tax advisors.

(a) *Best practices.* Tax advisors should provide clients with the highest quality representation concerning Federal tax issues by adhering to best practices in providing advice and in preparing or assisting in the preparation of a submission to the Internal Revenue Service. Best practices include the following:

(1) Communicating clearly with the client regarding the terms of the

engagement. For example, the advisor should determine the client's expected purpose for and use of the advice and should have a clear understanding with the client regarding the form and scope of the advice or assistance to be rendered.

(2) Establishing the facts, determining which facts are relevant, and evaluating the reasonableness of any assumptions or representations.

(3) Relating the applicable law (including potentially applicable judicial doctrines) to the relevant facts.

(4) Arriving at a conclusion supported by the law and the facts.

(5) Advising the client regarding the import of the conclusions reached, including, for example, whether a taxpayer may avoid penalties for a substantial understatement of income tax under section 6662(d) of the Internal Revenue Code if a taxpayer acts in reliance on the advice.

(6) Acting fairly and with integrity in practice before the Internal Revenue Service.

(b) *Effective date.* This section is effective on the date that final regulations are published in the **Federal Register**.

3. Section 10.35 is added to subpart B to read as follows:

§ 10.35 Requirements for certain tax shelter opinions.

(a) *In general.* A practitioner providing a *more likely than not tax shelter opinion* or a *marketed tax shelter opinion* must comply with each of the following requirements.

(1) *Factual matters.* (i) The practitioner must use reasonable efforts to identify and ascertain the facts, which may relate to future events if a transaction is prospective or proposed, and determine which facts are relevant. The opinion must identify and consider all relevant facts.

(ii) The practitioner must not base the opinion on any unreasonable factual assumptions (including assumptions as to future events), such as a factual assumption that the practitioner knows or should know is incorrect or incomplete. For example, it is unreasonable to assume that a transaction has a business purpose or that a transaction is potentially profitable apart from tax benefits, or to make an assumption with respect to a material valuation issue. In the case of any *marketed tax shelter opinion,* the practitioner is not expected to identify or ascertain facts peculiar to a taxpayer to whom the transaction may be marketed, but the opinion must include the appropriate disclosure(s) required under paragraph (d) of this section.

(iii) The practitioner must not base the opinion on any unreasonable factual representations, statements or findings of the taxpayer or any other person, such as a factual representation that the practitioner knows or should know is incorrect or incomplete. For example, a practitioner may not rely on a taxpayer's factual representation that a transaction has a business purpose if the representation fails to include a specific description of the business purpose or the practitioner knows or should know that the representation is incorrect or incomplete.

(2) *Relate law to facts.* (i) The practitioner must relate the applicable law (including potentially applicable judicial doctrines) to the relevant facts.

(ii) The practitioner must not assume the favorable resolution of any material Federal tax issue except as provided in paragraphs (a)(3)(ii) and (b) of this section, or otherwise base an opinion on any unreasonable legal assumptions, representations, or conclusions.

(iii) The practitioner's opinion must not contain internally inconsistent legal analyses or conclusions.

(3) *Evaluation of material Federal tax issues.* (i) The practitioner must consider all material Federal tax issues except as provided in paragraphs (a)(3)(ii) and (b) of this section.

(ii) The practitioner may provide an opinion that considers less than all of the material Federal tax issues if—

(A) The taxpayer and the practitioner agree to limit the scope of the opinion to one or more Federal tax issue(s);

(B) The opinion is not a *marketed tax shelter opinion;* and

(C) The opinion includes the appropriate disclosure(s) required under paragraph (d) of this section.

(iii) The practitioner must provide his or her conclusion as to the likelihood that the taxpayer will prevail on the merits with respect to each material Federal tax issue. If the practitioner is unable to reach a conclusion with respect to one or more material Federal tax issue(s), the opinion must state that the practitioner is unable to reach a conclusion with respect to those issues. The practitioner must describe the reasons for the conclusions, including the facts and analysis supporting the conclusions, or describe the reasons that the practitioner is unable to reach a conclusion as to one or more material Federal tax issue(s). If the practitioner fails to reach a conclusion at a confidence level of at least more likely than not with respect to one or more material Federal tax issue(s), the opinion must include the appropriate disclosure(s) required under paragraph (d) of this section.

(iv) The practitioner must not take into account the possibility that a tax return will not be audited, that an issue will not be raised on audit, or that an issue will be settled.

(4) *Overall conclusion.* The practitioner must provide an overall conclusion as to the likelihood that the Federal tax treatment of the tax shelter item or items is the proper treatment and the reasons for that conclusion. If the practitioner is unable to reach an overall conclusion, the opinion must state that the practitioner is unable to reach an overall conclusion and describe the reasons for the practitioner's inability to reach a conclusion.

(b) *Competence to provide opinion; reliance on opinions of others.* (1) The practitioner must be knowledgeable in all of the aspects of Federal tax law relevant to the opinion being rendered. If the practitioner is not sufficiently knowledgeable to render an informed opinion with respect to particular material Federal tax issues, the practitioner may rely on the opinion of another practitioner with respect to these issues unless the practitioner knows or should know that such opinion should not be relied on. If a practitioner relies on the opinion of another practitioner, the relying practitioner must identify the other opinion and set forth the conclusions reached in the other opinion.

(2) The practitioner must be satisfied that the combined analysis of the opinions, taken as a whole, satisfies the requirements of this section.

(c) *Definitions.* For purposes of this section—

(1) A *practitioner* includes any individual described in § 10.2(e).

(2) The term *tax shelter* includes any partnership or other entity, any investment plan or arrangement, or any other plan or arrangement, a significant purpose of which is the avoidance or evasion of any tax imposed by the Internal Revenue Code. A tax shelter may give rise to one or more tax shelter items.

(3) A *tax shelter item* is, with respect to a tax shelter, an item of income, gain, loss, deduction, or credit, the existence or absence of a taxable transfer of property, or the value of property.

(4) *Tax shelter opinion*—(i) *In general.* A *tax shelter opinion* is written advice by a practitioner concerning the Federal tax aspects of any Federal tax issue relating to a tax shelter item or items.

(ii) *Excluded advice.* A tax shelter opinion does not include written advice provided to a client during the course of an engagement pursuant to which the practitioner is expected subsequently to

provide written advice to the client that satisfies the requirements of this section, or written advice concerning the qualification of a qualified plan.

(iii) *Included advice.* A tax shelter opinion includes the Federal tax aspects or tax risks portion of offering materials prepared by or at the direction of a practitioner. Similarly, a financial forecast or projection prepared by or at the direction of a practitioner is a tax shelter opinion if it is predicated on assumptions regarding Federal tax aspects of the investment.

(5) A *more likely than not tax shelter opinion* is a tax shelter opinion that reaches a conclusion at a confidence level of at least more likely than not (that is, greater than 50 percent) that one or more material Federal tax issues would be resolved in the taxpayer's favor.

(6) A *marketed tax shelter opinion* is a tax shelter opinion, including a more likely than not tax shelter opinion, that a practitioner knows or has reason to know will be used or referred to by a person other than the practitioner (or a person who is a member of, associated with, or employed by the practitioner's firm) in promoting, marketing or recommending the tax shelter to one or more taxpayers.

(7) A *material Federal tax issue* is any Federal tax issue for which the Internal Revenue Service has a reasonable basis for a successful challenge and the resolution of which could have a significant impact, whether beneficial or adverse and under any reasonably foreseeable circumstance, on the Federal tax treatment of a taxpayer's tax shelter item or items.

(d) *Required disclosures.* An opinion must contain all of the following disclosures that apply—(1) *Relationship between promoter and practitioner.* A practitioner must disclose in the beginning of the opinion the existence of—

(i) Any compensation arrangement, such as a referral fee or a fee-sharing arrangement, between the practitioner (or the practitioner's firm) and any person (other than the client for whom the opinion is prepared) with respect to the promoting, marketing or recommending of a tax shelter discussed in the opinion; or

(ii) Any referral agreement between the practitioner (or the practitioner's firm) and a person (other than the client for whom the opinion is prepared) engaged in the promoting, marketing or recommending of the tax shelter discussed in the opinion.

(2) *Marketed tax shelter opinions.* A practitioner must disclose in the beginning of a *marketed tax shelter opinion* that with respect to any material Federal tax issue for which the opinion reaches a conclusion at a confidence level of at least more likely than not—

(i) The opinion may not be sufficient for a taxpayer to use for the purpose of avoiding penalties relating to a substantial understatement of income tax under section 6662(d) of the Internal Revenue Code; and

(ii) Taxpayers should seek advice based on their individual circumstances with respect to those material Federal tax issues from their own tax advisor(s).

(3) *Limited scope opinions.* If a practitioner provides an opinion that is limited to one or more Federal tax issue(s) agreed to by the taxpayer and the practitioner, the practitioner must disclose in the beginning of the opinion that—

(i) The opinion is limited to the one or more Federal tax issue(s) agreed to by the taxpayer and the practitioner and addressed in the opinion;

(ii) Additional issue(s) may exist that could affect the Federal tax treatment of the tax shelter addressed in the opinion and the opinion does not consider or provide a conclusion with respect to any additional issue(s); and

(iii) With respect to any material Federal tax issue(s) outside the limited scope of the opinion, the opinion was not written, and cannot be used by the recipient, for the purpose of avoiding penalties relating to a substantial understatement of income tax under section 6662(d) of the Internal Revenue Code.

(4) *Opinions that fail to reach a more likely than not conclusion.* If a practitioner does not reach a conclusion at a confidence level of at least more likely than not with respect to a material Federal tax issue addressed by the opinion, the practitioner must disclose in the beginning of the opinion that—

(i) The opinion does not reach a conclusion at a confidence level of at least more likely than not that with respect to one or more material Federal tax issues addressed by the opinion; and

(ii) With respect to those material Federal tax issues, the opinion was not written, and cannot be used by the recipient, for the purpose of avoiding penalties relating to a substantial understatement of income tax under section 6662(d) of the Internal Revenue Code.

(e) *Effect of opinion that meets these standards.* An opinion that meets these requirements satisfies the practitioner's responsibilities under this section, but the persuasiveness of the opinion with regard to the tax issues in question and the taxpayer's good faith reliance on the opinion will be separately determined under applicable provisions of the law and regulations.

(f) *Effective date.* This section applies to tax shelter opinions rendered after the date that final regulations are published in the **Federal Register**.

4. Section 10.36 is added to subpart B read as follows:

§ 10.36 Procedures to ensure compliance.

(a) *Best practices for tax advisors.* Tax advisors with responsibility for overseeing a firm's practice of providing advice concerning Federal tax issues or of preparing or assisting in the preparation of submissions to the Internal Revenue Service should take reasonable steps to ensure that the firm's procedures for all members, associates, and employees are consistent with the best practices described in § 10.33.

(b) *Requirements for certain tax shelter opinions.* Any practitioner who has (or practitioners who have or share) principal authority and responsibility for overseeing a firm's practice of providing advice concerning Federal tax issues must take reasonable steps to ensure that the firm has adequate procedures in effect for all members, associates, and employees for purposes of complying with § 10.35. A practitioner will be subject to discipline for failing to comply with the requirements of this paragraph if—

(1) The practitioner through willfulness, recklessness, or gross incompetence does not take reasonable steps to ensure that the firm has adequate procedures to comply with § 10.35, and one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, of failing to comply with § 10.35; or

(2) The practitioner knows or has reason to know that one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a practice, in connection with their practice with the firm, that does not comply with § 10.35 and the practitioner, through willfulness, recklessness, or gross incompetence fails to take prompt action to correct the noncompliance.

(c) *Effective date.* Paragraph (a) of this section is effective on the date that final regulations are published in the **Federal Register**. Paragraph (b) of this section applies to tax shelter opinions rendered after the date that final regulations are published in the **Federal Register**.

5. Section 10.37 is added to read as follows:

§ 10.37 Establishment of Advisory Committees.

(a) *Advisory committees.* To promote and maintain the public's confidence in tax advisors, the Director of the Office of Professional Responsibility is authorized to establish one or more advisory committees composed of at least five individuals authorized to practice before the Internal Revenue Service. Under procedures prescribed by the Director, an advisory committee may review and make recommendations regarding professional standards or best practices for tax advisors, or more particularly, whether a practitioner may have violated §§ 10.35 or 10.36.

(b) *Effective date.* This section is effective on the date that final regulations are published in the **Federal Register**.

6. Section 10.93 is revised to read as follows:

§ 10.93 Effective date.

Except as otherwise provided in each section and subject to § 10.91, Part 10 is applicable on July 26, 2002.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 19, 2003.

George B. Wolfe,

Deputy General Counsel, Office of the Secretary.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD146–3106; FRL–7603–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; The 2005 ROP Plan for the Baltimore Severe One-Hour Ozone Nonattainment Area: Revisions to the Plan's Emissions Inventories and Motor Vehicle Emissions Budgets To Reflect MOBILE6

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Maryland. These revisions amend the Baltimore severe 1-hour ozone nonattainment area's (the Baltimore area's) rate-of-progress (ROP) plan for the 2005 milestone year. The intent of these revisions is to update the plan's emission inventories and motor vehicle emissions budgets (MVEBs) to reflect the use of MOBILE6 while continuing to demonstrate that the ROP requirement for 2005 will be met. The State of Maryland also submitted revisions which amend the contingency measures associated with the 2005 ROP plan. These revisions are being proposed for approval in accordance with the Clean Air Act (the Act).

DATES: Written comments must be received on or before January 29, 2004.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Martin T. Kotsch, Mailcode 3AP23, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *Kotsch.Martin@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 4 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; Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Martin T. Kotsch, Energy, Radiation and Indoor Environment Branch, U.S. Environmental Protection Agency, 1650 Arch Street, Mail Code 3AP23, Philadelphia Pennsylvania 19103–20209, (215) 814–3335, or by e-mail at *Kotsch.Martin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Clean Air Act Requirements

The Clean Air Act (the Act) requires that for certain ozone nonattainment areas, states are to submit plans demonstrating a reduction in volatile organic compound (VOC) emissions of at least three percent per year, grouped in consecutive three year periods, through the area's designated attainment date. This is known as the rate-of-progress (ROP), also referred to as the reasonable further progress (RFP), requirement of the Act. The first ROP requirement covers the period 1990–1996 and is commonly known as the 15 Percent Plan. Subsequent reductions are required by the end of serial three year intervals beginning after the milestone year 1996 (*i.e.,* ROP milestone years for the Baltimore area are 1999, 2002, 2005). Section 182(c)(2)(C) of the Act allows states to substitute nitrogen oxides (NO_X) emission reductions for VOC emission reductions in post-1996 ROP plans. To qualify for SIP credit in ROP plans, emission reduction measures, whether mandatory under the Act or adopted at the state's discretion, must ensure real, permanent and enforceable emission reductions.

Section 172(c)(9) of the Act requires ozone nonattainment, areas, classified as moderate or above nonattainment, to adopt contingency measures to be implemented should the area fail to achieve ROP or to attain the National Ambient Air Quality Standard (NAAQS) for ozone by its statutory attainment date. In addition, section 182(c)(9) of the Act requires ozone nonattainment areas classified as serious or above nonattainment to adopt contingency measures to be implemented if the area fails to meet any applicable milestone.

Under EPA's transportation conformity rule, an ROP plan is a ''control strategy'' SIP (62 FR 43780, August 15, 1997). Among other things, a control strategy SIP identifies and establishes the motor vehicle emissions budgets (MVEBs) to which an area's transportation improvement program and long range transportation plan must conform. Conformity to a control strategy SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. The State of Maryland is required to identify MVEBs for both NO_X and VOCs in the Baltimore area's ROP plan for the 2005 milestone year.

EPA previously approved the 2005 ROP plan for the Baltimore area (66 FR 48209, September 19, 2001) which included mobile emissions inventories for the years 1990 and 2005 and identified MVEBs for the milestone year 2005 based on the EPA emissions model MOBILE5.

The attainment date for the Baltimore severe ozone nonattainment area is 2005. This rulemaking addresses the SIP revisions submitted by the Maryland Department of the Environment (MDE) to amend the Baltimore area's 2005 ROP plan to reflect the use of the new EPA emissions model MOBILE6. In this rulemaking, EPA is proposing to approve these revisions to the Baltimore area's ROP plan for the 2005 attainment year.

II. Maryland's SIP Revisions

On November 3, 2003, MDE submitted proposed SIP revisions, and requested that EPA parallel process its approval of those SIP revisions concurrent with the State's process for

amending its SIP. As previously stated, these proposed SIP revisions revise the 1990 and 2005 motor vehicle emissions inventories and the 2005 MVEBs of the Baltimore area's 2005 ROP plan to reflect the use of MOBILE6. The November 3, 2003 submittal demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to demonstrate the required ROP for the Baltimore area by 2005.

Table 1 below summarizes the revised motor vehicle emissions inventories for the Baltimore area in tons per day (tpd). The revised 1990 base year inventories were updated using the MOBILE6 model. The 2005 inventories were developed using MOBILE6 and the latest planning assumptions, including 2002 vehicle registration data, vehicle miles traveled (VMT), speeds, fleet mix, and SIP control measures.

TABLE 1.—MARYLAND'S REVISED MOTOR VEHICLE EMISSIONS INVENTORIES

Nonattainment area	1990		2005	
	VOC (tpd)	NO_X (tpd)	VOC (tpd)	NO_X (tpd)
Baltimore	165.14	228.21	55.3	146.9

EPA has articulated its policy regarding the use of MOBILE6 in SIP development in its ''Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity''.[1] EPA's policy guidance required the State to consider whether growth and control strategy assumptions for non-motor vehicle sources (*i.e.,* point, area, and non-road mobile sources) were still accurate at the time the November 3, 2003 submittal was developed. Maryland reviewed the growth and control strategy assumptions for non-motor vehicle sources, revised those which were not current and concluded that the remaining assumptions continue to be valid for the 2005 ROP plan.

Maryland's November 3, 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 ROP for the projected attainment of the 1-hour ozone NAAQS by the attainment date of 2005 for the Baltimore area.

The Revised Motor Vehicle Emissions Budgets (MVEBs)

Table 2 below summarizes the revised MVEBs identified in MDE's November 3, 2003 submittal to EPA. These MVEBs were developed using the latest planning assumptions, including 2002 vehicle registration data, VMT, speeds, fleet mix, and SIP control measures. Because Maryland's November 3, 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 ROP for the projected attainment of the 1-hour NAAQS for ozone by the Baltimore area's November 15, 2005 attainment date, EPA is proposing to approve these budgets.

TABLE 2.—MARYLAND MOTOR VEHICLE EMISSIONS BUDGETS

Nonattainment area	2005 ROP	
	VOC (tpd)	NO_X (tpd)
Baltimore	55.05	144.5

III. EPA Evaluation of Maryland's Submittal

A. Rate-of-Progress (ROP) Plan

(1) Calculation of Needed Reductions—The first step in demonstrating ROP is to determine the target level of allowable emissions for the ROP milestone year. The target level of emissions represents the maximum amount of emissions that can be emitted in a nonattainment area in the given ROP milestone year, which in this case is 2005. The Act allows states to substitute NO_X emission reductions for VOC emission reductions in post-1996 ROP plans. The required ROP is demonstrated when the sum of all creditable VOC and NO_X emission reductions equal at least 3 percent per year grouped in three year periods (*i.e.,* 2002–2005), or for a total of 9 percent. If a state wishes to substitute NO_X for VOC emission reductions, then a target level of emissions demonstrating a representative combined 9 percent emission reduction in VOC and NO_X emissions must be developed for that milestone year. EPA approved the attainment demonstration for the Baltimore area on October 30, 2001 (66 FR 54687). The attainment demonstration modeling for the Baltimore area establishes that NO_X reductions are necessary to bring the area into attainment. Because NO_X reductions are necessary to attain the 1-hour NAAQS for ozone in the Baltimore area, MDE may and does use NO_X reductions to demonstrate ROP in the Baltimore area. MDE developed NO_X target levels to account for the NO_X substitution. The process for calculating the revised 2005 target levels to account for all required ROP reductions and noncreditable reductions (for each milestone year these exclude from the baseline those emissions that would be eliminated by the Federal Motor Vehicle Control Program, FMVCP, and Reid Vapor Pressure, RVP, regulations promulgated prior to enactment)[2] in baseline emissions is as follows:

(a) Develop the base year emissions inventories for NO_X and VOCs.

(b) Develop the 1990 ROP base year inventory (by subtracting biogenic emissions and sources located outside the nonattainment area from the base year inventory).

(c) Calculate the 1990 adjusted base year inventories for each milestone year (which in the case of Baltimore are 1996, 1999, 2002 and 2005) by reducing the 1990 ROP inventory by the total noncreditable FMVCP/RVP reductions to occur by that year.

(d) Calculate the required ROP reduction required for each milestone year: For VOC this entails multiplying the 1990 adjusted VOC base year inventory for 1996 by 15 percent and multiplying the 1990 adjusted VOC base year inventory for 1999 and later milestone years by the percentage of required ROP reductions to be achieved

[1] 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.*

[2] Section 182(b)(1)(B) of the Act defines the baseline year of emissions as ''the total amount of actual VOC and NO_X emissions from all anthropogenic sources in the area during the calendar year of 1990. This section prohibits crediting the ROP plan with the reductions in the baseline the emissions that would be eliminated by the FMVCP regulations promulgated by January 1, 1990. It also excludes any reductions associated from the RVP regulations promulgated at the time of enactment.

through VOC control measures; for NO_X, this entails multiplying the 1990 adjusted NO_X base year inventory for 1999 and later milestone years by the percentage of required ROP reductions to be achieved through NO_X substitution.

(e) Calculate the fleet turnover correction term for each milestone year: The fleet turnover correction is the difference between the FMVCP/RVP emission reductions calculated in step (c) for one milestone year and that for the previous milestone year; it is also the difference between the 1990 adjusted base year inventory for one milestone year and that of the following milestone year [3].

(f) Calculate the revised target level of emissions for the 2005 milestone year, by subtracting the sum of all the fleet turnover corrections, the sum of all the required ROP reductions for all milestone years from the 1990 ROP base year inventory.

Tables 3 and 4 below summarize the target level calculations for both NO_X and VOC emissions for the 2005 ROP milestone year. Using a combination of VOC and NO_X emission reductions, MDE's target level calculations show that the 2005 target level for VOC incorporates the 15 percent ROP reduction in baseline emissions by 1996, and show that the VOC and NO_X 2005 target levels incorporate at least a 9 percent total ROP reduction in baseline emissions for all milestone years, namely 1999, 2002 and 2005, after 1996. The MDE has correctly calculated the 2005 target levels for the Baltimore area.

TABLE 3.—BALTIMORE AREA 2005 VOC TARGET LEVEL

Row	Description	VOC (tpd)
0	1990 Base Year Inventory	554.29
	(Minus biogenic emissions)	(-180.09)
1	1990 Rate-of-Progress Base-Year Inventory	374.20
	1990 Inventory Adjusted to 1996	296.30
2	Reduction Required for 15% VOC Rate-of-Progress	44.445
3	Fleet Turnover Correction 1990 to 1996	77.9
	1990 Inventory Adjusted to 1999	286.59
4	Reduction Required for 1999 Rate-of-Progress to 1999: 0.15% VOC and 8.85% NO_X	0.43
5	Fleet Turnover Correction 96 to 99	9.7
	1990 Inventory Adjusted to 2002	279.4
6	Reduction Required for 2002 Rate-of-Progress: 2.5% VOC and 6.5% NO_X	6.99
7	Fleet Turnover Correction 1999 to 2002	7.19
	1990 Inventory Adjusted to 2005	274.43
8	Reduction Required for 2005 Rate-of-Progress: 0.38% VOC and 8.62% NO_X	1.05
9	Fleet Turnover Correction	4.97
10	2005 Target Level is row one minus the sum of rows two through nine	221.53

TABLE 4.—BALTIMORE AREA NO_X TARGET LEVEL

Row	Description	NO_X (tpd)
1	1990 Rate-of-Progress Base-Year Inventory	536.60
	1990 Inventory Adjusted to 1999	487.30
2	Reduction Required for Rate-of-Progress to 1999: 0.15% VOC and 8.85% NO_X	43.13
3	Fleet Turnover Correction 90 to 99	49.3
	1990 Inventory Adjusted to 2002	472.40
4	Reduction Required for Rate-of-Progress: 2.5% VOC and 6.5% NO_X	30.71
5	Fleet Turnover Correction 1999 to 2002	14.90
	1990 Inventory Adjusted to 2005	458.86
6	Reduction Required for Rate-of-Progress: 0.38% VOC and 8.62% NO_X	39.54
7	Fleet Turnover Correction	13.54
8	2005 Target Level = row one minus the sum of rows two through seven	345.49

The methodologies used by MDE to project emissions growth and EPA's evaluation are discussed in the technical support document (TSD) prepared in support of this proposed rulemaking action. Maryland used appropriate methodologies to project emissions growth in all source categories. The projection year inventories for NO_X and VOCs for the 2005 attainment year are shown in Tables 5 and 6 below. EPA has determined that these growth estimates are approvable.

TABLE 5.—BALTIMORE PROJECTED (UNCONTROLLED) VOC EMISSIONS

Source Category	1990 VOC base-line (tpd)	2005 VOC pro-jected (tpd)
Point	42.0	54.2
Mobile	165.1	91.8
Nonroad	44.7	55.76

[3] The aggregate noncreditable FMVCP/RVP reductions increase over time, and conversely, the 1990 adjusted base year inventory decreases over time. Thus the aggregate noncreditable FMVCP/RVP reductions through 2005 are larger than those for 2002, and the 1990 adjusted base year inventory for 2005 is less than that for 2002. The sum of the aggregate noncreditable FMVCP/RVP reductions up to and including those achieved in a milestone year and of the 1990 adjusted base year inventory for that year is always equal to the ROP base year inventory.

TABLE 5.—BALTIMORE PROJECTED (UNCONTROLLED) VOC EMISSIONS—Continued

Source Category	1990 VOC baseline (tpd)	2005 VOC projected (tpd)
Area	122.4	132.2
Total	374.2	321.67

TABLE 6.—BALTIMORE PROJECTED (UNCONTROLLED) NO_X EMISSIONS

Source category	1990 NO_X baseline (tpd)	2005 NO_X projected (tpd)
Point	223.2	251.9
Mobile	228.2	199.8
Nonroad	71.5	91.84
Area	13.7	15.4
Total	536.6	558.94

(2) Evaluation of Emission Control Measures—The purpose of the ROP plan is to demonstrate how the state has reduced emissions 3 percent per year, grouped in three year intervals, through the area's attainment year. In general, reductions toward ROP requirements are creditable provided the control measures occurred after 1990 and are real, permanent, quantifiable, federally enforceable and they occurred by the applicable ROP milestone year. An evaluation of each of the control measures implemented by Maryland in the Baltimore nonattainment area can be found in the TSD prepared for this rulemaking. Table 7 below provides a summary of the control measures used by Maryland to achieve ROP in the Baltimore nonattainment area. All control measures in the ROP demonstration have been adopted and implemented by the State of Maryland or are Federal measures being implemented nationally. All but one of the state control measures have been fully approved by EPA into the Maryland SIP and are permanent and enforceable. Final approval of the November 3, 2003 revisions are contingent upon EPA's approval of Maryland's new consumer product rule (COMAR 26.11.32) which was submitted to EPA on November 19, 2003 and was proposed by EPA for direct final approval on December 9, 2003 (68 FR 68523). The mobile source control programs include the total amount of reductions associated with enhanced vehicle inspection and maintenance, Tier 1 and Tier 2 motor vehicle emission standards, reformulated gasoline, the National Low Emissions Vehicle program, and highway heavy duty diesel engine standards. EPA's MOBILE6 emissions model was used to generate the mobile source emission reductions.

TABLE 7.—SUMMARY OF ROP EMISSION CONTROL MEASURES FOR BALTIMORE

Control measure	2005 VOC reduction (tpd)	2005 NO_X reduction (tpd)
Mobile Source Control Programs	*36.75	*55.3
Stage II Refueling	*12.65	0.00
Landfills	0.27	0.00
Open Burning	*3.52	*0.74
Surface Cleaning/ Degreasing	5.76	0.00
Architectural Coatings	5.55	0.00
Consumer Products	2.83	0.00
Autobody Refinishing	8.07	0.00
Nonroad Small Gas Engines	17.51	*(0.45)
Nonroad Diesel Engines Tier I & II	0.0	*21.62
Marine Engine Standards	1.79	***(0.07)
Railroads	0.00	4.20
VOC RACT—Expandable Polystyrene	0.10	0.00
VOC RACT—Yeast Production	0.87	0.00
VOC RACT—Commercial Bakeries	0.72	0.00
VOC RACT—Screen Printing	0.20	0.00
Federal Air Toxics	0.50	0.00
Lithographic Printers	2.66	0.00
Flexographic and Rotogravure Printers	0.90	0.00
Enhanced Rule Compliance	5.10	0.00
State Air Toxics	0.96	0.00
NO_X RACT	0.00	5.01
OTC NO_X Phase II/III	0.00	*127.6
Nonroad RFG**	1.39	0.00
OTC—Consumer Products**	3.57	0.00
Large Spark Ignition Engines**	0.75	0.54
Total	112.43	214.48

*Estimated reductions revised from those in current, approved SIP in order to reflect updated growth and/or control strategy assumptions.

**New control measure with credit being applied to attaining ROP for 2005.

***( ) sign indicates increase in projected emissions.

(3) Summary of ROP Evaluation—Maryland's ROP demonstration for the Baltimore nonattainment area is summarized in tons per day in Table 8 below. The table shows that the projected control strategy inventories are less than or equal to the target level established for 2005. Therefore, the ROP plan demonstrates that emissions have been sufficiently reduced for the 2005 milestone year.

TABLE 8.—BALTIMORE NONATTAINMENT AREA ROP DEMONSTRATION

	2005 VOC (tpd)	2005 NO_X (tpd)
Projected Uncontrolled Emissions (includes growth) (refer to tables 3 and 4)	333.96	558.94
Reductions From Creditable Emission Control Measures (refer to table 5)	112.43	214.48
Emissions Level Obtained (uncontrolled emissions minus emission reductions)	221.53	344.47
Projected Target Levels (refer to tables 1 and 2)	221.53	345.47
Surplus Emission Reductions (target levels minus emissions obtained)	0.00	1.02

B. Motor Vehicle Emissions Budgets

Under EPA's transportation conformity rule, an ROP plan, like an attainment plan, is referred to as a control strategy SIP (40 CFR 93.124). A control strategy SIP identifies and establishes the MVEBs to which an area's transportation improvement program and long range transportation plan must conform. Conformity to a control strategy SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standard. Maryland is required to identify motor MVEBs for both NO_X and VOCs in the Baltimore area's post 96 ROP plans. The MVEBs for the Baltimore area for the milestone year 2005 are shown in Table 9 below.

TABLE 9.—ROP MOTOR VEHICLE EMISSION BUDGETS FOR THE BALTIMORE AREA

Attainment year	VOC (tpd)	NO_X (tpd)
2005	55.05	144.5

EPA approved new 2005 MOBILE6 based MVEBs for the Baltimore attainment demonstration on October 27, 2003 (68 FR 61106). Those MVEBs became effective on November 26, 2003. The approved 2005 attainment plan MVEBs budgets are 55.3 tons per day of VOC and 146.9 tons per day of NO_X.

Maryland's 2005 proposed ROP MVEBs, as shown above in Table 7 are less than those MVEBS in the approved attainment demonstration. These more restrictive MVEBs, contained in the proposed ROP plan will become the applicable MVEBs to be used in transportation conformity demonstrations for the year 2005 for the Baltimore area once the ROP plan is approved.

C. Contingency Measures

Section 172(c)(9) of the Act requires moderate and above ozone nonattainment areas to adopt contingency measures that would have to be implemented should the area fail to achieve ROP or to attain by its attainment date. In addition, section 182(c)(9) of the Act requires serious and above areas to adopt contingency measures which would be implemented if the area fails to meet any applicable milestone.

In the revised Baltimore area ROP plan, Maryland has reallocated some of the contingency measures established in prior SIP revisions to the control measures portion of the 2005 ROP plan. EPA guidance allows states an additional year to adopt new contingency measures to replace those which are used. In its November 3, 2003 SIP revision submittal, MDE is making an enforceable commitment to replace those contingency measures reallocated to the control measures portion of the plan and to submit an updated contingency plan reflecting these additional contingency measures by October 31, 2004.

EPA's review of Maryland's SIP revisions indicates that the post-1996 ROP requirements of the Act have been met for the Baltimore ozone nonattainment area. EPA is proposing to approve the revisions to the ROP plan for Baltimore area for milestone year 2005 that was submitted by MDE on November 3, 2003. EPA is soliciting public comments on its proposal to approve these revisions to the 2005 ROP plan and the contingency measures as discussed in this document. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

IV. Proposed EPA Action

EPA is proposing to approve the SIP revisions submitted by the State of Maryland on November 3, 2003. These revisions amend the Baltimore area's ROP plan for the 2005 milestone year to update the plan's emission inventories and MVEBs to reflect the use of MOBILE6 and continue to demonstrate that the ROP requirement for 2005 will be met. EPA is also proposing to approve the revisions submitted on November 3, 2003 which amend the contingency measures associated with the 2005 ROP plan, including an enforceable commitment to replace those contingency measures reallocated to the control measures portion of the plan, and to submit an updated contingency plan reflecting these additional contingency measures by October 31, 2004. These revisions are being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrent with the state's procedures for amending its SIP. If the proposed revisions are substantially changed in areas other than those identified in this document, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this notice, EPA will publish a final rulemaking notice on the revisions. The final rulemaking action by EPA on these SIP revisions will occur only after Maryland has completed the state's procedures for amending the SIP and formally submitted the revisions to EPA for final approval. In addition, final approval of the November 3, 2003 revisions is contingent upon our approval of Maryland's new consumer product rule (COMAR 26.11.32) which was submitted to EPA on November 19, 2003 and was proposed by EPA for direct final approval on December 9, 2003 (68 FR 68523). EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting either electronic or written comments. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number MD146–3106 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 *Kotsch.Martin@EPA.gov*, attention MD146–3106. 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 Regulations.gov at *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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed 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 proposes to approve 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 proposed 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 proposing to approve revisions which amend the Baltimore area's ROP plan for the 2005 milestone year to update the plan's emission inventories and motor vehicle emissions budgets (MVEBs) to reflect the use of MOBILE6 and which amend the contingency measures associated with the 2005 ROP plan does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

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

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

Dated: December 19, 2003.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03–32028 Filed 12–29–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 202, 204, 211, 212, 243, and 252

[DFARS Case 2003–D081]

Defense Federal Acquisition Regulation Supplement; Unique Item Identification and Valuation

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending Defense Federal Acquisition Regulation Supplement (DFARS) policy pertaining to unique item identification and valuation. This rule contains changes resulting from comments received in response to an interim rule published in the **Federal Register** on October 10, 2003.

DATES: *Effective date:* January 1, 2004.

Applicability date: The requirements in this rule apply to all solicitations issued on or after January 1, 2004.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before March 1, 2004, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* As an alternative, respondents may e-mail comments to: *dfars@osd.mil.* Please cite DFARS Case 2003–D081 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Mr. Steven Cohen, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2003–D081.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Mr. Steven Cohen, (703) 602–0293.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule in the **Federal Register** on October 10, 2003, applicable to all solicitations issued on or after January 1, 2004. The interim rule established requirements for contractors to furnish unique item identifiers, or other item identification, and to provide the Government's acquisition cost of items that are to be delivered under a DoD contract.

Twenty-six sources submitted comments on the interim rule. As a result of the significance of the comments, DoD has issued a second interim rule. The following is a discussion of the comments and the differences between the two rules. Where appropriate, similar comments have been grouped together.

1. *Comment:* Several comments were made with regard to the aggressiveness of the implementation schedule commencing January 1, 2004.

DoD Response: DoD agrees that the implementation schedule is aggressive. DoD considers the implementation of unique identification to be a strategic imperative, necessary to efficiently move supplies to warfighters. It will enhance logistics, contracting, and financial business transactions supporting U.S. and coalition troops; will enable DoD to consistently capture the value of items it buys, control these items during their use, and combat counterfeiting of parts; and will enable DoD to make appropriate entries into its property accountability, inventory, and financial management information systems toward achieving compliance with the Chief Financial Officers Act. Therefore, the implementation schedule can not be slipped. The clarification and streamlining of the ''valuation'' process in this new interim rule should assist in making implementation commencing January 1, 2004, achievable.

2. *Comment:* Several comments were made with regard to the timing of this new requirement, and the need to implement on an accelerated schedule when the aviation industry is suffering from the worst business conditions in the history of the industry.

DoD Response: DoD agrees that the implementation schedule is aggressive. A DoD Policy memo dated November 26, 2003, provides some relief for the aviation industry by including marking consistent with 14 CFR Part 45, Identification and Registration Marking, for aircraft, aircraft engines, propellers, propeller blades, and hubs as consistent with DoD unique identification policy.

3. *Comment:* Several comments were made with regard to the possibility of waivers from or exceptions to the new requirement.

DoD Response: The rule is considered to be a strategic imperative, necessary to efficiently move supplies to warfighters. No waivers or exceptions can be granted.

4. *Comment:* Several comments were made with regard to citing MIL–STD–130K, recommending that the more current version be cited.

DoD Response: The rule is consistent with the current MIL–STD–130L. However, the clause at 252.211–7003 has been amended to eliminate reference to a specific MIL–STD–130 version, and to instead require compliance with the version of MIL–STD–130 cited in the contract Schedule.

5. *Comment:* Numerous comments were received addressing difficulties and confusion with the policy inserted in DFARS 204.7103 and 204.7104 concerning contract line and subline item number structure.

DoD Response: The policy added to DFARS 204.7103 and 204.7104 by the previous interim rule has been removed. The existing policy in DFARS Subpart 204.71 for contract line, subline, and exhibit line item structure is sufficient for the requirements of this rule. Valuation information will be included in the Material Inspection and Receiving Report provided at the time of delivery.

6. *Comment:* Numerous comments were received addressing the methodology for assessing the Government's acquisition cost of items for cost-type contracts.

DoD Response: As a result of the concerns raised in the comments, DoD has redefined the Government's unit acquisition cost for cost-type line, subline, or exhibit line items, as the Contractor's estimated fully burdened unit cost to the Government for each item at the time of delivery.

7. *Comment:* Comments were received highlighting confusion among the definitions for ''unique item identifier,'' ''unique item identification,'' and the DoD data elements of unique identification.

DoD Response: As a result of the concerns raised in the comments, DoD has amended the clause at DFARS 252.211–7003 to add a definition of ''DoD unique item identification'' and to clarify the definition of ''DoD recognized unique identification equivalent, including a reference to the Web site at *http://www.acq.osd.mil/uid,* where all DoD recognized unique identification equivalents are listed.

8. *Comment:* Numerous comments were received highlighting the cost of implementing these requirements, and five comments were received citing the cost burden of implementing these requirements for small businesses.

DoD Response: DoD has determined that it is a strategic imperative that items valued at or above $5,000, or meeting other specified conditions, be marked with unique identification. There are no exceptions. Small businesses will find there are a number of vendors, many of them small businesses, that can provide unique identification marking assistance. DoD considers the cost of implementing unique identification requirements to be an allowable cost under FAR Part 31.

9. *Comment:* Several comments cited confusion as to what items specifically require unique identification and which do not.

DoD Response: As a result of the concerns raised in the comments, DoD has restructured the policy in DFARS 211.274 and the clause at 252.211–7003 to clarify that all items over $5,000 in value require unique identification,

items under $5,000 requiring unique identification must be identified in paragraph (c)(1)(ii) of the clause, and embedded items that require unique identification will be identified in a Contract Data Requirements List or other exhibit that is cited in paragraph (c)(1)(iii) of the clause.

10. *Comment:* A respondent suggested that a Contract Data Requirements List be used for unique identification when required below the contract line or subline item level.

DoD Response: DoD has revised the rule so that subassemblies, components, and parts that are embedded in items that require unique identification will be identified in a Contract Data Requirements List or other exhibit that is cited in paragraph (c)(1)(iii) of the clause at DFARS 252.211–7003.

11. *Comment:* Several respondents suggested that unique identification is inconsistent with FAR Part 12, Acquisition of Commercial Items, and that an exception be made for items acquired under FAR Part 12 contracts.

DoD Response: Do not concur. The rule is considered to be a strategic imperative, necessary to efficiently move supplies to warfighters. DoD acquires a large number of items under FAR Part 12 contracts. These items can not be excluded from unique identification requirements.

12. *Comment*: A respondent asked whether unique identification requirements will apply to classified contracts; another respondent asked whether the requirements will apply to foreign military sales contracts.

DoD Response: Yes. There are no exceptions to the policy.

13. *Comment*: Several respondents cited problems and confusion resulting from the requirement that acquisition cost be identified a contract line, subline, or informational subline item when structuring the contract, while acquisition cost for cost-type contracts could not be identified until delivery.

DoD Response: The rule has been revised to clarify that the contractor is required to provide the unique identification and the acquisition cost at the time of delivery.

14. *Comment*: Several comments were received concerning applicability of the rule to existing contracts, orders under existing basic ordering agreements (BOAs), and options under existing contracts.

DoD Response: The rule applies to new solicitations issued on or after January 1, 2004. DoD Policy memorandum dated November 26, 2003, Update to Policy for Unique Identification (UID) of Tangible Items—New Equipment, Major Modifications, and Reprocurements of Equipment and Spares, addresses this issue as follows: ''The UID policy strongly encourages Component Acquisition Executives to incorporate UID requirements into ongoing contracts where it makes business sense to do so. Since BOAs awarded before January 1, 2004, would be an ongoing agreement, UID requirements can be included in orders issued under the BOA whenever the program/item manager determines it is feasible to do so.'' Component Acquisition Executives should also incorporate UID requirements when exercising options where it makes business sense to do so.

15. *Comment*: A respondent suggested unique identification is inconsistent with the simplified acquisition threshold, and that the prescription for the clause at DFARS 252.211–7003 should exclude contracts below the simplified acquisition threshold.

DoD Response: Do not concur. The rule is considered to be a strategic imperative, necessary to efficiently move supplies to warfighters. Items acquired under the simplified acquisition threshold can not be excluded from unique identification requirements.

16. *Comment*: The semantics/syntax (ISO 15434/15418) use unprintable characters for record separators and group separators. It is impossible for the quality organization to verify the validity of the 2D Matrix content if the visual representation of ''required'' characters is, in-effect, ''invisible (unprintable)''. As a part is marked, the ISO 9000 quality requirements specify that the content of the information encoded into the 2D Matrix be verified. ''Invisible'' characters are ''impossible'' to verify. As so, this solution may not be ISO 9000 compliant. This should be verified.

DoD Response: The only standard that uses unprintable characters for record separators and group separators is ISO/IEC 15434. It will be sufficient to verify only that the software of the automatic information technology readers and printers used to construct and print the data matrix symbol is compliant with ISO/IEC 15434.

17. *Comment*: Procedures should be developed to address how unique identification will be constructed when the Government buys items that are surplus, remanufactured, or overhauled after initial manufacture.

DoD Response: If the item does not already have unique identification and meets the criteria for unique identification, the enterprise furnishing the item must provide unique identification marking as part of the purchase price.

18. *Comment*: In research and development contracting, software is often a deliverable item. In some cases, the software to be delivered is commercial software, and the acquisition cost would be the price paid for the license. However, most of the software being delivered under a research and development contract is software that was developed during performance. The ''item'' definition neither includes nor excludes software. Is commercial software considered an ''item'' by definition. Is developed software considered an ''item''? Both are required to be delivered, are produced, and are tangible. However, one could also argue that developed software is data, because the source and object code and manuals are delivered via the use of Contract Data Requirements Lists. Therefore, the acquisition cost of the medium (CD, disk) in which the software is delivered would be minimal and would not meet the threshold requirements of the clause.

DoD Response: For purposes of unique identification and valuation, software, manuals, and other forms of information are not considered to be ''items''. The definition of ''item'' has been changed to refer to ''a single hardware article or unit formed by a grouping of subassemblies, components, or constituent parts'' to clarify this point.

19. *Comment*: Two respondents suggested there is no value to the rule.

DoD Response: Do not concur. These are subjective judgments. DoD finds considerable value in the rule.

20. *Comment*: One respondent suggested that the rule was unclear and should be redrafted.

DoD Response: DoD has redrafted significant portions of the rule to improve clarity.

21. *Comment*: One respondent asked how the Government would identify which type of identification system the contractor is using, if multiple choices were allowed, and whether Government personnel would have to be educated on the different identification systems?

DoD Response: Marking must be in accordance with the version of MIL–STD–130 in effect at the time of contract award, regardless of the system used to mark items. Government personnel are familiar with the MIL–STD–130.

22. *Comment*: A respondent asked whether references to ''cost'' should be changed to ''value,'' and whether all references to contract line item structure should be incorporated in the prescriptive language of DFARS Part

204 rather than DFARS Part 11 requirements policy.

DoD Response: For clarity, all references to ''value'' have been removed, and ''unit acquisition cost'' has been more clearly defined. This interim rule removes the prescriptive policy in DFARS Part 204 that was added by the previous interim rule.

23. *Comment*: A respondent asked whether valuation needs to be captured down to zero. The respondent suggested that the cost of capturing the value of low-dollar items under cost-type contracts may exceed the benefits.

DoD Response: The definition of ''unit acquisition cost'' under cost-type line items has been changed to capture the contractor's estimate of the Government's unit cost. This should avoid the unnecessary administrative burden envisioned by the respondent.

24. *Comment*: A respondent asked how development items are to be handled. For example, how will a subline item for development work on one or more pieces of hardware be identified and part numbered?

DoD Response: The estimated unit acquisition cost for a development item will be handled the same as the estimated unit acquisition cost for any other delivered item. The contractor will use its business judgment to provide the Government with its best estimate of the fully burdened cost to the Government.

25. *Comment*: A respondent asked how modification kits that are not separately stock listed items, but comprise several hundred individual parts/items, would be handled.

DoD Response: Modification kits will be handled the same as any other delivered item. Subassemblies, components, or parts that are embedded within the kit will need to be separately identified if unique identification is required, but acquisition cost will not be required.

26. *Comment*: A respondent suggested that the clause at DFARS 252.211–7003 should be limited to the marking requirements (formerly paragraphs (a) thru (c)) and the flow down requirement (formerly paragraph (f)). The respondent suggested that former paragraph (d), Item records, duplicates data that already exists either in the contract or on the associated DD 250/Memo of Shipment. The only exception is the unique identification itself.

DoD Response: Concur in part. The rule has been amended to specify that the data required by the clause will be submitted in the Material Inspection and Receiving Report. As a result, DoD was able to eliminate the DFARS part 204 line item structure requirements for this data.

27. *Comment*: A respondent suggested that the contractor should be told how long the assigned unique identification data should be maintained. For example, most contract data presently must be maintained until final contract payment plus 3 years. If the Government wished the unique identification data to be maintained longer, it should be stated here. Alternatively, if the only requirement is that the contractor ensure that a unique identifier is not duplicated, this is not a records retention requirement, but rather a requirement to ensure a system is set up to avoid duplication. Therefore, record retention would be up to the contractor.

DoD Response: The clause at DFARS 252.211–7003 defines ''Unique item identifier'' as a set of data marked on items that is globally unique, unambiguous, and robust enough to ensure data information quality throughout life and to support multi-faceted business applications and users.

28. *Comment*: A respondent suggested that the Valuation paragraph (formerly paragraph (e)) of the clause at 252.211–7003, is unnecessary. The assignment of value for items to be delivered to the Government should be a contracting officer responsibility under DFARS 204.7103. The language in the rule creates an additional ''reporting'' requirement that is inconsistent with existing processes and the Paperwork Reduction Act determination.

DoD Response: Do not concur. The valuation portion of the rule is the data currently provided on the DD Form 250, Material Inspection and Receiving Report.

29. *Comment*: DFARS Appendix F should be revised to specify the data the Government needs on the DD Form 250 or Memo of Shipment. These existing documents should be the vehicle through which the Government collects the desired data. Most of the data listed in the Item records paragraph (formerly paragraph (d)) of the clause at DFARS 252.211–7003 is already available in the contract and on the DD250/Memo of Shipment. The DFARS rule should require contractors to continue to provide that data on those documents with the addition of the unique identification specific data; once Wide Area WorkFlow revisions are fully operational, the Government will have the data and the mechanism to populate its data base without further contractor intervention.

DoD Response: Revisions to DFARS Appendix F are being considered separately under DFARS Case 2003–D085, as part of DoD's DFARS Transformation Initiative.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* DoD has prepared an initial regulatory flexibility analysis, which is summarized as follows:

This interim rule contains requirements for DoD contractors to provide unique identification for items delivered to DoD, through the use of item identification marking. In addition, the rule contains requirements for DoD contractors to identify the Government's unit acquisition cost of all hardware items delivered under a contract. The objective of the rule is to improve management of DoD assets. DoD considers this rule to be a strategic imperative, necessary to efficiently move supplies to warfighters. This rule will facilitate DoD compliance with the Chief Financial Officers Act of 1990 (Pub. L. 101–576). The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternatives that will accomplish the objectives of the rule.

A copy of the analysis may be obtained from the point of contact specified herein.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule contains requirements for contractors to uniquely mark and to identify the Government's unit acquisition cost of items delivered to DoD. DoD considers the implementation of unique identification to be a strategic imperative, necessary to efficiently move supplies to warfighters. It will enhance logistics, contracting, and financial business transactions supporting U.S. and coalition troops; will enable DoD to consistently capture the value of items it buys, control these

items during their use, and combat counterfeiting of parts; and will enable DoD to make appropriate entries into its property accountability, inventory, and financial management information systems toward achieving compliance with the Chief Financial Officers Act.

On October 10, 2003, DoD issued an interim rule to implement unique identification policy, effective January 1, 2004. As a result of public comments received on the interim rule, DoD has determined that significant changes are needed to streamline and clarify the rule and to ensure effective implementation of DoD's unique identification policy. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 202, 204, 211, 212, 243, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 202, 204, 211, 212, 243, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 202, 204, 211, 212, 243, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

2. Section 202.101 is amended by removing the definition of ''Unique item identifier'', which was added at 68 FR 58632 on October 10, 2003, to become effective on January 1, 2004.

PART 204—ADMINISTRATIVE MATTERS

3. Section 204.7104–1 is amended by revising paragraph (a)(3) to read as follows:

204.7104–1 Criteria for establishing.

* * * * *

(a) * * *

(3) Informational subline items shall be used to identify each accounting classification citation assigned to a single contract line item number when use of multiple citations is authorized (see 204.7103–1(a)(4)(ii)).

* * * * *

204.7104–2 [Amended]

4. Section 204.7104–2 is amended by removing paragraphs (e)(10) and (11), which were added at 68 FR 58632 on October 10, 2003, to become effective on January 1, 2004.

PART 211—DESCRIBING AGENCY NEEDS

5. Sections 211.274 through 211.274–3, which were added at 68 FR 58633 on October 10, 2003, to become effective on January 1, 2004, are revised to read as follows:

211.274 Item identification and valuation.

211.274–1 Item identification.

(a) DoD unique item identification, or a DoD recognized unique identification equivalent, is required for—

(1) All items for which the Government's unit acquisition cost is $5,000 or more;

(2) Items for which the Government's unit acquisition cost is less than $5,000, when determined necessary by the requiring activity for serially managed, mission essential, or controlled inventory equipment, repairable items, or consumable items or material; and

(3) Subassemblies, components, and parts embedded within an item identified on a Contract Data Requirements List or other exhibit (see *http://www.acq.osd.mil/uid*).

(b) If unique item identification is not required, the contractor shall provide commonly accepted commercial marks.

211.274–2 Government's unit acquisition cost.

(a) Contractors shall identify the Government's unit acquisition cost for all items delivered.

(b) The Government's unit acquisition cost is—

(1) For fixed-price type line, subline, or exhibit line items, the unit price identified in the contract at the time of delivery.

(2) For cost-type line, subline, or exhibit line items, the contractor's estimated fully burdened unit cost to the Government for each item at the time of delivery.

(c) The Government's unit acquisition cost of subassemblies, components, and parts embedded in delivered items need not be identified.

211.274–3 Contract clause.

Use the clause at 252.211–7003, Item Identification and Valuation, in solicitations and contracts that require delivery of one or more ''items'' as defined at 252.211–7003(a).

(a) Complete paragraph (c)(1)(ii) of the clause with the contract line, subline, or exhibit line item number and description of any item(s) below $5,000 in unit acquisition cost for which the requiring activity determines that DoD unique item identification or a DoD recognized unique identification equivalent is required.

(b) Complete paragraph (c)(1)(iii) of the clause with the applicable exhibit number or Contract Data Requirements List item number, when DoD unique item identification or a DoD recognized unique identification equivalent is required for subassemblies, components, or parts embedded within deliverable items.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.301 [Amended]

6. Section 212.301 is amended by redesignating paragraph (f)(vii), which was added at 68 FR 58633 on October 10, 2003, to become effective on January 1, 2004, as paragraph (f)(vi).

PART 243—CONTRACT MODIFICATIONS

243.171 [Amended]

7. Amendment 7 to section 243.171, which was published at 68 FR 58633 on October 10, 2003, is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 252.211–7003, which was added at 68 FR 58633 on October 10, 2003, to become effective on January 1, 2004, is revised to read as follows:

252.211–7003 Item Identification and Valuation.

As prescribed in 211.274–3, use the following clause:

Item Identification and Valuation (Jan 2004)

(a) *Definitions.* As used in this clause—

Automatic identification device means a device, such as a reader or interrogator, used to retrieve data encoded on machine-readable media.

Commonly accepted commercial marks means any system of marking products for identification that is in use generally throughout commercial industry or within commercial industry sectors. Some examples of commonly accepted commercial marks are: EAN.UCC Global Trade Item Number; Automotive Industry Action Group B–4 Parts Identification and Tracking Application Standard, and B–2 Vehicle Identification Number Bar Code Label Standard; American Trucking Association Vehicle Maintenance Reporting Standards; Electronic Industries Alliance EIA 802 Product Marking Standard; and Telecommunications Manufacturers Common Language Equipment Identification Code.

Concatenated unique item identifier means—

(1) For items that are serialized within the enterprise identifier, the linking together of the unique identifier data elements in order of the issuing agency code, enterprise identifier, and unique serial number within the enterprise identifier; or

(2) For items that are serialized within the original part number, the linking together of the unique identifier data elements in order of the issuing agency code, enterprise identifier, original part number, and serial number within the part number.

Data qualifier means a specified character (or string of characters) that immediately precedes a data field that defines the general category or intended use of the data that follows.

DoD recognized unique identification equivalent means a unique identification method that is in commercial use and has been recognized by DoD. All DoD recognized unique identification equivalents are listed at *http://www.acq.osd.mil/uid.*

DoD unique item identification means marking an item with a unique item identifier that has machine-readable data elements to distinguish it from all other like and unlike items. In addition—

(1) For items that are serialized within the enterprise identifier, the unique identifier shall include the data elements of issuing agency code, enterprise identifier, and a unique serial number.

(2) For items that are serialized within the part number within the enterprise identifier, the unique identifier shall include the data elements of issuing agency code, enterprise identifier, the original part number, and the serial number.

Enterprise means the entity (*i.e.*, a manufacturer or vendor) responsible for assigning unique item identifiers to items.

Enterprise identifier means a code that is uniquely assigned to an enterprise by a registration (or controlling) authority.

Government's unit acquisition cost means—

(1) For fixed-price type line, subline, or exhibit line items, the unit price identified in the contract at the time of delivery; and

(2) For cost-type line, subline, or exhibit line items, the Contractor's estimated fully burdened unit cost to the Government for each item at the time of delivery.

Issuing agency code means a code that designates the registration (or controlling) authority.

Item means a single hardware article or unit formed by a grouping of subassemblies, components, or constituent parts required to be delivered in accordance with the terms and conditions of this contract.

Machine-readable means an automatic information technology media, such as bar codes, contact memory buttons, radio frequency identification, or optical memory cards.

Original part number means a combination of numbers or letters assigned by the enterprise at asset creation to a class of items with the same form, fit, function, and interface.

Registration (or controlling) authority means an organization responsible for assigning a non-repeatable identifier to an enterprise (*i.e.*, Dun & Bradstreet's Data Universal Numbering System (DUNS) Number, Uniform Code Council (UCC)/EAN International (EAN) Company Prefix, or Defense Logistics Information System (DLIS) Commercial and Government Entity (CAGE) Code).

Serial number within the enterprise identifier or *unique serial number* means a combination of numbers, letters, or symbols assigned by the enterprise to an item that provides for the differentiation of that item from any other like and unlike item and is never used again within the enterprise.

Serial number within the part number or *serial number* means a combination of numbers or letters assigned by the enterprise to an item that provides for the differentiation of that item from any other like item within a part number assignment.

Serialization within the enterprise identifier means each item produced is assigned a serial number that is unique among all the tangible items produced by the enterprise and is never used again. The enterprise is responsible for ensuring unique serialization within the enterprise identifier.

Serialization within the part number means each item of a particular part number is assigned a unique serial number within that part number assignment. The enterprise is responsible for ensuring unique serialization within the part number within the enterprise identifier.

Unique item identification means marking an item with machine-readable data elements to distinguish it from all other like and unlike items.

Unique item identifier means a set of data marked on items that is globally unique, unambiguous, and robust enough to ensure data information quality throughout life and to support multi-faceted business applications and users.

Unique item identifier type means a designator to indicate which method of uniquely identifying a part has been used. The current list of accepted unique item identifier types is maintained at *http://www.acq.osd.mil/uid.*

(b) The Contractor shall deliver all items under a contract line, subline, or exhibit line item.

(c) *Unique item identification.*

(1) The Contractor shall provide DoD unique item identification, or a DoD recognized unique identification equivalent, for—

(i) All items for which the Government's unit acquisition cost is $5,000 or more; and

(ii) The following items for which the Government's unit acquisition cost is less than $5,000:

Contract Line, Subline, or Exhibit Line Item Number

_____

_____

_____

Item Description

_____

_____

_____

(iii) Subassemblies, components, and parts embedded within items as specified in Exhibit Number _____ or Contract Data Requirements List Item Number _____.

(2) The unique item identifier and the component data elements of the unique item identifier shall not change over the life of the item.

(3) *Data syntax and semantics.* The Contractor shall—

(i) Mark the encoded data elements (except issuing agency code) on the item using any of the following three types of data qualifiers, as specified elsewhere in the contract:

(A) Data Identifiers (DIs) (Format 06).

(B) Application Identifiers (AIs) (Format 05), in accordance with ISO/IEC International Standard 15418, Information Technology—EAN/UCC Application Identifiers and ASC MH 10 Data Identifiers and ASC MH 10 Data Identifiers and Maintenance.

(C) Text Element Identifiers (TEIs), in accordance with the DoD collaborative solution ''DD'' format for use until the final solution is approved by ISO JTC1/SC 31. The DoD collaborative solution is described in Appendix D of the DoD Guide to Uniquely Identifying Items, available at *http://www.acq.osd.mil/uid;* and

(ii) Use high capacity automatic identification devices in unique identification that conform to ISO/IEC International Standard 15434, Information Technology—Syntax for High Capacity Automatic Data Capture Media.

(4) *Marking items.*

(i) Unless otherwise specified in the contract, data elements for unique identification (enterprise identifier, serial number, and, for serialization within the part number only, original part number) shall be placed on items requiring marking by paragraph (c)(1) of this clause in accordance with the version of MIL–STD–130, Identification Marking of U.S. Military Property, cited in the contract Schedule.

(ii) The issuing agency code—

(A) Shall not be placed on the item; and

(B) Shall be derived from the data qualifier for the enterprise identifier.

(d) *Commonly accepted commercial marks.* The Contractor shall provide commonly accepted commercial marks for items that are not required to have unique identification under paragraph (c) of this clause.

(e) *Material Inspection and Receiving Report.* The Contractor shall report at the time of delivery, as part of the Material Inspection and Receiving Report specified elsewhere in this contract, the following information:

(1) Description.*

(2) Unique identifier**, consisting of—

(i) Concatenated DoD unique item identifier; or

(ii) DoD recognized unique identification equivalent.

(3) Unique item identifier type.**

(4) Issuing agency code (if DoD unique item identifier is used).**

(5) Enterprise identifier (if DoD unique item identifier is used).**

(6) Original part number.**

(7) Serial number.**

(8) Quantity shipped.*

(9) Unit of measure.*

(10) Government's unit acquisition cost.*

(11) Ship-to code.

(12) Shipment date.

(13) Contractor's CAGE code or DUNS number.

(14) Contract number.

(15) Contract line, subline, or exhibit line item number.*

(16) Acceptance code.

* Once per contract line, subline, or exhibit line item.

** Once per item.

(f) *Material Inspection and Receiving Report for embedded subassemblies, components, and parts requiring unique item identification.* The Contractor shall report at the time of delivery, as part of the Material Inspection and Receiving Report specified elsewhere in this contract, the following information:

(1) Unique item identifier of the item delivered under a contract line, subline, or exhibit line item that contains the embedded subassembly, component, or part.

(2) Unique item identifier of the embedded subassembly, component, or part, consisting of—

(i) Concatenated DoD unique item identifier; or

(ii) DoD recognized unique identification equivalent.

(3) Unique item identifier type.**

(4) Issuing agency code (if DoD unique item identifier is used).**

(5) Enterprise identifier (if DoD unique item identifier is used).**

(6) Original part number.**

(7) Serial number.**

(8) Unit of measure.

(9) Description.

** Once per item.

(g) The Contractor shall submit the information required by paragraphs (e) and (f) of this clause in accordance with the procedures at *http://www.acq.osd.mil.uid.*

(h) *Subcontracts.* If paragraph (c)(1)(iii) of this clause applies, the Contractor shall include this clause, including this paragraph (h), in all subcontracts issued under this contract.

(End of clause)

[FR Doc. 03–31951 Filed 12–29–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 031017264–3317–02; I.D. 100103C]

RIN 0648–AR48

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Referendum Procedures for a Potential Gulf of Mexico Red Snapper Individual Fishing Quota Program

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

ACTION: Proposed rule; revision and request for comments.

SUMMARY: NMFS issues this proposed rule to provide information about the schedule, procedures, and eligibility requirements for participating in referendums to determine whether an individual fishing quota (IFQ) program for the Gulf of Mexico commercial red snapper fishery should be prepared and, if so, whether it should subsequently be submitted to the Secretary of Commerce (Secretary) for review. This proposed rule revises a previously published proposed rule based on public comments that were received on the initial proposed rule. In response to those public comments, this proposed rule includes additional options regarding the procedure for weighting votes by eligible participants. NMFS is soliciting additional public comment on this proposed rule and, particularly, comments on the vote-weighting options. The intended effect of this proposed rule is to implement the referendums consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received no later than 5 p.m., eastern time, on January 20, 2004.

ADDRESSES: Written comments on the proposed rule must be sent to Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

Copies of supporting documentation for this proposed rule, which includes a regulatory impact review (RIR) and a Regulatory Flexibility Act Analysis (RFAA) are available from NMFS at the address above.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone: 727–570–5305, fax: 727–570–5583, e-mail: *phil.steele@noaa.gov.*

SUPPLEMENTARY INFORMATION: The reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

The following is a restatement of the material contained in the original proposed rule, with minor changes regarding: Scheduling; date and location of the Council meeting where results of the initial referendum, if approved, would be presented; and clarification of an example stated in the original proposed rule regarding the landings categories (poundage ranges) to be used. See ''Additional Alternatives for a Vote-Weighting Formula,'' which follows this restatement of the original proposed rule, for a description of other vote-weighting alternatives that are under consideration and are provided for public comment. Restatement of the Original Proposed Rule Material.

Background

During the early to mid-1990s, the Council began development of an IFQ program for the commercial red snapper fishery in the Gulf of Mexico. Development of this program involved extensive interaction with the fishing industry, other stakeholders, and the public through numerous workshops, public hearings, and Council meetings. The program was approved by NMFS and was scheduled for implementation in 1996. However, Congressional action in late 1995 prohibited implementation of any new IFQ programs in any U.S. fishery, including the Gulf of Mexico red snapper fishery, before October 2000. Subsequent Congressional action, passage of HR5666, incorporated this prohibition and related provisions into the 1996 amendments to the Magnuson-Stevens Act and ultimately extended the prohibition until October 1, 2002. However, HR5666 also provided authority to the Council to develop a profile for any fishery under its jurisdiction that may be considered for a quota management system.

Under Section 407(c) of the Magnuson-Stevens Act, the Council is authorized to prepare and submit a plan amendment and regulations to implement an IFQ program for the commercial red snapper fishery, but only if certain conditions are met. First, the preparation of such a plan amendment and regulations must be approved in a referendum. If the result of the referendum is approval, the Council would be responsible for preparing any such plan amendment and regulations through the normal Council and rulemaking processes that would involve extensive opportunities for industry and public review and input at various Council meetings, public hearings, and during public comment periods on the plan amendment and regulations. Second, the submission of the plan amendment and regulations to the Secretary for review and approval or disapproval must be approved in a subsequent referendum. Both referendums must be conducted in accordance with Section 407(c)(2). Section 407(c)(2) also specifies that, ''Prior to each referendum, the Secretary, in consultation with the Council, shall: (A) identify and notify all such persons holding permits with red snapper

endorsements and all such vessel captains; and (B) make available to all such persons and vessel captains information about the schedule, procedures, and eligibility requirements for the referendum and the proposed individual fishing quota program.''

Purpose of This Proposed Rule and the Referendums

NMFS, in accordance with the provisions of Section 407(c) of the Magnuson-Stevens Act, will conduct referendums to determine, based on the majority vote of eligible voters, whether a plan amendment and regulations to implement an IFQ program for the Gulf of Mexico commercial red snapper fishery should be prepared and, if so, whether any subsequently prepared plan amendment and regulations should be submitted to the Secretary for review and approval or disapproval. The primary purpose of this proposed rule is to notify potential participants in the referendums, and members of the public, of the procedures, schedule, and eligibility requirements that NMFS would use in conducting the referendums. The procedures and eligibility criteria used for purposes of conducting the referendums have no bearing on the procedures and eligibility requirements that might be applied in any future IFQ program that may be developed by the Council. The provisions of any proposed IFQ program would be developed independently by the Council through the normal plan amendment and rulemaking processes that would involve extensive opportunities for public review and comment during Council meetings, public hearings, and public comment on any proposed rule. There is no relation between eligibility to vote in the referendums, as described in this proposed rule, and any eligibility regarding a subsequent IFQ program.

Referendum Processes

Who Would Be Eligible to Vote in the Referendums?

Section 407(c)(2) of the Magnuson-Stevens Act establishes criteria regarding eligibility of persons to vote in the referendums. Those criteria are subject to various interpretations. After careful consideration of those criteria and the practicality and fairness of several possible interpretations, NMFS has determined that the following persons would be eligible to vote in the referendums.

(I) For the initial referendum:

(A) A person who according to NMFS permit records has continuously held their Gulf red snapper endorsement/Class I license from September 1, 1996, through the date of publication in the **Federal Register** of the final rule implementing these referendum procedures;

(B) In the case of a Class 1 license that has been transferred through sale since September 1, 1996, the person that according to NMFS' permit records holds such Class 1 license as of the date of publication in the **Federal Register** of the final rule implementing these referendum procedures;

(C) In the case of a Class 1 license that has been transferred through lease since September 1, 1996, both the final lessor and final lessee as of the date of publication in the **Federal Register** of the final rule implementing these referendum procedures, as determined by NMFS' permit records; and

(D) A vessel captain who harvested red snapper under a red snapper endorsement in each red snapper commercial fishing season occurring between January 1, 1993, and September 1, 1996.

(II) For the second referendum:

(A) A person who according to NMFS permit records has continuously held their Gulf red snapper endorsement/Class I license from September 1, 1996 through the date of publication in the **Federal Register** of a subsequent notice announcing the second referendum;

(B) In the case of a Class 1 license that has been transferred through sale since September 1, 1996, the person that according to NMFS' permit records holds such Class 1 license as of the date of publication in the **Federal Register** of a subsequent notice announcing the second referendum;

(C) In the case of a Class 1 license that has been transferred through lease since September 1, 1996, both the final lessor and final lessee as of the date of publication in the **Federal Register** of a subsequent notice announcing the second referendum, as determined by NMFS' permit records; and

(D) A vessel captain who harvested red snapper under a red snapper endorsement in each red snapper commercial fishing season occurring between January 1, 1993, and September 1, 1996.

A person would only receive voting eligibility under one of the eligibility criteria, *i.e.*, a person would not receive dual voting eligibility by being both a qualifying vessel captain and a qualifying holder of an endorsement/Class I license.

NMFS will have sufficient information in the Southeast Regional Office fisheries permit database to identify those persons who would be eligible to vote in the referendums based on their having held a red snapper endorsement/Class 1 license during the required periods. However, NMFS did not have sufficient information to identify vessel captains whose eligibility would be based on the harvest of red snapper under a red snapper endorsement in each red snapper commercial fishing season occurring between January 1, 1993, and September 1, 1996. To obtain that information, NMFS prepared and distributed a fishery bulletin that described the general referendum procedures and provided a 20-day period (ending August 18, 2003) for submittal of detailed information by those vessel captains. That fishery bulletin was widely distributed to all Gulf reef fish permitees, including dealers, and to major fishing organizations, state fisheries directors, and others. Information received from that solicitation would be used to identify vessel captains whose eligibility to vote in the referendums is based on the red snapper harvest criterion.

How Would Votes Be Weighted?

Section 407(c)(2) of the Magnuson-Stevens Act requires that NMFS develop a formula to weight votes based on the proportional harvests under each eligible endorsement and by each eligible captain between the period January 1, 1993, and September 1, 1996. NMFS would obtain applicable red snapper landings data from the Southeast Fisheries Science Center reef fish logbook database. Information from NMFS' Southeast Regional Office permit database would be used to assign total applicable landings to each eligible voter (red snapper endorsement/Class 1 license holder, lessee/lessor, or vessel captain).

The weighting procedure is complicated somewhat by requirements to protect the confidentiality of landings data, when the applicable landings history involves landings by different entities. To address confidentiality concerns, NMFS would establish a series of categories (ranges) of red snapper landings based on 5,000-lb (2,268-kg) intervals, *e.g.*, 0–5,000 lb (0–2,268 kg); 5,001–10,000 lb (2,268–4,536 kg); *etc.,* concluding with the interval that includes the highest documented landings. Each eligible voter's total landings between the period January 1, 1993, and September 1, 1996, would be attributed to the appropriate category. The overall average landings attributed to each category would be determined. That average number of pounds would be the vote-weighting factor, *i.e.*, one vote for each such pound, for each eligible voter whose landings fall within

that category. For example, if the overall average number of pounds attributed to the 5,001–10,000-lb (2,268–4,536-kg) category is 8,150 lb (3,697 kg), each eligible voter within that category would receive 8,150 votes.

How Would the Vote Be Conducted?

On or about January 23, 2004, NMFS would mail each eligible voter a ballot that would specify the number of votes (weighting) that that voter is assigned. NMFS would mail the ballots and associated explanatory information, via certified mail return receipt requested, to the address of record indicated in NMFS' permit database for endorsement/Class I license holders and, for vessel captains, to the address provided to NMFS by the captains during the prior information solicitation that ended August 18, 2003. All votes assigned to an eligible voter must be cast for the same decision, *i.e.*, either all to approve or all to disapprove the applicable referendum question. The ballot must be signed by the eligible voter. Ballots must be mailed to Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Ballots for the initial referendum must be received at that address by 4:30 p.m., eastern time, February 27, 2004; ballots received after that deadline would not be considered in determining the outcome of the initial referendum. Although it would not be required, voters may want to consider submitting their ballots by registered mail.

How Would the Outcome of the Referendums Be Determined?

Vote counting would be conducted by NMFS. Approval or disapproval of the referendums would be determined by a majority (*i.e.*, a number greater than half of a total) of the votes cast. NMFS would prepare a fishery bulletin announcing the results of each referendum that is conducted and would distribute the bulletin to all Gulf reef fish permitees, including dealers, and to other interested parties. The results would also be posted on NMFS' Southeast Regional Office's Web site at *http://caldera.sero.nmfs.gov.*

What Would Happen After the Initial Referendum?

NMFS would present the results of the initial referendum at the March 8–11, 2004, Council meeting in Mobile, AL. If the initial referendum fails, the Council cannot proceed with preparation of a plan amendment and regulations to implement an IFQ program for the commercial red snapper fishery in the Gulf of Mexico. If the initial referendum is approved, the Council would be authorized, if it so decides, to proceed with development of a plan amendment and regulations to implement an IFQ program for the commercial red snapper fishery in the Gulf of Mexico. The proposed IFQ program would be developed through the normal Council and rulemaking processes that would involve extensive opportunities for industry and public review and input at various Council meetings, public hearings, and during public comment periods on the plan amendment and regulations. The plan amendment and regulations could only be submitted to the Secretary for review and approval or disapproval if in a second referendum approval of the submission was passed by a majority of the votes cast by the eligible voters as described in this proposed rule. NMFS would announce any required second referendum by publishing a notice in the **Federal Register** that would provide all pertinent information regarding the referendum. Any second referendum would be conducted in conformance with Section 407(c)(2) of the Magnuson-Stevens Act and the provisions outlined in this proposed rule.

Background Information About a Potential IFQ Program

In anticipation of the October 2002 expiration of the Congressional moratorium on development of IFQ programs, and recognizing that HR5666 provided the Council the authority to develop a profile for any fishery that may be considered for a quota management system, some members of the commercial red snapper fishery requested that the Council develop an IFQ profile for the fishery. Based on that request, the Council convened an Ad Hoc Red Snapper Advisory Panel (AHRSAP), comprised of participants in the commercial red snapper fishery and other individuals knowledgeable about the fishery and/or IFQ programs, to develop a profile. This profile, later referred to as an Individual Transferable Quota (ITQ) Options Paper for the Problems Identified in the Gulf of Mexico Red Snapper Fishery, provides background information about historical management of the red snapper fishery, problems in the fishery, management goals, and issues and management alternatives associated with a potential IFQ/ITQ program. The profile addresses such issues as: ITQ units of measurement (percentage of quota or pounds of red snapper), duration of ITQ rights, set-aside for non-ITQ catches under current commercial quota, actions to be taken if the quota increases or decreases, types of ITQ share certificates, initial allocation of ITQ shares and annual coupons (including eligibility, apportionment, transferability of landings histories, *etc.*), possible controls on ownership and transfer of ITQ shares, whether to include a ''use it or lose it'' provision, disposition of unused or sanctioned ITQ shares and coupons, possible landings restrictions, monitoring of ITQ share certificates and annual coupons, quota tracking, an appeals process, and size limit changes.

This profile represents an outline of an IFQ program as envisioned by the AHRSAP, with input from the Council—it does not reflect any final decisions by the Council regarding the structure of a proposed IFQ program for the red snapper commercial fishery. The Council may consider the options in the profile, and perhaps a variety of other options, if it chooses to pursue development of an IFQ program for the fishery. However, for purposes of the initial referendum, the Council intentionally refrained from adopting the profile. Any subsequent development of a proposed IFQ program for the red snapper commercial fishery would be conducted through the normal Council and Federal rulemaking processes that ensure numerous opportunities for review and comment by industry participants and members of the public.

Additional Alternatives for a Vote-Weighting Formula

On October 27, 2003, NMFS published a proposed rule that described procedures and eligibility requirements for participating in referendums regarding a potential individual fishing quota (IFQ) program for the Gulf of Mexico commercial red snapper fishery; comments were requested through November 12, 2003 (68 FR 61178). Public comment received on that October 27, 2003, proposed rule expressed concern about the vote-weighting procedure, and specifically objected to allowing both a qualified lessor and qualified lessee fully weighted votes, resulting in double counting. In response to those public comments, NMFS is issuing a second proposed rule to include a broader range of potential options for weighting votes. NMFS is seeking public input regarding these or other options.

NMFS evaluated several additional alternatives for a vote-weighting formula for the IFQ referendums. In addition to the one vote per-participant-per-pound approach specified in the initial proposed rule (68 FR 61178) each alternative below is based on varying the vote-per-pound weighting by

specified eligible voting class based on their respective involvement in the fishery.

NMFS is expressly seeking comments as to alternative approaches for weighting votes, whether they focus on the following or propose entirely new alternatives not addressed below.

The following alternatives are not necessarily mutually exclusive and were considered individually and in combinations. For the purpose of these alternatives, the term ''license'' refers to a Class I license and/or endorsement, consistent with the context of Section 407(c)(2) of the Magnuson-Stevens Act.

(1) Allocating one half (or some other fraction) of a vote per qualifying pound to the qualifying historical vessel captain. Section 407(c)(2) of the Magnuson-Stevens Act specifically identifies such vessel captains as eligible to vote in the referendums; thus, implicitly it acknowledges the need for some level of multiple counting, unless all current license holders, whose license was previously fished by a qualifying historical captain, are subject to the same pound to vote ratio (see alternative 5 below). Fractionalizing historical captains' pound to vote ratio would reduce the impact of weighting multiple votes by the pounds from a single license's landings history, but this option alone would not eliminate such multiple counting of landings associated with a single license;

(2) Allocating one half vote (or some other fraction) per qualifying pound to both the lessor and lessee license holders to avoid double counting of the associated poundage. As is the case with historical captains, using this option alone would not eliminate the multiple counting of poundage associated with a single license. However, in combination with some fractionalization of historical captain weighting and associated reductions in lessor/lessee proportional votes, it would eliminate such multiple counting (see alternative 5);

(3) Allocating one vote per pound of landings to both lessors and lessees, while allocating two votes per pound to license holders who are not involved in lease arrangements with their license. This option addresses the multiple counting of landings by allowing all poundage to be counted at least twice, which while actually increasing the quantity of pounds multiple counted would provide the same treatment for virtually all poundage. This would result in increasing the voting weight of landings associated with non-leased licenses to the same level as the landings associated with leased licenses, *i.e.,* all pounds would be counted at least twice;

(4) Votes could be weighted based on an individual's level of participation in the fishery, measured by length of time they held a license. This could be applied to all license holders, or some portion thereof, such as only lessors and lessees, and would prorate the respective weight of a vote based on the number of years of participation in the fishery. For example, using the 3-year time period established for historical captain eligibility, a participant could be awarded one vote per pound if they held a license for 3 or more years, two-thirds of a vote per pound if they held a license for less than 3 but at least 2 years, and one-third of a vote if they held it less than 2 years. Once again, this would not eliminate multiple counting of poundage, but would increase the weighting factor for longer-term participants in the fishery;

(5) The total allowable weighted votes allocated to participants in each referendum could be capped by the total number of pounds harvested, which would eliminate all multiple counting of poundage. Then all participants with eligibility tied to a particular license would have their vote weighted at a ratio equal to all other participants associated with that license, so that their combined vote would be equal to one vote per one pound of landings associated with that license. For example, if a historical captain is eligible based on his landings under a specific license during the relevant time period, and that license is now held by a license holder who is not involved with lease arrangements with that license, but who is not the same historical captain, then each would get one-half of a vote per pound of landings associated with the license. In this example, should the current holder lease the same license, then each participant would have their vote weighted as one-third of a vote per pound, so that their combined vote would equal the total number of pounds associated with the license. While this option would eliminate all multiple counting, it is not directly tied to participation in the fishery.

Classification

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The basis for this certification follows.

The Magnuson-Stevens Act, as amended, provides the statutory basis for the proposed rule. The proposed rule would implement up to two referendums on a potential Individual Fishing Quota (IFQ) for the commercial red snapper fishery in the Gulf of Mexico, consistent with the requirements of the Magnuson-Stevens Act. The primary purpose of this proposed rule is to notify potential participants in the referendums, and members of the public, of the procedures, schedule, and eligibility requirements that NMFS would use in conducting the referendums.

One hundred and thirty-seven entities have been identified as having a vessel permit with a red snapper Class 1 license during the specified eligibility time frame and, therefore, qualify for participation in the referendums. Approximately 37 of these licenses are currently being fished on vessels operated by other entities through lease arrangements. One additional vessel captain has been identified as a referendum qualifier. Although the number of Class 1 licenses and vessel captains is known with certainty, lease arrangements may be subject to cancellation prior to a referendum such that the total number of eligible entities due to lease arrangements is not known with certainty. Although new lease arrangements are also a possibility, such that the number of lease arrangements could increase from the current total, increased leasing is not expected since this would dilute the voting power of the Class 1 license holder, absent control over the subsequent vote by the lessee. Thus, it is expected that the number of lease qualifiers will decline by some unknown amount. Assuming, however, that all current qualifiers maintain their status, the total number of entities that qualify for participation in the referendum is 175.

The total red snapper fishery is valued at approximately $10 million in ex-vessel revenue on an annual basis. Although participants in this fishery do not harvest red snapper exclusively, among those vessels that target red snapper (as determined by whether the revenues from red snapper on an individual trip were greater than the revenues from any other individual species), approximately 57 percent of annual revenues for these vessels came from red snapper sales. If all qualifiers target red snapper and all red snapper ex-vessel revenues are attributed to these participants, and assuming red snapper revenues equal 57 percent of total commercial revenues for these participants, the average ex-vessel revenue per entity is approximately $100,000 (($10 million/0.57)/175). If evaluated over the number of Class 1 licenses (137), the appropriate average revenue is approximately $128,000. Although it is logical to assume that the qualifiers target red snapper, these estimates are biased high since all red snapper revenues cannot be attributed to either categories of entities. Thus, the average ex-vessel revenue per entity is less than either figure.

All referendum qualifiers that would be directly affected by the proposed rule are commercial fishing operations. The Small Business Administration defines a small business that engages in commercial fishing

as a firm with receipts up to $3.5 million. Based on the revenue profile provided above, all commercial entities that would qualify for participation in the referendums are considered small entities. Since all qualifying entities would be affected by the proposed rule, it is concluded that the proposed rule would affect a substantial number of small entities.

The outcome of ''significant economic impact'' can be ascertained by examining two issues: disproportionality and profitability. The disproportionality question is: Do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities? Since all the entities that would be affected by the proposed rule are considered small entities, the issue of disproportionality does not arise in the present case.

The profitability question is: Do the regulations significantly reduce profit for a substantial number of small entities? Since the proposed rule would not directly affect fishery participation or harvest in any way, it would not reduce business profit for any fishery participants or related businesses. Profits are, therefore, not expected to be significantly reduced by the proposed action. On this basis, the proposed rule may be adjudged not to have a significant economic impact on a substantial number of small entities.

As a result, an initial regulatory flexibility analysis was not prepared. Copies of the RIR and Regulatory Flexibility Act Analysis are available (see **ADDRESSES**).

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

This rule contains collection-of-information requirements subject to the PRA which have been approved by OMB under control number 0648–0477. Public reporting burden is estimated to average 10 minutes for a response to an initial referendum regarding preparation of an IFQ program; 20 minutes for a response to a subsequent referendum; and 10 minutes per response for any information request regarding vessel captains, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed , and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

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

Dated: December 23, 2003.

Rebecca J. Lent,

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

[FR Doc. 03–32034 Filed 12–23–03; 3:17 pm]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 68, No. 249
Tuesday, December 30, 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 COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance, the following proposal for an extension of a currently approved collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.

Title: (1) Survey of Ocean Freight Revenues and Foreign Expenses of United States Carriers (BE–30).

(2) Survey of U.S. Airline Operators' Foreign Revenues and Expenses (BE–37).

Form Number(s): BE–30/BE–37.

Agency Approval Number: 0608–0011.

Type of Request: Extension of a currently approved collection.

Burden: 780 hours (BE–30); 304 hours (BE–37).

Number of Respondents: 39 (BE–30); 19 (BE–37).

Average Hours Per Response: 5 hours (BE–30); 4 hours (BE–37).

Needs and Uses: The Bureau of Economic Analysis is responsible for the compilation of the U.S. balance of payments accounts. The information collected in these surveys is an integral part of the ''transportation'' portion of the U.S. balance of payments accounts. The balance of payments accounts, which are published quarterly in the Bureau's monthly publication, the *Survey of Current Business*, are one of the major statistical products of BEA. The accounts provide a statistical summary of U.S. international transactions and are used by government and private organizations for national and international policy formulation, and analytical studies. The information collected is also used for compiling the U.S. national income and product accounts, and for reporting to international organizations such as the International Monetary Fund. Without the information collected in these surveys, quarterly data needed for estimating an integral component of the transportation account would be unavailable. No other Government agency collects comprehensive quarterly data on U.S. ocean carriers' freight revenues and foreign expenses or U.S. airline operators' foreign revenues and expenses.

These surveys request information from U.S. ocean and air carriers engaged in the international transportation of goods and/or passengers. Information is collected on a quarterly basis from U.S. ocean and air carriers with total annual covered revenues or total annual covered foreign expenses of $500,000 or more. U.S. ocean and air carriers with total annual covered revenues and total annual covered foreign expenses below $500,000 are exempt from reporting.

Affected Public: U.S. ocean and air carriers.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

Legal Authority: The International Investment and Trade in Services Survey Act, 22 U.S.C. 3101–3108.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above extension of a currently approved collection can be obtained by calling or writing Diane Hynek, DOC Forms Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations in response to this extension of a currently approved collection should be sent within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503; fax: 202–395–7245; e-mail: *pbugg@omb.eop.gov.*

Dated: December 22, 2003.

Madeleine Clayton,

Management Analyst, Office of Chief Information Officer.

[FR Doc. 03–31999 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–06–P

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 an extension of a currently approved collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.

Title: Survey of Foreign Airline Operators' Revenues and Expenses in the United States.

Form Number(s): BE–36.

Agency Approval Number: 0608–0013.

Type of Request: Extension of a currently approved collection.

Burden: 360 hours.

Number of Respondents: 72.

Avg Hours Per Response: 5 hours.

Needs and Uses: The Bureau of Economic Analysis is responsible for the compilation of the U.S. balance of payments accounts. The information collected in this survey is an integral part of the ''transportation'' portion of the U.S. balance of payments accounts. The balance of payments accounts, which are published quarterly in the Bureau's monthly publication, the *Survey of Current Business*, are one of the major statistical products of BEA. The accounts provide a statistical summary of U.S. international transactions and are used by government and private organizations for national and international policy formulation, and analytical studies.

The information collected is also used for compiling the U.S. national income and product accounts, and for reporting to international organizations such as the International Monetary Fund. Without the information collected in this survey, annual data needed for estimating an integral component of the transportation account would be unavailable. No other Government agency collects comprehensive annual data on foreign airline operators' revenues and expenses in the United States.

The survey requests information from U.S. agents of foreign air carriers operating in the United States. Information is collected on an annual basis from foreign air carriers with total covered revenues or total covered

expenses incurred in the United States of $500,000 or more. Foreign air carriers with total covered revenues and total covered expenses below $500,000 are exempt from reporting.

Affected Public: U.S. agents of foreign air carriers.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: The International Investment and Trade in Services Survey Act, 22 U.S.C. 3101–3108.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above extension of a currently approved collection can be obtained by calling or writing Diane Hynek, DOC Forms Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations in response to this extension of a currently approved collection should be sent within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503; fax: 202–395–7245; e-mail: *pbugg@omb.eop.gov.*

Dated: December 22, 2003.

Madeleine Clayton,

Management Analyst, Office of Chief Information Officer.

[FR Doc. 03–32000 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–06–P

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 provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Report of New Privately-Owned Residential Building or Zoning Permits Issued (Building Permits Survey).

Form Number(s): C–404.

Agency Approval Number: 0607–0094.

Type of Request: Extension of a currently approved collection.

Burden: 24,166 hours.

Number of Respondents: 19,000.

Avg Hours Per Response: 10 and a half minutes.

Needs and Uses: The U.S. Census Bureau is requesting an extension of a currently approved collection of the Form C–404, ''Report of Privately-Owned Residential Building or Zoning Permits Issued'' otherwise known as the Building Permits Survey (BPS.) The Census Bureau uses the Form C–404 to collect data that will provide estimates of the number and valuation of new residential housing units authorized by building permits. About one half of the permit offices are requested to report monthly. The remainder are only surveyed once per year. We use the data, a component of the index of leading economic indicators, to estimate the number of housing units started, completed, and sold, if single-family. The Census Bureau also uses these data to select samples for its demographic surveys. Policymakers, planners, businessmen/women, and others use the detailed geographic data collected from state and local officials on new residential construction authorized by building permits to monitor growth and plan for local services, and to develop production and marketing plans. The BPS is the only source of statistics on residential construction for states and smaller geographic areas.

Affected Public: State, local, or tribal government.

Frequency: Monthly or annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

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 Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: December 22, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–32002 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–853]

Bulk Aspirin From the People's Republic of China: Notice of Amended Final Determination and Amended Order Pursuant to Final Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final determination and amended order pursuant to final court decision on Bulk Aspirin from the People's Republic of China.

SUMMARY: On September 9, 2002, the Court of International Trade (''CIT'' or ''the Court'') affirmed the Department's remand determination and entered a judgment order in *Rhodia, Inc.* v. *United States,* 240 F. Supp. 2d 1247 (CIT 2002) (''*Rhodia* II''), a lawsuit challenging certain aspects of the Department of Commerce's (''the Department'') *Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China,* 65 FR 33805 (May 25, 2000) and accompanying Issues and Decision Memorandum (May 17, 2000) (''*Issues and Decision Memorandum*''), and *Notice of Amended Final Determination of Sales at Less Than Fair Value: Bulk Aspirin from the People's Republic of China*, 65 FR 39598 (June 27, 2000) (collectively, ''*Final Determination*''). On October 14, 2003, the CIT's opinion upholding the Department's final remand was affirmed without opinion by the U.S. Court of Appeals for the Federal Circuit (''Federal Circuit''). *See Rhodia II,* 240 F. Supp. 2d 1247 (CIT 2002) *aff'd mem.* Ct. No. 03–1097 (October 14, 2003); 2003 U.S. App. LEXIS 21424.

In its remand determination, the Department reviewed the record evidence regarding the extent to which the Indian surrogate producers are integrated and concluded that the evidence did not support the *Final Determination* in this regard. We also reconsidered our use of weighted-average ratios for overhead, SG&A, and profit, and amended our calculations using simple averages. Finally, in accordance with our voluntary request for remand, we removed ''trade sales'' (or ''traded goods'') from the denominator in calculating the overhead ratio.

As a result of the remand determination, Jilin Pharmaceutical (''Jilin'') will be excluded from the antidumping duty order on bulk aspirin from the People's Republic of China

(''PRC'') because its antidumping rate was *de minimis* (1.27 percent).[1] The antidumping duty rate for Shandong Xinhua Pharmaceutical Factory, Ltd. (''Shandong'') was decreased from 16.51 to 6.42 percent. The PRC-wide rate was unchanged from the *Final Determination.* As there is now a final and conclusive court decision in this action, we are amending our *Final Determination.*

EFFECTIVE DATE: December 30, 2003.

FOR FURTHER INFORMATION CONTACT: Blanche Ziv or Julie Santoboni, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4207, or (202) 482–4194, respectively.

SUPPLEMENTARY INFORMATION:

Background

Following publication of the *Final Determination,* Rhodia, Inc., the petitioner in this case, and the respondents, Jilin and Shandong, filed a lawsuit with the CIT challenging the Department's *Final Determination.* Rhodia challenged the Department's use of import data rather than domestic data as a surrogate value for the aspirin input, phenol. Rhodia also challenged the Department's normal value calculation for the respondent Shandong because the Department excluded purchased salicylic acid where it had determined this input was not used in the production of bulk aspirin for export. Jilin and Shandong challenged the Department's application of the factory overhead ratio and the Department's use of a weighted average to calculate surrogate factory overhead, selling general and administrative expenses, and profit ratios. Also, the respondents challenged, and the Department voluntarily requested remand on, the issue of including traded goods in the denominator of the factory overhead ratio.

On November 30, 2001, the CIT affirmed the Department's *Final Determination* with respect to the use of import price to value the input phenol and the calculation of Shandong's normal value excluding purchased salicylic acid. *See Rhodia, Inc.* v. *United States,* 185 F. Supp. 2d 1343 (CIT 2001) (''*Rhodia I*''). The Court remanded the above-referenced proceeding to the Department for reconsideration of the overhead calculation methodology applied in the *Final Determination.* In the underlying investigation, the Department was required to develop values for factory overhead, SG&A, and profit relying on ''surrogate'' data from Indian producers of comparable merchandise. *See* section 773(c) of the Act. Regarding factory overhead, the Department used information from three Indian producers: Andhra Sugars, Alta Laboratories, and Gujarat Organics, Ltd. In the *Final Determination,* the Department found that the PRC producers of bulk aspirin were more fully integrated than the Indian producers. Therefore, the Department reasoned, the PRC producers would have a higher overhead-to-raw material ratio than the surrogate Indian producers. To account for this in computing normal value, the Department applied the overhead ratio calculated from the Indian producers' data twice, once to reflect the overhead incurred in producing the inputs for aspirin, and again to reflect the overhead incurred in producing aspirin from those inputs.

The Court pointed to the lack of evidence or explanation regarding the Department's position that integrated producers would experience higher overhead ratios than non-integrated producers. Additionally, the Court questioned the Department's conclusion that the Indian producers were less integrated than the PRC producers. Specifically, the Court found that the Department could not reasonably infer this from the evidence cited in the *Issues and Decision Memorandum.* Therefore, the Court remanded this issue to the Department and asked the agency to identify the facts in the record that support its *Final Determination. Rhodia I,* 185 F. Supp. 2d at 1348–1349 (CIT 2001).

The second issue remanded to the Department related to the calculation of the ratios for overhead, SG&A, and profit. In the *Final Determination,* the Department computed a weighted average of the overhead, SG&A, and profit of the three Indian surrogate producers. However, citing to the agency's usual practice of using simple averages in these situations, the Court ruled that the Department had provided no explanation for departing from this practice. Thus, the Court directed the Department to explain its reasoning for computing weighted averages in this case. *Rhodia I,* 185 F. Supp. 2d at 1349–1351 (CIT 2001).

Finally, the Department sought, and the Court granted, a voluntary remand to correct the calculation of the overhead ratio by removing traded goods from the denominator. *Rhodia I,* 185 F. Supp. 2d at 1357 (CIT 2001).

To assist it in complying with the Court's instructions, the Department asked the parties to identify information on the record of the proceeding regarding the extent of integration of Indian producers of comparable merchandise. *See* the December 13, 2001, letter to Rhodia, Inc., Jilin and Shandong. Responses were received from the three parties on January 15, 2002, and rebuttals were received on January 22, 2002.

The *Draft Redetermination Pursuant to Court Remand* (''*Draft Results*'') was released to the parties on February 4, 2002. In its *Draft Results,* the Department reviewed the record evidence regarding the extent to which the Indian surrogate producers are integrated and concluded that the evidence did not support the *Final Determination* in this regard. We also reconsidered our use of weighted-average ratios for overhead, SG&A, and profit, and amended our calculations using simple averages. Finally, in accordance with our voluntary request for remand, we removed ''trade sales'' (or ''traded goods'') from the denominator in calculating the overhead ratio.

Comments on the *Draft Results* were received from Rhodia, Inc. and Shandong on February 11, 2002, and rebuttal comments were received from the petitioner and Jilin on February 14, 2002. On March 29, 2002, the Department responded to the Court's Order of Remand by filing its Final Results of Redetermination pursuant to the Court remand (''*Final Results of Redetermination*''). The Department's *Final Results of Redetermination* were identical to the *Draft Results.*

The CIT affirmed the Department's *Final Results of Redetermination* on September 9, 2002. *See Rhodia II*, 240 F. Supp. 2d 1247 (CIT 2002). On October 14, 2003, the CIT's decision was affirmed by the Federal Circuit. *Rhodia II,* 240 F. Supp. 2d 1247 (CIT 2002) *aff'd mem.* Ct. No. 03–1097 (October 14, 2003); 2003 U.S. App. LEXIS 21424. We have recalculated the dumping margin for the respondents based upon the changes set forth above.

Amendment to the Final Determination

Because there is now a final and conclusive decision in the court proceeding, effective as of the publication date of this notice, we are amending the *Final Determination* and

[1] In accordance with the Department's changed circumstances review (*see Bulk Aspirin from the People's Republic of China: Final Results of Changed Circumstances Review,* 67 FR 65537 (October 25, 2002)), Jilin Henghe Pharmaceutical Co. is the successor-in-interest to Jilin Pharmaceutical Co., and as such Jilin Henghe Pharmaceutical Co. will be excluded from the antidumping duty order on bulk aspirin from the PRC.

establishing the following revised weighted-average dumping margins:

Company	Amended final determination 10/01/98–03/31/99
Jilin Henghe Pharmaceutical Co.	1.27 percent (*de minimis*).
Shandong Xinhua Pharmaceutical Co., Ltd.	6.42 percent.

The ''PRC-wide Rate'' was not affected by the *Final Results of Redetermination* and remains at 144.02 percent as determined in the LTFV *Final Determination.*

The Department will issue appraisement instructions directly to U.S. Customs and Border Protection (''CBP''). The Department will instruct CBP to liquidate entries from Jilin, without regard to antidumping duties, because Jilin is excluded from the antidumping duty order, effective September 30, 2002, the date on which the Department published a notice of the Court decision (*see Bulk Aspirin from the People's Republic of China: Notice of Court Decision and Suspension of Liquidation,* 67 FR 61315 (September 30, 2002)).

This notice is issued and published in accordance with section 751(a)(1) of the Act.

Dated: December 19, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–32071 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A-570–831)

Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review for Xiangcheng Yisheng Foodstuffs Co., Ltd.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty New Shipper Review for Xiangcheng Yisheng Foodstuffs Co., Ltd.

SUMMARY: On September 26, 2003, the Department of Commerce published the preliminary results of the new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China. The period of review is November 1, 2001, through October 31, 2002. The new shipper review initially covered three producers/exporters of subject merchandise. The Department issued a separate notice of preliminary results of the new shipper review for Xiangcheng Yisheng Foodstuffs Co., Ltd. (''Yisheng''). Accordingly, this notice pertains solely to the final results of review for Yisheng. The notice of final results of the review applicable to the other two producers/exporters is due April 8, 2004.

We invited interested parties to comment on our preliminary results. Based on our analysis of the comments received, we have made no changes to our preliminary determination that, based on the use of adverse facts available, the respondent sold subject merchandise to the United States at prices below normal value. The final dumping margin for Yisheng is listed in the ''Final Results of Review'' section below.

EFFECTIVE DATE: December 30, 2003.

FOR FURTHER INFORMATION CONTACT: Jeffrey Frank or Minoo Hatten, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 4203, Washington, DC 20230; telephone (202) 482–0090 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The products covered by this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection (''Customs'') to that effect.

Background

The Department of Commerce (''Department'') is conducting this review of Yisheng in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (''the Act''). On September 26, 2003, the Department published the preliminary results of the new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China with respect to Yisheng. See *Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review for Xiangcheng Yisheng Foodstuffs Co., Ltd.,* 68 FR 55583 (''*Preliminary Results*''). We invited parties to comment on that *Preliminary Results*. We received comments from Yisheng and rebuttal comments from the petitioners, the Fresh Garlic Producers Association[1] and its individual members. On November 5, 2003, we held a hearing during which the parties presented their comments.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to the new shipper review are addressed in the ''Issues and Decision Memorandum for Final Results of the New Shipper Review of the Antidumping Duty Order of Fresh Garlic from the People's Republic of China'' from Jeff May to James J. Jochum (December 22, 2003) (''Decision Memo''), which is hereby adopted by this notice. A list of the issues which parties raised and to which we respond in the Decision Memo is attached to this notice as an Appendix. The Decision Memo is a public document and is on file in the Central Records Unit, Main Commerce Building, Room B-099, and is accessible on the Web at www.ia.ita.doc.gov.

Separate Rates

In the *Preliminary Results*, the Department established that Yisheng is

[1] The members of the Fresh Garlic Producers Association are Christopher Ranch LLC, Farm Gate LLC, The Garlic Company, Spice World, Inc., and Vessey and Company, Inc.

sufficiently independent in its export activities from government control to be entitled to a separate, company-specific rate. See *Preliminary Results*, 68 FR at 55584. We have not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsideration of this determination.

Use of Adverse Facts Available

In the *Preliminary Results*, the Department assigned Yisheng the rate of 376.67 percent based on the use of adverse facts available. See *Preliminary Results*, 68 FR at 55586. The Department has considered the issues raised by Yisheng and the petitioners and has addressed them in the Decision Memo. Based on its analysis of the parties' comments and for the reasons outlined in the *Preliminary Results*, the Department has not changed its determination with respect to the application of adverse facts available to subject merchandise exported by Yisheng. In summary, Yisheng withheld information requested by the Department, failed to provide requested information in a timely manner, significantly impeded the proceeding within the meaning of section 776(a)(2) of the Act, and did not act to the best of its ability to comply with the Department's request for information. Thus, for the final results of review, the Department has determined that it is appropriate to base Yisheng's antidumping margin on adverse facts available.

Final Results of Review

As a result of the application of adverse facts available, we find that a dumping margin of 376.67 percent exists for the period November 1, 2001, through October 31, 2002, on Yisheng's shipments of fresh garlic from the PRC.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. We will issue appropriate assessment instructions directly to Customs within 15 days of publication of these final results of review.

Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise grown by Henan Yuyu Fruit & Vegetables Products Co., Ltd., and exported by Yisheng, the cash-deposit rate will be 376.67 percent; (2) for all other subject merchandise exported by Yisheng, the cash-deposit rate will be the PRC countrywide rate, which is 376.67 percent; (3) for all other PRC exporters which have not been found to be entitled to a separate rate, the cash-deposit rate will be the PRC countrywide rate; (4) for all PRC exporters of subject merchandise which have been found to be entitled to a separate rate, the cash-deposit rate will remain the rate applicable to that exporter; and (5) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC exporter which supplied that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification

Bonding is no longer permitted to fulfill security requirements for shipments from Yisheng of fresh garlic 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**.

This notice serves as a final reminder to importers covered by this determination 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 Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

We are issuing and publishing these final results of review in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214(i)(1) and 351.210(c).

Dated: December 19, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix

Decision Memo

1. Use of Adverse Facts Available

2. Supplier is Not an Interested Party

3. AFA Should Have Been Applied Only to the FOP Segment

[FR Doc. 03–32065 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588–862]

Notice of Antidumping Duty Order: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Antidumping Duty Order.

EFFECTIVE DATE: December 30, 2003.

FOR FURTHER INFORMATION CONTACT: Timothy Finn at (202) 482–0065 or Michele Mire at (202) 482–4711, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The scope of this order covers station post insulators manufactured of porcelain, of standard strength, high strength,[1] or extra-high strength, solid core or cavity core, single unit or stacked unit, assembled or unassembled, and with or without hardware attached, rated at 115 kilovolts (kV) voltage class and above (550 kV Basic Impulse Insulation Level and above), including, but not limited to, those manufactured to meet the following American National Standards Institute, Inc. standard class specifications: T.R.-286, T.R.-287, T.R.-288, T.R.-289, T.R.-291, T.R.-295, T.R.-304, T.R.-308, T.R.-312, T.R.-316, T.R.-362 and T.R.-391. Subject merchandise is classifiable under subheading 8546.20.0060 of the Harmonized Tariff Schedule of the United States (HTSUS). While the HTSUS subheading is provided for convenience and customs purposes, the written description above remains dispositive as to the scope of this order.

Antidumping Duty Order

On November 5, 2003, in accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act),

[1] Station post insulators are manufactured in various styles and sizes, and are classified primarily according to the voltage they are designed to withstand. Under the governing industry standard issued by the Institute of Electrical and Electronic Engineers, the voltage spectrum is divided into three broad classes: ''medium'' voltage (i.e., less than or equal to 69 kilovolts), ''high'' voltage (i.e., from 115 to 230 kilovolts), and ''extra-high'' or ''ultra-high'' voltage (i.e., greater than 230 kilovolts).

the Department of Commerce (the Department) published its final determination that high and ultra-high voltage ceramic station post insulators (HVSPs) from Japan are being, or are likely to be, sold in the United States at less than fair value (LTFV). *See Notice of Final Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan* (68 FR 62560). On December 19, 2003, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (the ITC) notified the Department of its final determination that an industry in the United States is materially injured by reason of LTFV imports of subject merchandise from Japan.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the U.S. price of the merchandise for all relevant entries of HVSPs from Japan. These antidumping duties will be assessed on all unliquidated entries of HVSPs that are entered, or withdrawn from warehouse, for consumption on or after June 16, 2003, the date on which the Department published its notice of an affirmative preliminary determination in the **Federal Register**. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan* (68 FR 35627). CBP must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins listed below. The weighted-average percentage dumping margins are as follows:

Manufacturer/Exporter	Weighted-Average Percent Margin
NGK Insulators Ltd.	105.80
All Others	105.80

This notice constitutes the antidumping duty order with respect to HVSPs from Japan. Interested parties may contact the Department's Central Records Unit, room B-099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of the Act and 19 C.F.R. § 351.211.

Dated: December 22, 2003.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–32068 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A-427–009

Industrial Nitrocellulose from France: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: On September 30, 2003, the Department of Commerce initiated an administrative review of the antidumping duty order on industrial nitrocellulose from France. The review covers one manufacturer/exporter, Bergerac, N.C. The period of review is August 1, 2002, through July 31, 2003. We are rescinding this review after receiving a timely withdrawal from the party requesting this review.

EFFECTIVE DATE: December 30, 2003.

FOR FURTHER INFORMATION CONTACT: Susan Lehman or Richard Rimlinger, AD/CVD Enforcement Group I, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: 202–482–0180 or 202–482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2003, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on industrial nitrocellulose from France covering the period August 1, 2002, through July 31, 2003. See *Notice of Opportunity to Request an Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 68 FR 45218.

On September 30, 2003, pursuant to a request by the petitioner, Green Tree Chemical Technologies, Inc. (Green Tree), the Department initiated an administrative review of Bergerac, N.C. (Bergerac) for the period August 1, 2002, through July 31, 2003. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation In Part and Deferral of Administrative Review*, 88 FR 56262. On December 9, 2003, Green Tree withdrew its request for a review and asked the Department to rescind the administrative review.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review if a party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Because Green Tree submitted its request for rescission within the 90-day time limit and there were no requests for a review from other interested parties, we are rescinding this review. As such, we will issue appropriate assessment instructions directly to U.S. Customs and Border Protection.

This notice is in accordance with section 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: December 19, 2003.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–32064 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-423–808]

Notice of Extension of Time Limit for Preliminary Results of Administrative Antidumping Review: Stainless Steel Plate in Coils from Belgium

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 30, 2003.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Scot Fullerton at (202) 482–0197 or (202) 482–1386, respectively; Office of Antidumping/Countervailing Duty Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

Background

On May 21, 1999, the Department of Commerce (the Department) published in the **Federal Register** the antidumping duty order on stainless steel plate in coils from Belgium (64 FR 27756). On May 30, 2003, in accordance with Section 751(a) of the Tariff Act of 1930,

as amended (the Act) and section 19 CFR 351.213(b) of the Department's regulations, Allegheny Ludlum, North American Stainless, Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL-CIO/CLC (collectively, petitioners) requested a review of the antidumping duty order on stainless steel plate in coils from Belgium for ALZ N.V. (ALZ) and its affiliate Arcelor International America Inc. for the period May 1, 2002 through April 30, 2003. On July 1, 2003, we published a notice of ''Initiation of Antidumping Review.'' *See* 68 FR 39055.

On September 11, 2003, Ugine & ALZ Belgium (U&A Belgium) submitted its response to section A of the Department's questionnaire. On October 2, 2003, U&A Belgium submitted its response to sections B and D of the Department's questionnaire. On October 6, 2003, U&A Belgium submitted its response to section C of the Department's questionnaire. On October 9, 2003, U&A Belgium requested that the Department consider U&A Belgium to be the successor to ALZ. On October 14, 2003, U&A Belgium submitted a revised version of its section C questionnaire response. On October 30, 2003, U&A Belgium requested that the Department extend the deadline for issuance of the preliminary results of review to May 31, 2004. On November 21, 2003, petitioners submitted comments concerning U&A Belgium's response to sections B and C of the Department's questionnaire. On December 3, 2003, U&A Belgium submitted corrections to certain clerical errors contained in U&A Belgium's questionnaire response.

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department may extend the deadline for completion of the preliminary results of a review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days from the last day of the anniversary month of the order for which the administrative review was requested. In this review, the Department must determine whether the respondent is the legal successor to another company by examining a number of factors. Because of the complexity and timing of this and other issues in this case, it is not practicable to complete this review within the time limit mandated by section 751(a)(3)(A) of the Act.

Consequently, in accordance with sections 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department is extending the time limit for the completion of the preliminary results to 365 days from the last day of the anniversary month of the order. As the 365th day falls on a Sunday, and the following Monday is a federal holiday, the preliminary results will now be due no later than June 1, 2004.

Dated: December 17, 2003.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–32070 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588–852]

Structural Steel Beams from Japan: Initiation of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of changed circumstances review.

SUMMARY: The Department of Commerce has received information sufficient to warrant initiation of a changed-circumstances review of the antidumping order on structural steel beams from Japan. The review will be conducted to determine whether Yamato Steel is the successor-in-interest to Yamato Kogyo for purposes of determining antidumping and countervailing duty liabilities.

EFFECTIVE DATE: December 30, 2003.

FOR FURTHER INFORMATION CONTACT: John D. A. LaRose or Alex Villanueva, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3794 or (202) 482–3208, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 19, 2000, the Department of Commerce (''Department'') published in the Federal Register an antidumping duty order resulting from the Department's investigation of Structural Steel Beams from Japan. *See Structural Steel Beams from Japan: Notice of Antidumping Duty Order*, 65 FR 37960 (June 19, 2000). On November 17, 2003 Yamato Kogyo Co., Ltd. (''Yamato Kogyo'') submitted a request that the Department initiate a changed circumstances review to confirm that the newly-formed Yamato Steel Co., Ltd. (''Yamato Steel'') is its successor-in-interest and should be entitled to the same cash deposit rate.

Scope of the Review

For purposes of this review, the products covered are doubly-symmetric shapes, whether hot or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These products (''Structural Steel Beams'') include, but are not limited to, wide-flange beams (''W'' shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes.

All products that meet the physical and metallurgical descriptions provided above are within the scope of this review unless otherwise excluded. The following products, are outside and/or specifically excluded from the scope of this review:

Structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

The merchandise subject to this review is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, 7228.70.6000. Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (''Customs'') purposes, the written description of the merchandise under review is dispositive.

Initiation of Antidumping Duty Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act and 351.216 of the Department's regulations, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty finding which shows changed circumstances sufficient to warrant a review of the order. Information submitted by Yamato Kogyo Co. Ltd. (''Yamato Kogyo'') and Yamato Steel Co., Ltd. (''Yamato Steel'') claims Yamato Steel as the successor-in-interest to Yamato Kogyo and shows changed circumstances sufficient to

warrant a review. *See* 19 CFR 351.216(c) (2003).

In accordance with section 751(b) of the Tariff Act and 351.216 of the Department's regulations, the Department is initiating a changed circumstances review to determine whether Yamato Steel Co., Ltd. is the successor company to Yamato Kogyo Co., Ltd. In antidumping duty changed circumstances reviews involving a successor-in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) management, (2) organizational structure, (3) ownership, (4) production facilities, (5) supplier relationships, and (6) customer base. *See, e.g., Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Notice of Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 66 FR 67513, 67515 (December 31, 2001) and *Brass Sheet and Strip from Canada; Final Results of Changed Circumstances Review*, 57 FR 20460, 20461 (May 13, 1992). While no one or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is similar to that of the predecessor. *See Industrial Phosphoric Acid from Israel; Final Results of Antidumping Duty Changed Circumstances Review*, 59 FR 6944, 6946 (February 14, 1994). Thus, if evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same entity as the former company, the Department will treat the new company as the successor-in-interest to the predecessor. *See Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999).

The Department will publish in the **Federal Register** a notice of preliminary results of antidumping duty changed circumstances review, in accordance with section 351.216(c), and 351.221(b)(4) and 351.221(c)(3)(i) of the Department's regulations. This notice will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed based on those results. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of review. In accordance with 19 CFR 351.216(e), the Department will issue the final results of its antidumping duty changed circumstances review not later than 270 days after the date of publication of this notice.

During the course of this changed circumstances review, we will not change any cash deposit instructions on the merchandise subject to this review, unless a change is determined to be warranted pursuant to the final results of this review.

This notice of initiation is in accordance with sections 751(b)(1) of the Act and section 351.221(b)(1) of the Department's regulations.

Dated: December 19, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–32067 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

San Diego State University; Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–050. Applicant: San Diego State University, San Diego, CA 92182–4614. Instrument: Electron Microscope, Model Tecnai G^2 12 TWIN. Manufacturer: FEI Company, the Netherlands. Intended Use: See notice at 68 FR 65879, November 24, 2003.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. Reasons: The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of receipt of application by U.S. Customs and Border Protection.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–32069 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Publication of Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

SUMMARY: The Department of Commerce (''the Department''), in consultation with the Secretary of Agriculture, has prepared its annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period October 1, 2002, through September 30, 2003. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: December 30, 2003.

FOR FURTHER INFORMATION CONTACT: Alicia Kinsey, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702 of the Trade Agreements Act of 1979 (as amended) (''the Act'') requires the Department to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's annual list of subsidies on articles of cheese that were imported during the period October 1, 2002, through September 30, 2003.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: December 19, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

APPENDIX

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross[1] Subsidy ($/lb)	Net[2] Subsidy ($/lb)
Austria	European Union (EU) Restitution Payments	$ 0.1	$ 0.1
Belgium	EU Restitution Payments	$ 0.05	$ 0.05
Canada	Export Assistance on Certain Types of Cheese	$ 0.25	$ 0.25
Denmark	EU Restitution Payments	$ 0.04	$ 0.04
Finland	EU Restitution Payments	$ 0.14	$ 0.14
France	EU Restitution Payments	$ 0.12	$ 0.12
Germany	EU Restitution Payments	$ 0.05	$ 0.05
Greece	EU Restitution Payments	$ 0.07	$ 0.07
Ireland	EU Restitution Payments	$ 0.08	$ 0.08
Italy	EU Restitution Payments	$ 0.07	$ 0.07
Luxembourg	EU Restitution Payments	$ 0.07	$ 0.07
Netherlands	EU Restitution Payments	$ 0.04	$ 0.04
Norway	Indirect (Milk) Subsidy	$ 0.34	$ 0.34
.....	Consumer Subsidy	$ 0.16	$ 0.16
.....	.....	$ 0.50	$ 0.50
Portugal	EU Restitution Payments	$ 0.05	$ 0.05
Spain	EU Restitution Payments	$ 0.06	$ 0.06
Switzerland	Deficiency Payments	$ 0.07	$ 0.07
U.K.	EU Restitution Payments	$ 0.01	$ 0.01

[1]Defined in 19 U.S.C. 1677(5).
[2]Defined in 19 U.S.C. 1677(6).

[FR Doc. 03–32066 Filed 12–29–03; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122303A]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling public meetings of its Habitat, Groundfish and Scallop Oversight Committees and Scallop Advisory Panel in, January, 2004 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between January 13–16, 2004. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Narragansett, RI and Mansfield, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Tuesday, January 13, 2004 at 9:30 a.m.–Habitat/MPA Committee Meeting.

Location: Holiday Inn, 31 Hampshire Street, Mansfield, MA; telephone: 508–339–2200.

The Committee will discuss upcoming Omnibus ı2 Habitat Amendment including, but not limited to, the review of the Draft Timeline, Draft Notice of Intent, Draft Request for Proposals for Habitat Areas of Particular Concern and Dedicated Habitat Research Areas, and discussion of a draft Habitat Advisory Panel Process. The meeting will also include a recap of Council decisions in Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and Amendment 13 to the Multispecies FMP and a discussion of the upcoming Herring Amendment 1 and Monkfish Amendment 2 Draft Supplementary Environmental Impact Statement (DSEIS). In addition, the Committee will be updated on the status of the American Oceans Campaign V. Daley lawsuit settlement agreement requirements and any NMFS essential fish habitat (EFH) Consultations of particular interest to the Council. Lastly, the Committee will be updated on recent marine protected areas (MPA) work by the formerly separate MPA Committee. The timeline for development of a Council policy on MPAs will be developed. There will be a possible closed session for the discussion and selection of habitat advisory panel.

Wednesday, January 14, 2004 at 9:30 a.m. and Thursday, January 15, 2004 at 8:30 a.m.–Groundfish Oversight Meeting.

Location: Holiday Inn, 31 Hampshire Street, Mansfield, MA; telephone: 508–339–2200.

The Groundfish Oversight Committee will meet to discuss Framework Action 39 and Framework Action 40 to the

Northeast Multispecies FMP. On Wednesday, January 14, the Committee will discuss Framework 40. The Committee will develop recommended objectives and alternatives for this framework, which will be considered by the full Council at its January 27–29, 2004 meeting. It is tentatively planned that this framework will identify opportunities and restrictions for the use of Category B days-at-sea (DAS). Category B DAS are identified in Amendment 13 and, if this amendment is approved, will be allocated on May 1, 2004. Some possible uses for Category B DAS include Special Access Programs, experimental fisheries, or to target healthy stocks subject to additional restrictions that will be specified in Framework 40. The Committee may also consider other issues for this framework that have been raised during the review of Amendment 13, such as, but not limited to, issues related to steaming time. On Thursday, January 15, the Committee will discuss Framework 39. This framework will specify the requirements and restrictions for scallop vessels that are fishing in groundfish closed areas. This framework is necessary to implement the area management system proposed in Scallop Amendment 10. If the proposed rule implementing Amendment 13 is published prior to the Committee meeting, the Committee may also review the proposed rule in order to develop recommendations for comments by the Council.

Thursday, January 15, 2004 at 6:30 p.m.–Scallop Advisory Panel Meeting.

The Scallop Advisory Panel will develop recommendations on draft alternatives in Framework Adjustment 16/39, including measures to manage scallop fishery access in the groundfish closed areas during 2004B07. Implementation of Amendment 10 and interim/emergency action may also be discussed. Advisors may want to arrive early to attend a Groundfish Oversight Committee meeting in the morning and afternoon that will discuss Framework Adjustment 39 alternatives.

Friday, January 16, 2004 at 9 a.m.–Scallop Oversight Committee Meeting.

The Committee will review advice from the Scallop Advisory Panel and Scallop Plan Development Team to guide development of measures to manage scallop fishery access in the groundfish closed areas during 2004–07 (Framework Adjustment 16/39). They may identify recommendations for a preferred alternative. Implementation of Amendment 10 and interim/emergency action may also be discussed.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: December 23, 2003.

Richard W. Surdi,

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

[FR Doc. E3–00660 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121903E]

New England Fishery Management Council; Public Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3–day Council meeting on January 27–29, 2004, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, January 27, 2004, beginning at 9:00 a.m. and on Wednesday and Thursday, January 28 and 29, beginning at 8:30 a.m.

ADDRESSES: The meeting will be held at the Viking Hotel, One Bellevue Avenue,Newport, RI, 02840; telephone (401) 847–3300. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, January 27, 2004

Following introductions, the Council will receive reports on recent activities from the Council Chairman and Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel and representatives of the U.S. Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission. During her report, the Regional Administrator will brief the Council on a national commercial fisheries employment survey to be conducted by NOAA Fisheries early next year. There also will be a short presentation on the status of species reviewed at the 38th Northeast Regional Stock Assessment Workshop. Species will include ocean quahogs and butterfish. During the Tuesday afternoon session the Council will discuss and set Council work priorities for 2004. A Scallop Committee report will follow and focus on a request for emergency action. If approved, the emergency would likely remain in effect until NMFS publishes a final rule for Amendment 10 the Atlantic Sea Scallop Fishery Management Plan (FMP). Measures could include, but are not limited to closure of the Hudson Canyon and Elephant Trunk Areas. The areas contain a high abundance of small scallops that would be subject to harvesting without the protection specified in Amendment 10 or the emergency action. Late in the day, the Groundfish Committee will begin its report to the Council with guidance provided by the Transboundary Management Guidance Committee on U.S./Canada issues. This will include Total Allowable Catch recommendations for eastern Georges Bank cod, haddock and yellowtail flounder.

Wednesday, January 28, 2004

The Groundfish Committee will continue its report on Wednesday. It will propose initial action on Framework Adjustment 40 to the Northeast Multispecies FMP. At this meeting the Council intends to identify the objectives of the action as well as the alternatives that will specify the restrictions on the use of ''B'' days-at-sea. B days are among the effort controls included in Amendment 13 to the FMP. The Council also will likely prepare comments on the proposed rule implementing Amendment 13. Additionally, it may consider recommendations from the Groundfish Committee concerning the issues of steaming time and future access to the

fishery by former participants who may be precluded from fishing under Amendment 13. If necessary, the Council also could discuss issues related to Congressional action as it affects NMFS funding in 2004.

Thursday, January 29, 2004

The Research Steering Committee will report to the Council on refinements to its policy on incorporating the results of cooperative research results into the management process and activities planned for 2004. The Council is then scheduled to review and approve its draft Statement of Organization, Practices and Procedures. The Habitat/Marine Protected Area Committee will ask for approval of its recommendations concerning the timing and scope of Essential Fish Habitat Amendment 2. There will also be a discussion of the committee's rationale to prohibit clam dredges from habitat closed areas designated in Amendment 13 to the Northeast Multispecies FMP. The afternoon session will include a report by the NOAA Fisheries Statistics Office on a proposed rule implementing mandatory dealer electronic reporting and scheduled for publication in 2004. The meeting will conclude with a briefing on NOAA Fisheries National Bycatch Strategy and regional implementation of a plan. Any other Council business that was postponed until the close of the meeting will also be addressed at this time.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: December 22, 2003.

Bruce Morehead,

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

[FR Doc. 03–32073 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120302A]

Magnuson-Stevens Act Provisions; Atlantic Highly Migratory Species; Exempted Fishing and Scientific Research Permits

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

ACTION: Reopening of comment period.

SUMMARY: Due to public request for an extension of the public comment period, NMFS is reopening the comment period for the notice of intent to issue Exempted Fishing Permits (EFPs) and Scientific Research Permits (SRPs) for the collection of Atlantic highly migratory species (HMS), previously published in the **Federal Register** on December 9, 2003.

DATES: The deadline of written comments on research and fishing activities is January 26, 2004.

ADDRESSES: Send comments to Christopher Rogers, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. The EFP/SRP applications and copies of the regulations under which EFPs/SRPs are issued may also be requested from this address. Comments also may be sent via facsimile (fax) to (301)713–1917. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Heather Stirratt or Sari Kiraly, 301–713–2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: EFPs and SRPs are requested and issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and/or the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). Regulations at 50 CFR 600.745 and 50 CFR 635.32 govern scientific research activity, exempted fishing, and exempted educational activity with respect to Atlantic HMS.

On December 9, 2003 (68 FR 68595), NMFS published a notice of intent to issue EFPs and SRPs for 2004. Due to public request, NMFS is reopening the comment period to January 26, 2004. Information regarding the issuance of EFPs and SRPs is contained in the previous notice and is not repeated here.

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: December 23, 2003.

John H. Dunnigan,

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

[FR Doc. 03–32072 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 2003–C–031]

Request For Comments and Notice of Round Table Meeting Regarding The Equities of Inter Partes Reexamination Proceedings

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for comments and notice of round table meeting.

SUMMARY: The United States Patent and Trademark Office (USPTO) seeks comments from former, current and prospective participants and other interested parties on whether *inter partes* reexamination proceedings are believed to be inequitable to any of the parties in interest and, if so, what changes are suggested to remove such inequities. As a part of this effort, USPTO announces the scheduling of a round table meeting to receive views on the effectiveness and possible improvement of *inter partes* reexamination proceedings.

DATES: Comments must be received by February 20, 2004, to ensure consideration. Requests to participate in the round table meeting must be received by January 28, 2004. The USPTO will make reasonable efforts to balance the interests represented at the round table meeting. If it becomes necessary to limit the number of participants, preference will be given to first-in-time requests to participate. The round table meeting is tentatively scheduled for February 17, 2004, at USPTO offices in Arlington, Virginia.

ADDRESSES: Written comments and requests to participate in the round table meeting should be (a) addressed to the United States Patent and Trademark Office, Office of Congressional Relations, Room 902, 2121 Crystal Drive, Arlington, VA 22202, ATTN: Anggie Reilly, Inter Partes Reexam; (b) faxed to Anggie Reilly's attention at (703) 305–8885; or (c) sent via electronic mail to *interpartesreexam@uspto.gov.* The specific time and location for the round table meeting will be communicated to participants and posted on USPTO's Web site at *www.uspto.gov.* That notice also will

include information for persons wishing to observe the round table meeting.

FOR FURTHER INFORMATION CONTACT: Anggie Reilly by telephone at (703) 305–9300 or by electronic mail at *interpartesreexam@uspto.gov.*

SUPPLEMENTARY INFORMATION:

Background

Ex parte reexamination of patents, and the procedures for same, were enacted by Congress in 1980 to serve as expedited, low-cost alternatives to patent litigation in reviewing certain aspects of patent validity. Subsequent Congressional review indicated that *ex parte* reexamination of patents was being used infrequently, primarily because a third party who requested reexamination was unable to participate after initiating the reexamination proceeding. Interested parties suggested that the volume of lawsuits in district courts would be reduced if third parties were encouraged and able to use reexamination procedures that provided an opportunity to argue their case for patent invalidity at the USPTO. To address those concerns and provide such an opportunity, Congress enacted the ''Optional *Inter Partes* Reexamination Procedure Act of 1999'' as Subtitle F of the ''American Inventors Protection Act of 1999'' (Pub. L. 106–113). While the existing *ex parte* reexamination procedures remain intact, the separate optional *inter partes* reexamination procedures enacted in 1999 permit third party requesters to submit a written comment each time the patent owner files a response to the USPTO, to appeal an adverse decision of the patent examiner to the Board of Patent Appeals and Interferences (BPAI), and to participate in a patent owner's appeal to the BPAI in support of the patent examiner's rejection of claims. Third party requesters did not, however, have the ability to appeal further to the Court of Appeals for the Federal Circuit, nor to participate in the patent owner's appeal to the Court. In addition, an estoppel adverse to a third party requester (which does not exist in *ex parte* reexamination) attaches, if the requester is unsuccessful in the *inter partes* reexamination proceeding. The requester is estopped from later asserting in any civil action, or in a subsequent *inter partes* reexamination, the ''invalidity/unpatentability'' of any claim finally determined to be valid and patentable on any ground the third party requester raised or could have raised in the *inter partes* reexamination. (35 U.S.C. 315(c).) Also, the requester is estopped from later challenging in a civil action any ''fact'' determined in the *inter partes* reexamination. (Section 4607 of the Optional *Inter Partes* Reexamination Procedure Act of 1999.)

In order to make the optional *inter partes* procedures a more attractive alternative to litigation, Congress enacted, in 2002, sections 13105 and 13106 of subtitle A of the 21st Century Department of Justice Appropriations Authorization Act (Pub. L. 107–273). Those sections (1) provide third party *inter partes* reexamination requesters with the right to appeal to the Court of Appeals for the Federal Circuit and to participate in the patent owner's appeal to the Court and (2) clarify that reexamination (both *ex parte* and *inter partes* reexamination) may be based on a patent or printed publication previously cited by or to USPTO, or considered by USPTO, as long as a substantial new question of patentability is raised. The estoppel provisions of the Optional *Inter Partes* Reexamination Procedure Act of 1999 were not, however, deleted by the Justice Appropriations Authorization Act.

To assist Congress in its continuing oversight of patent operations, Section 4606 of the ''Optional *Inter Partes* Reexamination Procedure Act of 1999'' includes the requirement that the USPTO submit to the Congress, within five years of the 1999 enactment, a report evaluating whether the *inter partes* reexamination proceedings established by the Act are ''inequitable to any of the parties in interest.'' If inequity is determined to exist, the USPTO's report must then contain ''recommendations for changes * * * to remove such inequity.''

Request for Comments

To aid the USPTO in compiling the required report to Congress, the USPTO requests that interested parties having comments and/or recommendations on promoting equity in *inter partes* reexamination proceedings submit same to the USPTO. It is suggested that any such input to the USPTO include responses to the following questions:

(1) Do you qualify as, or do you represent, a small entity?

(2) Have you been a participant, *i.e.*, a third party requester or a patent owner party, in one or more *inter partes* reexamination proceedings?

(3) Are *inter partes* reexamination proceedings inequitable to any of the parties in interest?

(4) What particular procedures or lack of procedures do you feel are inequitable?

(5) What administrative action(s) should USPTO take to remove the identified inequities?

(6) What legislative/statutory action(s) should Congress take to remove the identified inequities?

Comments must be received by February 20, 2004, to ensure consideration. Such comments should be addressed as indicated above, and clearly identified as Comments in response to the **Federal Register** Notice titled ''Request for comments and notice of round table meeting regarding The Equities of *Inter Partes* Reexamination Proceedings.''

Round Table Meeting

In addition, the USPTO will conduct a round table meeting to hear views on the effectiveness and possible improvement of *inter partes* reexamination proceedings. The round table meeting is tentatively scheduled for February 17, 2004, in USPTO offices in Arlington, Virginia.

Requests to participate in the round table meeting must be received by January 28, 2004. Such requests should be addressed as indicated above, and clearly identified as requests to participate in the round table meeting. The USPTO will make reasonable efforts to balance the interests represented at the round table meeting tentatively scheduled for February 17, 2004. If it becomes necessary to limit the number of participants, preference will be given to first-in-time requests. Notice of the specific time and location for the round table meeting will be communicated to participants and posted on USPTO's Web site at *www.uspto.gov.* That notice also will include information for persons wishing to observe the round table meeting.

Dated: December 19, 2003.

Jon W. Dudas,

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

[FR Doc. 03–31930 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 29, 2004.

Title, Form, and OMB Number: Vessel Operation Report; OMB Number 0710–0006.

Type of Request: Reinstatement.

Number of Respondents: 1,217.

Responses per Respondent: 159 (average).

Annual Responses: 193,906.

Average Burden per Response: 18 minutes.

Annual Burden Hours: 43,213.

Needs and uses: This is a U.S. Army Corps of Engineers information collection that serves as the basic instrument to collect waterborne commerce statistics. These data constitute the sole source for domestic vessel movements of freight and passengers on U.S. navigable waterways and harbors. These data, collected from vessel operating companies, are essential to plans for maintaining U.S. navigable waterways and are critical to the enforcement of the ''Harbor Maintenance Tax'' authorized under Pub. L. 99–662, Section 1402.

Affected Public: Business or other for profit.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ms. Jacqueline Zeiher. Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Ms. Jacqueline Davis. Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–31920 Filed 12–29–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 29, 2004.

Title, Form, and OMB Number: TRICARE Prime Enrollment/Disenrollment Applications; OMB Number 0720–0008.

Type of Request: Reinstatement.

Number of Respondents: 20,689.

Responses per Respondent: 1.

Annual Responses: 20,689.

Average Burden Per Response: 7 minutes.

Annual Burden Hours: 2,150.

Needs and Uses: These collection instruments serve as applications for the enrollment, disenrollment, and Primary Care Manager (PCM) Change for the Department of Defense's TRICARE Prime program established in accordance with title 10 U.S.C. 1099, which calls for a healthcare enrollment system. Monthly payment options for retiree enrollment fees for TRICARE Prime are established in accordance with title 10 U.S.C. 1097a(c). The information collected on the TRICARE Prime Enrollment Application/PCM Change Form provides the necessary data to determine beneficiary eligibility, to identify the selection of a health care option, and to change the designated PCM when the beneficiary is relocating or merely requests a local PCM change, in accordance with the National Defense Authorization Act for Fiscal Year 2001, Public Law 106–398, Section 723(b)(E). The TRICARE Prime Disenrollment Application serves to disenroll an enrollee from TRICARE Prime on a voluntary basis.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher. Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Ms. Jacqueline Davis. Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–31921 Filed 12–29–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Critical Homeland Installation Protection will meet in closed sessions on January 20–21, 2004; February 26–27, 2004; April 1–2, 2004; May 10–11, 2004; June 17–18, 2004, in Arlington, VA (exact location to be determined). The Task Force will assess best practices for protecting U.S. homeland installations and recommend various approaches to enhancing security and protection of these facilities.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force will assess investments in technology and manpower in order to ensure proper security levels at our nation's high-value installations with particular emphasis on airports, harbors, nuclear power facilities and military bases. To that end, the Task Force will review existing best practices in force protection and security at civil, industrial and military complexes; assess shortfalls and deficiencies associated with operational security; identify promising technology and/or processes that will enhance security; and recommend methods for reducing overall manpower requirements without relinquishing robust security measures.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

Dated: December 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–31922 Filed 12–29–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Corrosion Control will meet in closed sessions on February 2–3, 2004; February 25–26, 2004; April 21–22, 2004, and May 10–11, 2004, in Arlington, VA (exact location to be determined). The Task Force will address corrosion control throughout a combat system's life cycle: design, construction, operation and maintenance.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force will assess current on-going corrosion control efforts across the Department of Defense with particular attention to: Duplication for research efforts; application of current and future technology which currently exists in one area to other areas (*i.e.,* submarine applications which might translate to aircraft applications); the current state of operator and maintenance personnel training with regard to corrosion control and prevention; the current state of maintenance processes with regard to corrosion control and prevention; the incorporation of corrosion control and maintainability in current acquisition programs (during the design and manufacturing stages); the identity of unique environments important to National Security but with little commercial application (*e.g.,* nuclear weapons). The Task Force will conduct an analysis of the findings generated and determine which areas, if adequate resources were applied, would provide the most significant advances in combat readiness. In addition, the Task Force will assess best commercial practices and determine their applicability to DOD needs.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

Dated: December 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–31923 Filed 12–29–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD

ACTION: Notice to amend a system of records.

SUMMARY: The Office of the Secretary is amending one system of records notice in its inventory of records systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The changes will be effective on (insert date thirty days after publication in the Federal Register) unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Directives and Records Division, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 601–4722.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific amendments to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DFOISR 11

SYSTEM NAME:

Mandatory Declassification Review Files (August 7, 2002, 67 FR 51235).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Chief, Declassification and Historical Research Branch, Suite 501, Crystal Gateway North, 1111 Jefferson Davis Highway, Arlington, VA 22202–4306.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief, Declassification and Historical Research Branch, Suite 501, Crystal Gateway North, 1111 Jefferson Davis Highway, Arlington, VA 22202–4306.'

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Chief, Declassification and Historical Research Branch, Suite 501, Crystal Gateway North, 1111 Jefferson Davis Highway, Arlington, VA 22202–4306.'

* * * * *

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Declassification and Historical Research Branch, Suite 501, Crystal Gateway North, 1111 Jefferson Davis Highway, Arlington, VA 22202–4306.

* * * * *

DFOISR 11

SYSTEM NAME:

Mandatory Declassification Review Files.

SYSTEM LOCATION:

Chief, Declassification and Historical Research Branch, Suite 501, Crystal Gateway North, 1111 Jefferson Davis Highway, Arlington, VA 22202–4306.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request Mandatory Declassification Review (MDR) or appeal an MDR determination of any classified document for the purpose of releasing declassified material to the public, as provided for under the applicable Executive Order(s) governing classified National Security Information. Other individuals in the system are action offers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of person making MDR request or appeal, identification of records requested, dates and summaries of action taken, and documentation for establishing and processing collectable fees.

Names, titles, and/or positions of security specialists and/or officials

responsible for an initial or final denial on appeal of a request for declassification of a record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 12958, Classified National Security Information, or other applicable Executive Order(s) governing classified National Security Information.

PURPOSE(S):

To manage requests and/or appeals from individuals for the mandatory review of classified documents for the purposes of releasing declassified material to the public; and to provide a research resource of historical data on release of records so as to facilitate conformity in subsequent actions.

Data developed from this system is used for the annual report required by the applicable Executive Order(s) governing classified National Security Information. This data also serves management needs, by providing information about the number of requests; the type or category of records requested; and the average processing time.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Magnetic media storage, computer database, paper computer printouts, and paper records in file folders.

RETRIEVABILITY:

Retrieved by name of requester and other pertinent information, such as organization or address, subject material describing the MDR item (including date), MDR request number using computer indices, referring agency, or any combination of fields.

SAFEGUARDS:

Paper records are maintained in security containers with access limited to officials having a need-to-know based on their assigned duties. Computer systems require user passwords and users are limited according to their assigned duties to appropriate access on a need-to-know basis.

RETENTION AND DISPOSAL:

Files that grant access to records are held in current status for two years after the end of the calendar year in which created, then destroyed. Files pertaining to denials of requests are destroyed 5 years after final determination. Appeals are retained for 3 years after final determination.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Declassification and Historical Research Branch, Suite 501, Crystal Gateway North, 1111 Jefferson Davis Highway, Arlington, VA 22202–4306.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Chief, Declassification and Historical Research Branch, Suite 501, Crystal Gateway North, 1111 Jefferson Davis Highway, Arlington, VA 22202–4306.

Written requests for information should include the full name and organizational affiliation of the individual at the time the record would have been created.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Declassification and Historical Research Branch, Suite 501, Crystal Gateway North, 1111 Jefferson Davis Highway, Arlington, VA 22202–4306.

Written requests for information should include the full name and organizational affiliation of the individual at the time the record would have been created.

For personal visits to examine records, the individual should provide identification such as a driver's license or other form of picture identification.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Requests from individuals for Mandatory Declassification Review and subsequent release of records and information provided by form and memorandum by officials who hold the requested records, act upon the request, or who are involved in legal action stemming from the action taken.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–31924 Filed 12–29–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Fund for the Improvement of Postsecondary Education—Special Focus Competition: European Community-United States of America Cooperation Program in Higher Education and Vocational Education and Training: Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.116J.

DATES: *Applications Available:* January 16, 2004.

Deadline for Transmittal of Applications: April 16, 2004.

Deadline for Intergovernmental Review: June 16, 2004.

Eligible Applicants: Institutions of higher education and vocational education and training or combinations of these institutions and other public and private nonprofit educational institutions and agencies.

Estimated Available Funds: The Administration has requested $700,000 under this program for FY 2004. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $25,000–$200,000 total for up to three years.

Estimated Average Size of Awards: $25,000 for one-year preparatory projects; $75,000 for two-year complementary activities projects; $50,000 for year one of a three-year consortia implementation project with a $200,000 three-year total.

Estimated Number of Awards: 12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities by focusing on problem areas or improvement approaches in postsecondary education. This program is a Special Focus Competition under the Fund for the Improvement of Postsecondary

Education (Title VII, Part B of the Higher Education Act of 1965, as amended) to support projects addressing a particular problem area or improvement approach in postsecondary education.

Priority: Under this program we are particularly interested in applications that meet the following priority.

Invitational Priority: For FY 2004 this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is to encourage proposals designed to support the formation of educational consortia of institutions and organizations in the United States and the European Union to encourage cooperation in the coordination of curricula, the exchange of students and the opening of educational opportunities between the United States and the European Union. This includes the new member States scheduled to join the European Union in Summer 2004. The invitational priority is issued in cooperation with the European Union. European institutions participating in any consortium proposal responding to the invitational priority may apply to the European Commission's Directorate General for Education and Culture for additional funding under a separate European competition.

Program Authority: 20 U.S.C. 1138–1138d.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants or cooperative agreements.

Estimated Available Funds: The Administration has requested $700,000 under this program for FY 2004. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $25,000–$200,000 total for up to three years.

Estimated Average Size of Awards: $25,000 for one-year preparatory projects; $75,000 for two-year complementary activities projects; $50,000 for year one of a three-year consortia implementation project with a $200,000 three-year total.

Estimated Number of Awards: 12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education and vocational education and training or combinations of these institutions and other public and private nonprofit educational institutions and agencies.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.116J.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program office at FIPSE, U.S. Department of Education, 1990 K Street, NW., 6th floor, Washington, DC 20006–8544. Telephone: 202–502–7500 or via the Internet at *www.ed.gov/FIPSE*. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

You may also request application forms by calling 732–544–2504 (fax on demand), or application guidelines by calling 202–358–3041 (voice mail), or submitting the name of the competition and your name and postal address to *FIPSE@ed.gov* (e-mail). Applications also are available on the FIPSE Web site: *http://www.ed.gov/FIPSE*.

3. *Submission Dates and Times:*

Applications Available: January 16, 2004.

Deadline for Transmittal of Applications: April 16, 2004.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: June 16, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the Applicable Regulations section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program.

Application Procedures:

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The European Community-United States of America Cooperation Program in Higher Education and Vocational Education and Training—CFDA Number 84.116J is one of the programs included in the pilot project. If you are an applicant under the EC–US Cooperation Program you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your

application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the application for the EC–US Cooperation Program in Higher Education and Vocational Education and Training, the EC–US Program Budget, the US and EC partner identification forms, and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the application for the EC–US Cooperation Program in Higher Education and Vocational Education and Training to the Application Control Center after following these steps:

1. Print the application for the EC–US Cooperation Program in Higher Education and Vocational Education and Training from e-Application.

2. The institution's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the application for the EC–US Cooperation Program in Higher Education and Vocational Education and Training.

4. Fax the signed application for the EC–US Cooperation Program in Higher Education and Vocational Education and Training to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the EC–US Cooperation Program in Higher Education and Vocational Education and Training and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the EC–US Cooperation Program in Higher Education and Vocational Education and Training at: *http://e-grants.ed.gov.*

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are in 34 CFR 75.210.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project, you must submit a final performance report, including financial information as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), FIPSE performance is focused on (1) the extent to which funded projects are being replicated—*i.e.*, adopted or adapted—by others; and (2) the manner in which projects are being institutionalized and continued after grant funding. These two results constitute FIPSE's indicators of the success of our program. Consequently, applicants for FIPSE grants are advised to give careful consideration to these two outcomes in conceptualizing the design, implementation, and evaluation of the proposed project. If funded, you will be asked to collect and report data in your project's annual performance report on steps taken toward these goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Beverly Baker, Fund for the Improvement of Postsecondary Education, U.S. Department of Education, 1990 K Street, NW., suite 6140, Washington, DC 20006–8544. Telephone: (202) 502–7503 or by e-mail: *Beverly.Baker@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

For additional program information call the FIPSE office (202–502–7500) between the hours of 8 a.m. and 5 p.m., Eastern Time, Monday through Friday.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: December 23, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–32063 Filed 12–29–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–34–000]

Columbia Gas Transmission Corporation; Notice of Application

December 19, 2003.

Take notice that Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No. CP04–34–000 on December 16, 2003, an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA), as amended, to abandon and construct and operate pipeline facilities in Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or TTY, (202) 208–1659.

Any questions regarding this application should be directed to counsel for Columbia, Fredric J. George, at (304) 357–2359, fax (304) 357–3206.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before January 9, 2004, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Comment Date: January 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00659 Filed 12–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2493–006]

Puget Sound Energy, Inc.; Notice of Technical Meeting To Discuss Additional Information Filed With Regards to the Pending License Application

December 19, 2003.

a. *Date and Time of Meeting:* Tuesday, January 20, 2004, at 11 a.m. eastern standard time.

b. *Place:* Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. To participate by phone, see item (f).

c. *FERC Contact:* Nicholas Jayjack, 202–502–6073 or *Nicholas.Jayjack@ferc.gov.*

d. *Purpose of Meeting:* Puget Sound Energy (Puget) has requested a meeting with Commission staff to discuss Puget's ''Summary of Proposed License Elements'' filed with the Commission on December 9, 2003, for the Snoqualmie Falls Hydroelectric Project. The project is located on the Snoqualmie River in Snoqualmie, Washington.

e. *Proposed Agenda:* (1) Introduction of participants; (2) Puget Sound Energy's presentation on the purpose of the meeting; (3) Discussion; and (4) Meeting Wrap-up.

f. All local, State, and Federal agencies, Indian tribes, and other interested parties and individuals are invited to participate either in person or by telephone. Please RSVP Nicholas Jayjack at *Nicholas.Jayjack@ferc.gov* by no later than January 14, 2004, and indicate how you will participate

(telephone or in person). If participating by telephone, you will receive calling instructions when you RSVP. It is encouraged that those participating by telephone assemble together as much as possible to ensure that there will be a sufficient number of open telephone lines to accommodate all participants.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00657 Filed 12–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Petition for Declaratory Order and Soliciting Comments, Motions To Intervene, and Protests

December 19, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Petition for Declaratory Order.

b. *Docket No:* DI04–2–000.

c. *Date Filed:* December 15, 2003.

d. *Applicant:* Appalachian Mountain Club.

e. *Name of Project:* Zealand Falls Hut Hydroelectric Project.

f. *Location:* The Zealand Falls Hut Hydroelectric Project is located on Whitewall Brook, Grafton County, New Hampshire. The project is located on Federal land (White Mountain National Forest).

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Dave Herring, AMC, P.O. Box 298, Gorham, NH 30581, telephone: (603) 466–2721 x204, FAX: (603) 466–2822, E-mail: *dherring@amcinfo.org*

i. *FERC Contact:* Any questions on this notice should be addressed to Diane M. Murray (202) 502–8838, or E-mail: *diane.murray@ferc.gov*.

j. *Deadline for filing comments and/or motions:* January 23, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at: *http://www.ferc.gov*.

Please include the docket number (DI04–2–000) on any protests, comments or motions filed.

k. *Description of Project:* The existing Zealand Falls Hut Hydroelectric Project consists of: (1) A dam; (2) 3-inch-diameter, 1,500-foot-long polyethylene pipe; (3) a DC 12V/20 amp car-type alternator with a total rated capacity of 250 W; and (4) appurtenant facilities.

When a Petition for Declaratory Order is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the application*: Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link, select ''Docket#'' and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', OR ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00653 Filed 12–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 19, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12465–000.

c. *Date filed:* August 18, 2003.

d. *Applicant:* Glover Wilkins Hydro LLC.

e. *Name of Project:* Glover Wilkins By-Pass Project.

f. *Location:* On the Tombigbee Waterway, in Monroe County, Mississippi, utilizing the U.S. Army Corp of Engineers' Glover Wilkins Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 91(a)–825(r).

h. *Applicant Contact:* Mr. Brent Smith, Glover Wilkins Hydro LLC., P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the

Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project utilizing the U. S. Corps of Engineers' Glover Wilkins Dam by-pass and would consist of: (1) A proposed 100-foot-long, 9-foot-diameter steel penstock, (2) a proposed powerhouse containing a generating unit having an installed capacity of 1.875 megawatts, (3) a proposed 1-mile-long, 15 kilovolt transmission line, and (4) appurtenant facilities. Applicant estimates that the average annual generation would be 11 gigawatt-hours and would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *See* 18 C.F.R. 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00654 Filed 12–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2064–004]

Flambeau Hydro LLC; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Presecriptions

December 19, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New minor license.

b. *Project No.:* 2064–004.

c. *Date Filed:* November 26, 1999.

d. *Applicant:* Flambeau Hydro LLC.

e. *Name of Project:* Winter Hydroelectric Project.

f. *Location:* Partially within the Chequamegon National Forest, on the East Fork of the Chippewa River near the town of Winter, Sawyer County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Mr. Loyal Gake, Flambeau Hydro LLC, P.O. Box 167, Neshkoro, WI 54960 (920) 293–4628 Ext.12.

i. *FERC Contact:* Michael Spencer,*michael.spencer@ferc.gov*, or (202) 502–6093

j. Pursuant to section 4.34(b) of the Commission's Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991), the deadline for

filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance date of this notice. Reply comments are due 105 days from the issuance date of this notice.

The Commission directs, pursuant to section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. *Status of environmental analysis:* This application is ready for environmental analysis at this time.

l. *Description of Project:* The existing project consists of: (1) A 14-foot-high, 140-foot-long concrete stop log diversion dam (2) a 55 acre reservoir with a normal storage capacity of 300 area-feet, at a normal pool elevation of 1367.7 mean sea level; (3) a 2,100-foot-long power canal; (4) an 18-foot-wide concrete intake structure; (5) two 5.5-foot-diameter 78-foot-long steel penstocks; (6) a powerhouse containing two generating units with a combined capacity of 600 kW, and an average annual generation 2,130 MWh (7) a 700-foot-long tailrace; and appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

n. *Procedures schedule:* The Commission staff proposes to issue one Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intends to allow at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application. If any person or organization objects to the staff proposed alternative procedure, they should file comments as stipulated in item k above, briefly explaining the basis for their objection. The application will be processed according to the following schedule, but revisions to the schedule may be made as appropriate:

Issue Notice of availability of EA: April 2004.

Ready for Commission decision on the application: June 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00655 Filed 12–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

December 19, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project No:* 2210–098.

c. *Dates Filed:* November 10, 2003.

d. *Applicant:* Appalachian Power Company (APC).

e. *Name of Project:* Smith Mountain Pumped Storage Project.

f. *Location:* The project is located on the Roanoke River, in Bedford, Pittsylvania, Franklin, and Roanoke Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Teresa P. Rogers, Hydro Generation Department, American Electric Power, P.O. Box 2021, Roanoke, VA 24022–2121, (540) 985–2441.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 502–6182, or e-mail address: *heather.campbell@ferc.gov*.

j. *Deadline for filing comments and or motions:* January 20, 2004.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2210–098) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the (''e-Filing'') link. The Commission strongly encourages e-filings.

k. *Description of Request:* APC is requesting approval to permit Tilson Creations Inc. to install and operate within the project boundary two docks with a total of thirty-five covered stationary slips and 4 floaters. Construction would take place along the Roanoke River portion of the project at Grimes Creek in an area known as Timberlake Crossing. There is no dredging associated with the proposal.

l. *Location of the Application:* This filing is available for review at the

Commission in the Public Reference Room 888 First Street, NE., Room 2A, Washington, D.C. 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described applications. Copies of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00656 Filed 12–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Site Vist and Soliciting Scoping Comments

December 19, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2630–004.

c. *Date Filed:* June 27, 2003.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* Prospect Nos. 1, 2, and 4 Hydroelectric Project.

f. *Location:* On the Rogue River, Middle Fork Rouge River, and Red Blanket Creek in Jackson County, near Prospect, Oregon. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)–825(r).

h. *Applicant Contact:* Toby Freeman, Hydro Licensing, 825 NE Multnomah Avenue, Suite 1500, Portland, OR 97232, (503) 813–6208.

i. *FERC Contact:* Nick Jayjack at (202) 502–6073 or *nicholas.jayjack@ferc.gov.*

j. *Deadline for filing scoping comments:* February 23, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application is not ready for environmental analysis at this time.

l. The existing Prospect Nos. 1, 2, and 4 Hydroelectric Project consists of: (1) A 10-foot-high, 165-foot-long concrete gravity-type overflow diversion dam on the Middle Fork Rogue River; (2) a 10-foot-high, 1,160-foot-long concrete and earth-fill diversion dam on Red Blanket Creek; (3) a 50-foot-high, 384-foot-long concrete gravity diversion dam on the Rogue River; (4) a 260-acre-foot impoundment behind the North Fork diversion dam (the other two dams form minimal impoundments); (5) non-functional fishways at the Red Blanket Creek and Middle Fork Rogue River diversion dams; (6) a 9.25-mile-long water conveyance system composed of gunite-lined canals (24,967 feet), unlined earthen canals (4,426 feet), open-top woodstave flumes (6,609 feet), woodstave flow lines (7,139 feet), and steel penstocks (1,796 feet); (7) three powerhouses with a combined installed capacity of 41,560-kilowatts; (8) three 69-kilovolt (kV) transmission lines (0.26, 0.28, and 0.31 miles in length) and one 2.3-kV transmission line (0.6 miles in length); (9) a developed recreation area known as North Fork Park; and (10) appurtenant facilities. The applicant is proposing certain non-power resource enhancements. The applicant estimates that the total average annual generation is 280,657 megawatt-hours. Power from the project serves the applicant's residential and commercial customers in the communities of northern Jackson County and southern Douglas County, Oregon.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Scoping process.

The Commission intends to prepare an Environmental Assessment (EA) for the proposed project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

Commission staff will conduct two scoping meetings. An evening meeting will focus on public input and a second, daytime meeting will focus on agency,

Indian tribe, and non-governmental organization input. All interested individuals, organizations, agencies, and Indian tribes are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Evening Scoping Meeting

Date: Wednesday, January 21, 2004.
Time: 7 p.m. to 9 p.m.
Location: Reston Hotel and Convention Center, 2300 Crater Lake Hwy., Medford, Oregon.

Daytime Scoping Meeting

Date: Thursday, January 22, 2004.
Time: 1 p.m. to 3 p.m.
Location: Reston Hotel and Convention Center, 2300 Crater Lake Hwy., Medford, Oregon.

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EA were distributed to parties on the Commission's mailing list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link (see item m above).

Site Visit

PacifiCorp and Commission staff will conduct a project site visit beginning at 8 a.m. on Thursday, January 22, 2004. If you would like to attend the site visit, please RSVP Arianne Poindexter, PacifiCorp at (503) 813–5513 by January 16, 2004. We will assemble at the Prospect Nos. 1, 2, and 4 Operator Office/Warehouse located at 1111 Mill Creek Drive, Prospect, Oregon. All participants will be responsible for their own transportation to the designated meeting site.

Objectives

At the scoping meetings, staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially empirical data, on the resources at issue; (3) encourage statements from participants on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that do not require a detailed analysis.

Procedures

The meetings will be recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, agencies, and Indian tribes with environmental expertise and concerns are encouraged to attend the meetings and to assist Commission staff in defining and clarifying the issues to be addressed in the EA.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00658 Filed 12–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Technical Conference on Supply Margin Assessment Screen and Alternatives

December 19, 2003.

Conference on Supply Margin Assessment (Docket No. PL02–8–000); AEP Power Marketing, Inc., AEP Service Corporation, CSW Power Marketing, Inc., CSW Energy Services, Inc., and Central and South West Services, Inc. (Docket Nos. ER96–2495–016, ER97–4143–004, ER97–1238–011, ER98–2075–010, and ER98–542–006 (Not consolidated)); Entergy Services, Inc. (Docket No. ER91–569–018); Southern Company Energy Marketing L.P. (Docket No. ER97–4166–010).

1. Take notice that a technical conference will be held on January 13 and 14, 2004, from 9:30 a.m. to 4 p.m. in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC. As discussed below, the goal of the technical conference is to discuss modifications or alternatives to the Supply Margin Assessment (SMA) interim generation market power screen and related mitigation measures announced in *AEP Power Marketing, Inc., et al.*, 97 FERC ¶ 61,219 at 61,969 (2001), *reh'g pending* (SMA Order). One or more of the Commissioners may participate in the conference. Additional details about the conference and a conference agenda will be provided in a subsequent notice.

2. In the SMA Order, the Commission announced a new market power screen for generation, the SMA, to be applied to market-based rate applications on an interim basis pending a generic review of new methods for analyzing market power and established mitigation measures applicable to entities that fail the SMA screen.[1] In a Notice Delaying Effective Date of Mitigation and Announcing Technical Conference, issued on December 20, 2001, the Commission deferred the date by which the companies in the above-captioned proceedings or any other public utilities failing the SMA screen must implement the mitigation for spot market energy sales set forth in the SMA Order, and announced its intention to hold a technical conference open to all interested persons, not only parties to the dockets captioned in the SMA Order.

3. On August 23, 2002, the Commission issued a notice establishing Docket No. PL02–8–000, Conference on Supply Margin Assessment, to provide an opportunity for all interested persons to comment. In preparation for the technical conference, the Commission invited all interested persons to submit written comments regarding the SMA screen and related mitigation measures. Those comments were filed on October 22, 2002.

4. In an effort to address concerns raised by commenters regarding the SMA screen and the price mitigation measures contained in the SMA Order, the Commission asked staff to prepare a staff paper identifying possible modifications or alternatives to both the SMA screen and price mitigation measures (such staff paper is set forth in the Attachment to this notice) and to hold a technical conference on these issues. In preparation for the technical conference, the Commission invites all interested persons to submit written comments on the staff paper no later than January 6, 2004. All comments should include an executive summary; the summary shall not exceed five pages. To conserve time and avoid unnecessary expense, persons with common interests or views are encouraged to submit joint comments.

5. Persons interested in participating in the technical conference should be prepared to discuss the proposals in the staff paper. In addition, we encourage interested persons to propose alternative approaches and demonstrate why any such alternatives are improvements to the SMA screen/mitigation measures and the proposals contained in the staff paper. Those proposing alternative approaches, either in their comments or at the conference, should address how their proposal meets data accessibility issues as well as the timing constraints the Commission faces in having to act upon many market-based rate filings within a 60-day statutory period. Finally, persons interested in participating in the technical conference should indicate what principles the Commission should apply in modifying

[1] SMA Order, 97 FERC ¶ 61,219 at 61,967.

the SMA, such as what the generation dominance screen should measure, how rigorous the screen should be (*e.g.,* should it examine annual peak or monthly peak), how to factor in internal or external transmission constraints, and whether to look at installed capacity or uncommitted capacity.

6. As noted above, the SMA screen and related mitigation measures were designed as an interim measure for analyzing generation market power pending a generic review of new methods for analyzing markets and market power. The Commission has stated that it intends to launch a generic rulemaking proceeding to address other aspects of its market-based rate program.[2] The purpose of the technical conference will be to pursue what changes, if any, should be made to the SMA screen and to the mitigation measures applicable to entities failing the screen so that the interim screen for generation market power can be finalized and implemented (with mitigation measures where appropriate). Thus, the upcoming conference will be limited to a discussion of the alternative interim screens and mitigation measures.

7. Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646), for a fee. They will be available for the public on the Commission's e-Library two weeks after the conference. Additionally, Capitol Connection offers the opportunity for remote listening of the conference for a fee. Persons interested in this service should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on ''FERC.''

8. For more information about the conference, please contact Kermit Banks at 202–502–8217 or *Kermit.Banks@ferc.gov*.

Filing Requirements for Paper and Electronic Filings

9. Comments, papers, or other documents related to this proceeding may be filed in paper format or electronically. However, the Commission strongly encourages electronic filings. Those filing electronically do not need to make a paper filing.

10. For paper filings, the original and 14 copies of the comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to the above-referenced Docket Nos.

11. Documents filed electronically via the Internet must be prepared in MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *www.ferc.gov*, click on ''E-Filing'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments. User assistance for electronic filing is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

12. All written comments will be placed in the Commission's public files and will be available for inspection at the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, during regular business hours.

Magalie R. Salas,

Secretary.

Attachment—Staff Paper Technical Conference on Supply Margin Assessment Screen and Alternatives

This paper sets forth Staff options for the Supply Margin Assessment (SMA) or alternative interim generation market power screen in electricity markets, and the appropriate mitigation to impose on those that fail the adopted screen. This paper is intended to serve as a focus for discussion at an upcoming technical conference that will be held on these matters. Staff stresses that the focus of this paper, and of the upcoming technical conference, is the appropriate interim generation market power screen, which is only one prong of the Commission's four-part test in reviewing applications for market-based rates, which examines: (1) Generation (horizontal) market power; (2) transmission (vertical) market power; (3) other barriers to entry; and (4) affiliate abuse. As the Commission has previously stated, it intends to initiate a generic rulemaking proceeding on potential new analytical methods for assessing markets and market power.[3] Thus, the Commission would be positioned to address all aspects of its market-based rate program as part of the generic rulemaking proceeding, while the focus of this paper and technical conference is on just one aspect of that market-based rate program.

In the SMA Order, the Commission announced a new generation market power screen, the Supply Margin Assessment (SMA), to be applied to market-based rate applications on an interim basis pending a generic rulemaking proceeding. Since the markets were evolving, the Commission felt its test for generation market power should also evolve. The SMA screen was to be applied to all sales other than those in independent system operator (ISO) or regional transmission organization (RTO) markets with Commission-approved market monitoring and mitigation.

In a Notice Delaying Effective Date of Mitigation and Announcing Technical Conference, issued on December 20, 2001, the Commission deferred the date by which the companies in the above-captioned proceedings or any other public utilities failing the SMA screen must implement the mitigation for spot market energy sales set forth in the SMA Order, and announced its intention to hold a technical conference open to all interested persons, not only parties to the dockets captioned in the SMA Order.

On August 23, 2002, the Commission issued a notice establishing Docket No. PL02–8–000, Conference on Supply Margin Assessment, to provide an opportunity for all interested persons to comment. In preparation for the technical conference, the Commission invited all interested persons to submit written comments regarding the SMA screen and related mitigation measures. Those comments were filed on October 22, 2002. Concerns expressed in the comments regarding the SMA screen included the conditions and factors that impact available supply when implementing the SMA screen (*e.g.,* the generation capacity of an applicant that is used to meet native load, pre-existing wholesale contractual obligations, and operating reserves). Commenters also expressed concern about the mitigation measures and their implementation, such as spot market energy sales mitigation. They objected to the split-the-savings requirement and argued that requiring the posting of incremental/decremental cost information would be ineffective and harmful to the competitive market.

In an effort to address concerns raised by commenters regarding the SMA screen and the price mitigation measures contained in the SMA Order, and to provide a framework for the technical conference, the Commission asked Staff to prepare a paper identifying possible modifications or alternatives to both the SMA screen and price mitigation measures.

The purpose of this paper is to outline Staff's current thinking on potential interim generation market power screens and methods for mitigation. While Staff is not recommending one screen over another or a mitigation method over any other, Staff is seeking comments and welcomes suggestions from commenters and technical conference participants.

Persons interested in participating in the technical conference should be prepared to discuss the proposals in this staff paper, and to propose alternative approaches and why any such alternatives are improvements to the SMA screen/mitigation measures and the proposals contained herein.

I. SMA Screen and Mitigation

SMA Screen

The SMA screen as adopted by the Commission in the SMA Order assesses whether an applicant has generation market power. In determining the geographic market, the SMA considers transmission constraints into the applicant's respective control area(s).

[2] SMA Order, 97 FERC ¶ 61,219 at 61,967.

[3] *See AEP Power Marketing, Inc., et al.*, 97 FERC ¶ 61,219 at 61,967 (2001) (SMA Order).

In determining the size that triggers generation market power concerns, the SMA establishes a threshold based on whether an applicant is pivotal in the market, *i.e.*, whether at least some of the applicant's capacity must be used to meet the market's peak demand. An applicant will be pivotal if its capacity exceeds the market's surplus of capacity above peak demand—that is, the market's supply margin. Thus, an applicant will fail the SMA screen if the amount of its capacity exceeds the market's supply margin.

In applying the SMA screen, the control area market where the applicant is located is first considered. Next, the markets directly interconnected to the applicant's control area market are considered. An applicant will pass the screen if it or its affiliates own or control an amount of generation located in a control area which is less than the supply margin (generation in excess of load) in the control area. The margin will include the amount of generation that can be imported into the control area limited by the total transfer capability (TTC) of the transmission system (*i.e.*, the lesser of uncommitted generation capacity or TTC).[4] Under the Commission's current policy, market-based rate applicants are allowed to sell at market-based rates into any control area where they pass the screen.

All sales, including bilateral sales, into an ISO or RTO with Commission-approved market monitoring and mitigation (PJM, ISO–NE, NYISO, and CAISO) are currently exempt from the SMA and, instead, are governed by the specific thresholds and mitigation provisions approved for the particular markets. At the technical conference, Staff invites comments on whether this exemption should be continued.

Mitigation for Those Failing the SMA Screen

In the SMA Order, the Commission stated that the primary tools for exercising generation market power are physical and economic withholding. To prevent physical withholding, the Commission required that an applicant who fails the SMA screen offer uncommitted capacity (*i.e.*, generation in excess of each hourly projected peak load and minimum required operating reserves) for spot market sales in the relevant market. To prevent economic withholding, this uncommitted capacity would be priced using a split-the-savings formula.[5] The Commission required that an applicant implement split-the-savings pricing for spot market sales and purchases.[6]

The Commission reasoned that applying mitigation to spot market transactions will also result in mitigation of generation market power in longer term (forward) markets by creating a kind of competitive ''standard offer'' service for customers. If sellers attempt to charge excessive, non-competitive prices in forward markets, customers can avoid them by waiting to purchase in the real-time market. This puts market pressure on sellers to offer competitive prices in the forward markets. And when sellers offer competitive forward prices, many buyers will prefer to purchase in the forward markets in order to gain price certainty. Staff invites comments on the reasonableness of this assumption at the conference.

In the SMA Order, the Commission also imposed additional mitigation on applicants failing the screen. The Commission established mitigation for the size of a pivotal supplier (the Commission required that when a transmission provider performs a study pursuant to a request for interconnection, an unaffiliated entity may request that the output of its proposed project be modeled for study purposes to serve load within the control area in which it is located, without having to formally designate a particular load or without having to be selected as a designated network resource at the time of interconnection). In addition, to address concerns regarding residual transmission market power, the Commission required that the parties to the SMA Order employ an independent third party to operate and administer their OASIS sites. (*See* 97 FERC at 61,973).

II. Possible Revisions to the SMA Screen

Many commenters were critical of the SMA screen. In particular, some commenters claimed that the SMA screen overstates the amount of an applicant's capacity that is available to the wholesale market by including capacity committed to serve native load and pre-existing contract obligations as well as operating reserves set aside to meet regional reliability requirements. Other commenters raised concerns on the use of TTCs to determine import capability, since they claimed that TTCs may overstate transmission availability, thereby overstating the size of the geographic market to the benefit of market-based rate applicants. Some commenters objected that the SMA passes/fails applicants by using a bright-line standard which is overly narrow because it evaluates one hour's supply and demand, thereby neglecting to recognize non-peak generation market power or the lack thereof.

In response to these comments, Staff has identified for purposes of discussion at the technical conference two general methodologies for assessing generation market power that would constitute modifications to the interim SMA screen as announced in the SMA Order: Pivotal Supplier and Market Share.[7] Among the improvements Staff recommends are that the interim screen should recognize planned generation outages when calculating capacity under the pivotal supplier and market share models discussed below. In addition, Staff recommends that State and Regional Reliability Council operating requirements for reliability (*i.e.*, operating reserves) should be used when calculating capacity in both the pivotal supply and market share screens discussed below.

Staff continues to propose the use of TTCs in applying the interim SMA screen. However, Staff seeks comment on viable alternatives (*i.e.*, flexibility to consider historical firm transactions, losses, and transmission reserve margins affecting available transfer capability). In particular, Staff seeks comment on how much transmission capacity should be included in the analysis where transmission providers (whose control over transmission has not been transferred to an RTO or ISO) calculate the capacity and also participate in generation markets. There are also transmission and other operating constraints inside the control area being evaluated, such that some generators are not able to run to their maximum rated capacity. What percent of these generators' capacity should be included as participating in the market?

Also, to address the commenters' concerns as to the SMA's over reliance on system peak data, options discussed below propose to measure generation market power on a monthly basis. However, Staff solicits the input of technical conference participants as to how the Commission can obtain the data to make such monthly measurements practicable. Migrating to a monthly measurement using the proposed models will require collecting applicant and relevant control area supply and demand monthly information. Monthly data for the supply and the demand for control areas and applicants cannot presently be gathered from a single source. Although supply data could be obtained from the FERC Form No. 714, private or industry data services, and OASIS information, and demand data obtained from the FERC Form No. 714 and FERC Form No. 1, Staff would appreciate suggestions as to what current reporting requirements exist that include necessary data and what reporting requirements may need to be expanded to collect the data, if a monthly measurement is ultimately adopted.

In addition, some commenters contended that the SMA Order was flawed because it lacked clarity and explanation when defining the data that would be used. In response, Staff has developed definitions for the data used in the interim generation market power screens discussed below. These definitions are set forth in Appendix A and Staff seeks comment on the clarity and accuracy of these definitions.

[4] As the Commission explained in the SMA Order, the total amount of TTC is used as only a point of reference to establish the maximum amount of uncommitted generation supply, even though this amount of generation could not be simultaneously imported into an applicant's control area. The Commission stated in the SMA Order that intervenors will be allowed to present arguments on a case-by-case basis that another factor limiting import capability is appropriate, if warranted by the facts.

[5] A seller's incremental cost (the out-of-pocket cost of producing an additional MW) is compared with a buyer's decremental cost (the cost of not producing the last MW). The average of the incremental and decremental costs is the split-savings price. The details of how split-the-savings pricing was to be implemented are described in the SMA Order. *See* 97 FERC at 61,971–73.

[6] For purposes of this paper, spot market sales are intended to include only hourly transactions.

[7] Although several alternative screens were proposed by commenters (which are summarized below), Staff is not focusing on them at this time because of the intensive data requirements associated with these screens that would make them burdensome and costly for many applicants, and would be administratively difficult for Staff to review and perform in the 60-day statutory time period.

Possible Alternatives to SMA Screen

A. Pivotal Supply Screen—Capacity Surplus Index (CSI)

The CSI is a Pivotal Supplier screen that is a modified version of, and an alternative to, the SMA. Much like the SMA, the CSI continues the use of a pivotal supplier concept. However, unlike the SMA, rather than considering the applicant's capacity in relation to the supply margin, the CSI eliminates the applicant's capacity from the analysis entirely and only focuses on whether there is sufficient competing supply in the market to meet peak load.

An important refinement of the CSI over the SMA is that under the SMA, the applicant is assumed to have market power in all months if its installed capacity is higher than the supply margin (which is calculated based on the system's peak day). Rather than calculating the supply margin based on the system's peak day, the CSI incorporates monthly data and determines whether the applicant is a pivotal supplier on a monthly basis. With respect to the applicant's control area, the CSI calculation first computes the Control Area Competing Supply (all non-applicant installed capacity, minus planned outages in the control area, plus imports that are the lesser of Uncommitted Capacity or TTC). The Control Area Competitive Supply is then compared to the Control Area Peak Demand (which includes operating reserves). If the Competitive Supply exceeds the Control Area Demand, then the applicant passes the CSI screen. In other words, if there is sufficient competing supply to meet peak load, the applicant passes the CSI; otherwise, it fails. A similar analysis is computed for markets directly interconnected to the applicant's control area market.

Under the CSI, an applicant may be found to be a pivotal supplier in one or more months and found not to be pivotal in other months. The CSI would only impose price mitigation on the applicant in the season(s) in which it was found to be a pivotal supplier.[8] For example, if an applicant is found to be a pivotal supplier (having the ability to exercise generation market power) during the months of July and August but not during the remaining months of the year, the CSI would impose price mitigation on the applicant only during the summer period (June through August).

B. Market Share Screens

Discussed below are two alternatives which incorporate a market share approach in determining whether an applicant has the ability to exercise generation market power. The Limited Competing Supplier screen assesses both installed and uncommitted capacity. The Wholesale Market Share screen only assesses uncommitted capacity.

Unlike the Pivotal Supplier concept which determines whether a seller's generation must run to meet peak load, Market Share Screens measure whether a seller has a dominant position in the market based on the number of megawatts of capacity owned or controlled, *i.e.*, is the applicant's control of the market excessive compared to competitive supplies. To the extent this is true, the applicant would have generation market power. Under the Market Share Screens, an applicant may be found to be dominant in the market in one or more months and found not to be dominant in the market in other months. Just like the CSI, the Market Share Screens would only impose price mitigation on the applicant in the season(s) in which it was found to be dominant in the market.[9]

1. Limited Competing Supplier Screen. This generation market power screen directly considers the impact of transmission constraints. As proposed, the Limited Competing Supplier Screen examines the applicant's installed and uncommitted capacity. Under this screen, available transmission (measured by TTC) will be factored in from OASIS sites and into the analysis of the applicant's market share of both installed and uncommitted capacity.

Under the installed capacity element of this screen, the applicant's market share is derived by dividing its installed capacity by the sum of the total installed capacity of all suppliers in that control area plus the generation that can be imported (as limited by TTC). Under the uncommitted capacity element of this screen, the applicant's market share is derived by dividing its uncommitted capacity [10] by the sum of the total uncommitted capacity of all suppliers in that control area plus the generation that can be imported (as limited by TTC).

If the applicant's market share is less than 20% for the month, applicant passes the generation market screen and would be authorized to sell at market-based rates. If the applicant's market share is greater than 35% [11] for the month, then applicant fails this generation market power screen. If the applicant's market share is between 20% and 35%, the Commission could consider other factors in granting/denying market-based rate authority (*e.g.*, transmission constraints). Staff seeks comments on what other factors the Commission should consider.

2. Wholesale Market Share (WMS). As noted above, the Limited Competing Supplier Screen examines the applicant's installed and uncommitted capacity. Many commenters were critical of using committed generation in determining market power. They contended that it is not possible for a utility to exercise market power over its regulated native load for two primary reasons: 1) state regulation removes the ability of a utility with significant native load responsibilities to exercise market power; and 2) a utility would lack any incentive to exercise market power from its regulated generation because its native load pays a regulated price.

An alternative generation market power screen that may address these concerns by more narrowly focusing dominance in the wholesale market is the Wholesale Market Share (WMS) screen. Like the Limited Competing Supplier Screen, this WMS screen would consider market share, but only for uncommitted capacity for the wholesale market. The intent of this model is to isolate the wholesale supply by first capturing the size of supply and demand for the entire relevant market, and then removing the supply serving retail demand and retail demand itself from the total (and the respective operating reserves.) This would isolate wholesale supplies and demand for a market share analysis. The WMS is calculated by measuring, on a monthly basis, an applicant's market share of uncommitted capacity relative to the market's total uncommitted capacity. Issues needing discussion at the technical conference are the ability of the applicant and vertically integrated utilities to segregate wholesale opportunity sales from retail sales and the reasonableness of seeking to isolate wholesale and retail supplies.

In the relevant geographic market for the WMS, an applicant's market share is determined by dividing the applicant's uncommitted capacity by that of the total uncommitted capacity in the relevant market. The applicant's uncommitted capacity is calculated by taking the applicant's total installed capacity (nameplate capacity plus firm purchases) less planned outages, native load, long-term sales, and operating reserves. An applicant's uncommitted capacity represents its control of resources available for wholesale trade within the relevant market. The relevant market's uncommitted capacity is determined by taking the total control area installed capacity, plus competing supplies which could be imported from adjacent control areas (such imports are assumed to be the lesser of uncommitted capacity or TTC), less peak load (native & long-term sales) and operating reserve margins.

Like the Limited Competing Supplier Screen, the WMS uses 20% to 35% pass/fail thresholds as discussed above.

III. Alternative Models Suggested by Commenters

Three commenters proposed alternative models to the SMA for consideration.

• Reliant proposed the Supply Duration Index (SDI). The SDI first calculates the sum of generation available from non-applicants, imported power, the applicant's committed forward contracts and new generation, and the applicant's existing uncommitted generation. Next, the SDI considers the firm load duration curve in percentage terms over the course of a year. For some period of time during the year, the sum of all available committed generation may be less than the firm load demanded. When this occurs, the SDI screen assumes that this firm load can

[8] Although the generation market screens are applied on a monthly basis, mitigation could be on a seasonal basis. These screens take a snap shot in time, therefore, the month in which companies pass/fail may vary (within the season). Accordingly, to capture the broader time period where market power may exist, seasonal mitigation could be adopted. *See* note 13.

[9] *See* note 13.

[10] Applicant's uncommitted capacity is calculated by taking the applicant's installed capacity (generation owned or controlled by applicant) less planned outages, native load, long-term sales, and operating reserves. The same type of calculation is used when determining the amount of uncommitted capacity of competitive supplies.

[11] A ceiling of 35% is consistent with the Department of Justice's safeharbor threshold, per the 1992 Horizontal Merger Guidelines, Section 2.211.

only be supplied by the applicant's uncommitted generation resources. This represents a time when the applicant may have the potential to exercise market power. While this model is interesting, the data needed to verify the applicant and control area information is not readily available (hourly data). However, in the alternatives discussed below, many of the aspects of the SDI (*i.e.*, pivotal supplier concept) have been incorporated.[12]

• CAISO proposed the Residual Supplier Index (RSI). The RSI determines if a supplier is pivotal during a specified set of hours or all hours, *i.e.*, without the applicant's supply the market demand cannot be met. Because applying a model down to the hour creates insurmountable data and administrative difficulties, this model is not practical. In particular, obtaining hourly data for markets outside of an organized market is not practical nor is monitoring such markets on an hourly basis. However, some of the critical concepts of the model have been incorporated into the Capacity Surplus Index (CSI) screen.[13]

• Lastly, Old Dominion Electric Cooperative proposed the Market Simulation Analysis. This modeling technique attempts to simulate market conditions using loadflow algorithms which identify parallel/looping power flows, and seasonal variations. While such models can identify load pockets, daily and seasonal variations, and may provide a more precise measure of generation market power, such models require extensive data from all market participants (including small merchants), could take up to 9 months or more to create, and it is unclear how such a model would be applied on a case-by-case basis. Accordingly, Staff does not consider this alternative to be viable as an interim generation market power screen.[14]

IV. Possible Revisions to the SMA Mitigation

With respect to the SMA mitigation measures, among other things, many commenters object to the spot market energy sales mitigation, and in particular to the split-the-savings requirement. Commenters also oppose as ineffective and harmful to the competitive market the requirement to post incremental/decremental cost information.

Set forth below are alternative mitigation approaches for discussion at the technical conference that address many of the concerns expressed by commenters. In each approach, Staff proposes that the mitigation being considered be applied seasonally.[15] If the applicant fails any month of a season, it would thus be mitigated for the entire season (but only that season).

In addition, to address some commenters' concerns, applicants that fail the screen, to the extent necessary, could be required to file incremental and decremental cost information only with the Commission on a confidential basis.

A. Traditional Cost-based Rate

This alternative would require mitigated sellers to have on file an up to rate or a cost-based rate for periods when they are mitigated. The cost-based rate could be based on an average cost of the units expected to run to meet peak demand with an annual revenue cap, or an average system or regionwide rate could be established.

B. Single Market Clearing Price

Under the single market clearing price approach, all transactions of the failing applicant would be executed at a single market clearing price instead of at multiple split-the-savings prices. The applicant would still be required to provide its own 24 hourly incremental and decremental energy costs by noon for the following trading day.[16] The incremental costs would represent offers to sell and the decremental costs would represent bids to buy energy during each hour of the trading day. All additional requests to purchase and offers to sell energy that are received by 6 p.m. for the following trading day would, in combination with the applicant's bids and offers, be used to determine a market clearing price for energy in each hour of the trading day. The market clearing price for any hour would be a price that corresponds to a total quantity of energy that just balances the accepted supply offers with the accepted purchase bids. That is, it is a price that is at least as great as any accepted supply offer and is no higher than any accepted purchase bid. It is also a price at which no entities whose bids and offers were not accepted would be willing to transact.

Appendix A—Data Definitions

The following definitions are recommended for use in the proposed generation market power screens.

Applicant's Peak Demand—Represents the largest electric power requirement (based on net energy for load) during a specific period of time, usually integrated over one clock hour and expressed in megawatts, for the Native Load and Firm Sales that the applicant has an ''obligation to serve''.

Applicant's Total Capacity—Represents the applicant's and their affiliate's installed generation nameplate capacity, adjusted for seasonal deratings, plus firm purchases.

Applicant's Uncommitted Capacity—This calculation takes the applicant's installed capacity and subtracts the applicant's planned outages and the peak demand and operating reserves; which then isolates the amount of capacity that is available for wholesale competition. The calculation follows:

Total Applicant Capacity (including imports)
—Planned Outages
—Peak Demand
—Operating Reserves
—Applicant Uncommitted Capacity

Control Area Peak Demand—For the control area, this represents the largest electric power requirement (based on net energy for load) during a specific period of time, usually integrated over one clock hour and expressed in megawatts, for the native load and firm sales that are under an ''obligation to serve''.

Control Area Uncommitted Capacity—This calculation takes the total control area capacity, adds imports and subtracts the planned outages and the peak demand and operating reserves; which then isolates the amount of capacity that is available for wholesale competition. The calculation follows:

Total Control Area Capacity
−Planned Outages
+Imports
−Peak Demand
−Operating Reserves
Control Area Uncommitted Capacity

Imports—The lesser of either the uncommitted capacity (Installed capacity less peak load and operating reserves) from each adjacent control area or the total transfer capability between each Adjacent Control Area.

Installed Capacity—Total generating resources (installed generation plus firm purchases).

Operating Reserves—Any operating reserves the applicant is required to carry by NERC regional reliability councils or by their state utility regulatory commissions to ensure system reliability. To accommodate this operating requirement, each applicant will submit and support the amount of operating reserves that are mandated.

Planned Outages—Refers to generators that are normally in an operating or stand-by status, but are derated or unavailable due to routine service or planned maintenance.

Relevant Geographic Market—The control area in which the applicant owns the bulk of its generation and the interconnected control areas adjacent to that control area.

Total Control Area Capacity—Total capacity capability for the control area, includes installed generation and firm purchases.

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BILLING CODE 6717–01–P

[12] Comments of Reliant Resources, Inc., pages 5–8.

[13] Comments of the California Independent System Operator Corporation, pages 13–18.

[14] Comments of Old Dominion Electric Cooperative, pages 8–10.

[15] The four seasons considered are: Summer (June/July/August); Fall (September, October, November); Winter (December/January/February), and Spring (March/April/May).

[16] In lieu of disclosing this information publicly, the mitigated applicant could be required to provide the Commission on a confidential basis with all relevant information that supports the clearing price.

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0004; FRL–7603–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Application for Experimental Use Permit (EUP) to Ship and Use a Pesticide for Experimental Purposes Only

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on December 31, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 29, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OPP–2003–0004, to (1) EPA online using EDOCKET (our preferred method), by email to *opp-docket@epa.gov*, or by mail to: (1) Public Information and Records Integrity Branch, Office of Pesticide Programs, Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Nancy Vogel, Field and External Affairs Division, 7506C, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: *vogel.nancy@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. The **Federal Register** document, required under 5 CFR 1320.8(d), soliciting comments on this collection of information published on February 26, 2003 (68 FR 8887). EPA received no comments on this ICR during the 60–day comment period.

EPA has established a public docket for this ICR under Docket ID No. OPP–2003–0004, which is available for public viewing at the Public Information and Records Integrity Branch, Office of Pesticide Programs, 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. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: Application for Experimental Use Permit (EUP) to Ship and Use a Pesticide for Experimental Purposes Only.

Abstract: The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires that before a pesticide product may be distributed or sold in the U.S., it must be registered by EPA. However, section 5 of FIFRA authorizes EPA to issue experimental use permits (EUPs) to allow companies to transfer, sell or distribute unregistered pesticide products labeled for experimental use for the purpose of gathering data necessary to support the application for registration. This information collection program is designed to provide EPA with data necessary to determine whether to issue an EUP under section 5 of FIFRA.

The information collected and reported under an EUP is a summary of that which is routinely submitted in connection with registration. The EUP allows for large scale field testing, if necessary in order to collect sufficient data to support registration. An EUP is not required if the person conducting the tests limits testing to laboratories or greenhouses; limited replicated field trials and other tests whose purpose is only to assess the pesticide's potential efficacy, toxicity or other properties, and does not expect to receive benefits in pest control.

The EUP applicant must submit information describing the who, what, where, when and how the experimental use permit will be used. Such information would include, but not limited to, the applicant's name and address, the proposed program, rate of applications, data (including identity of the chemical composition, toxicity, efficacy) and the proposed labeling for the product. This information from the applicant is necessary in order to grant and effectively monitor the EUP. A final report is submitted on the results of the experimental program which includes information such as: amount of the product applied; the crops or sites treated; any observed adverse effects; any adverse weather conditions which may have inhibited the program; the goals achieved; and the disposition of containers, unused pesticide material, and affected food/feed commodities.

In addition, applicants are required to use EPA Form 8570–17 (Application for an Experimental Use Permit to Ship and Use a Pesticide for Experimental Purposes Only), and EPA Form 8570–4 (Confidential Statement of Formula) for the EUP application.

The authority for this information collection is section 5 of FIFRA. Compliance regulations are contained in 40 CFR part 172. CBI submitted to EPA in response to this information collection is protected from disclosure under FIFRA section 10.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 10 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any

previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Pesticide registrants who wish to obtain an EUP to ship and use a pesticide for experimental purposes only.

Estimated Number of Respondents: 75.

Frequency of Response: As needed.

Estimated Total Annual Hour Burden: 757 hours.

Estimated Total Annual Cost: $64,950.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: December 12, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–32055 Filed 12–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0028; FRL–7603–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Emission Guidelines for Commercial and Industrial Solid Waste Incineration Units, EPA ICR Number 1927.03, OMB Control Number 2060–0451

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 29, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0028, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Mail Code 2223A, Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 19, 2003 (68 FR 27059), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). No comments were received.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0028, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search'', then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Emission Guidelines for Commercial and Industrial Solid Waste Incineration Units (40 CFR part 60, subpart DDDD).

Abstract: Emission Guidelines for Commercial and Industrial Solid Waste Incineration (CISWI) Units (40 CFR part 60, subpart DDDD), was promulgated on December 1, 2000. The emission guidelines require a one-time waste management plan, initial performance tests for ten pollutants, annual performance testing for particulate matter (PM), hydrogen chloride (HCl), and opacity, continuous operating parameter monitoring, annual operator training, and annual reporting. A deviation report is required if any of the emission limitations or operating limits are exceeded. The frequency of these activities was chosen by EPA as the period that will provide an adequate margin of assurance that affected facilities will not operate for extended periods in violation of the standards.

The regulation addresses information collection activities imposed by the Commercial and Industrial Solid Waste Incineration (CISWI) Unit Emission Guidelines, subpart DDDD. The guidelines do not apply directly to CISWI unit owners and operators. The guidelines can be thought of as ''model regulations'' that States use in developing State plans to implement the emission guidelines. If a State does not develop, adopt, and submit an approved State plan, the Environmental Protection Agency (EPA) must develop a Federal plan to implement the emission guidelines. In the event that a State's plan is not approved, then a Federal plan must be developed.

The information will be used by the designated Administrator's enforcement personnel to ensure that the requirements of the State (or Federal) plan are being implemented and are

complied with on a continuous basis. Specifically, the information will be used by the designated Administrator to: (1) Identify existing sources subject to the standards; (2) ensure that existing sources have a control plan to achieve compliance by the final compliance date; (3) ensure that subpart DDDD is being properly applied; (4) ensure that the emission standards are being complied with; and (5) ensure, on a continuous basis, that the operating parameters established during the initial stack test are not exceeded.

In addition, records and reports are necessary to enable the Designated Administrator to identify CISWI units that may not be in compliance with the standards. Based on reported information, the designated Administrator can decide which CISWI units should be inspected and what records or processes should be inspected at the CISWI unit. The records that CISWI units maintain would indicate to the designated Administrator whether the personnel are operating and maintaining control equipment properly and whether they have met the qualification requirements. In more than 95 percent of the cases, the enforcement of emission guidelines has been delegated to State air pollution control agencies. In such cases, the reports required by the standards will be submitted to the appropriate State agency, and not directly to the EPA. Thus, there is a minimal possibility for the duplication of information to State agencies and EPA. In those few cases where State agencies have not developed a State plan or requested delegation of the federal plan, Federal enforcement still requires information from the CISWI facility. The plant owner or operator may submit a copy of State or local reports to the Administrator in lieu of the report required by the standards, as specified in the General Provisions of 40 CFR part 60.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 262 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Commercial and Industrial Solid Waste Incineration Units.

Estimated Number of Respondents: 97.

Frequency of Response: Annually, Semi-annual and Initially.

Estimated Total Annual Hour Burden: 72,423 hours.

Estimated Total Annual Cost: $6,021,000, includes $87,000 annualized capital/startup costs, $12,000 annual O&M costs and $5,922,000 annual labor costs.

Changes in the Estimates: There is an increase of 63,278 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase was due to the implementation of the rules. In the active ICR, it was assumed that most of the burdens of the rule in conformity with the initial requirements, will not occur until years four or five of implementation of this rule, therefore, most of the respondent burden for those requirements is included in this renewal package.

There was no capital cost or operational and maintenance costs associated with the emission guidelines in the active ICR, therefore, the respondent burden for the active ICR is minimal, as compared to the renewal ICR.

Dated: December 17, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–32059 Filed 12–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0026; FRL–7604–1]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NSPS for Aluminum Sulfate Manufacture, EPA ICR Number 1066.04, OMB Control Number 2060–0032

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 29, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0026, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division (Mail code 2223A), Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number (202) 564–4113; fax number (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 19, 2003 (68 FR 27059), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2003–0026, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is: (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Title: NSPS for Ammonium Sulfate Manufacture (40 CFR part 60, subpart PP).

Abstract: The Administrator has judged that Particulate Matter (PM) emissions from ammonium sulfate manufacturing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare.

Owners or operators of ammonium sulfate manufacturing plants must make the following one-time-only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; and the notification of the date of the initial performance test. The recordkeeping requirements for ammonium sulfate plants consist of the occurrence and duration of all start-ups and malfunctions, the initial performance test results, amount of ammonium sulfate feed material, and the pressure drop across the emission control system. Records of startups, shutdowns and malfunctions will be noted as they occur. Records of the performance test should include information necessary to determine the conditions of the performance test, and performance test measurements (including pressure drop across the emission control system) and results. The Continuous Monitoring System (CMS) will record pressure drop across the scrubbers continuously and automatically.

In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information are estimated to average 31 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Ammonium sulfate manufacturing facilities.

Estimated Number of Respondents: 4.

Frequency of Response: Initially and semiannually.

Estimated Total Annual Hour Burden: 246 hours.

Estimated Total Annual Cost: $19,912, includes $0 annualized capital/startup costs, $0 annual O&M costs, and $19,912 labor costs. There are no annualized capital/startup costs and annual O&M costs associated with this ICR.

Changes in the Estimates: There is an increase in burden from the most recently approved ICR. The increase is an adjustment due to a revised hourly labor rate from the United States Department of Labor which resulted in an increase in burden over the next three-years of this ICR. A correction to the previous ICR was also made to include semiannual reporting as required by the general provisions to the standard.

Dated: December 17, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–32060 Filed 12–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[TRI–2003–0001; FRL 7532–1]

Toxic Chemical Release Reporting; Notice of On-Line Dialogue; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: This notice announces that EPA is extending the comment period for the stakeholder dialogue by 30 days until February 4, 2004. The comment period for this stakeholder dialogue was initially scheduled to close on January 5, 2004. Because of a request for additional time to gather and incorporate data into comments, the Agency is extending the comment period for 30 days. EPA has revised Appendix B of the Stakeholder Dialogue on Burden Reduction Options white paper to reflect the latest TRI data. Further, some of the data in those columns listed as percentages contained decimal values and have been corrected.

In addition, two new Tables have been added to Appendix B to show the impact on the number of forms and facilities affected by modifying the waste management activities included in the annual reportable amount threshold for Form A Certification Statement eligibility. The revised Appendix B has been posted as a separate document on the docket and on the TRI Web site. Instructions for participating in the on-line dialogue are posted at EPA's TRI Web site at *http://www.epa.gov/tri/programs/stakeholders/outreach.htm*.

DATES: Comments, identified by the docket control number TRI–2003–0001, must be received by EPA on or before February 4, 2004.

ADDRESSES: The Stakeholder Dialogue Paper will be accessible via the Internet at *http://www.epa.gov/tri/programs/stakeholders/outreach.htm*. Comments, identified by Docket ID No. TRI–2003–0001, may be submitted by these methods: electronically to EPA Dockets at *http://www.epa.gov/edocket* (EPA's preferred method) or the U.S. Government's online rulemaking Web site at *http://www.regulations.gov*; e-mailed to *oei.docket@epa.gov*; delivered to EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004; or mailed to Office of Environmental Information Docket, Mail Code: 28221T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC, 20460–0001. Follow the detailed instructions in Unit III.A. of the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Larry Reisman, Environmental Protection Agency, Office of Environmental Information, Office of Information Analysis and Access, Toxics Release Inventory Program Division; telephone number: (202) 566–0751; fax number: (202) 566–0727; e-mail: *reisman.larry@epa.gov*. For general information on the Toxics Release Inventory contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346 or (703) 412–9810, TDD (800) 553–7672, *http://www.epa.gov/epaoswer/hotline.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Notice Apply to Me?

You may be interested in this notice if you use data collected under EPCRA section 313, or if you manufacture, process, or otherwise use any of the EPCRA section 313 chemicals and you are required to report annually to EPA their environmental releases and other waste management quantities. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially interested entities
Public	Environmental groups, community groups, researchers.
Industry	SIC major group codes 10 (except 1011, 1081, and 1094), 12 (except 1241), 20 through 39, 4911 (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce), 4931 (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce), 4939 (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce), 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. section 6921 *et seq.*), 5169, 5171, or 7389 (limited to facilities primarily engaged in solvents recovery services on a contract or fee basis).
Federal Government	Federal facilities in any SIC code.

This table 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 the table could also be affected. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. How Can I Get Additional Information or Copies of Documents Associated With This Stakeholder Dialogue Process?

A. *Docket.* EPA has established an official public docket for this action under Docket ID No. TRI–2003–0001. The official public docket is the collection of materials that is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752.

B. Electronic Access. An electronic copy of the issue paper is available from EPA's TRI Web site at *http://www.epa.gov/tri/programs/stakeholders/outreach.htm*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/homepage/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EDOCKET. You may use EDOCKET at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in Docket ID No. ''TRI–2003–0001''. The stakeholder issue paper and the **Federal Register** notice announcing this stakeholder dialogue are also available on the EDOCKET.

Certain types of information will not be placed in the EDOCKET. 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 EDOCKET, 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 II.A.

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

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

For additional information about EPA's electronic public docket, visit EDOCKET online or *see* 67 FR 38102, May 31, 2002.

III. What Does This Notice Do?

This notice announces that EPA is extending the comment period for the stakeholder dialogue by 30 days until February 4, 2004. The comment period for this stakeholder dialogue was initially scheduled to close on January 5, 2004. Because of a request for additional time to gather and incorporate data into comments, the Agency is extending the comment period for 30 days. EPA has revised Appendix B of the Stakeholder Dialogue on Burden Reduction Options white paper to reflect the latest TRI data. Further, some of the data in those columns listed as percentages contained decimal values and have been corrected. In addition, two new Tables have been added to Appendix B to show the impact on the number of forms and facilities affected by modifying the waste management activities included in the annual reportable amount threshold for Form A Certification Statement eligibility. The revised Appendix B has been posted as a separate document on the docket and on the TRI Web site.

A. How and To Whom Do I Submit Comments?

You may access the stakeholder dialogue issue paper, instructions for commenting on burden reduction options, and link to the electronic docket to submit and retrieve comments, from the TRI Stakeholder Outreach Web site at: *http://www.epa.gov/tri/programs/stakeholders/outreach.htm* during the time period specified in this notice.

Commenters are encouraged to use the TRI Stakeholder Outreach Web site to access the issue paper and the instructions for commenting on burden reduction options. The Outreach Web site also provides a link to the EDOCKET Web site for submission of comments and viewing of all comments submitted.

To assist in the organization of all comments received, commenters are asked to state in the beginning of their comments the specific burden reduction option(s) being addressed. If your comment addresses more than one of the options in the stakeholder paper, please indicate in the beginning of your comment the number associated with each of the options addressed. The stakeholder paper has 6 options. Option 6 requests comment on options not specifically discussed in the stakeholder paper. The stakeholder paper also requests comment on the ongoing Toxics Release Inventory—Made Easy (TRI–ME) software. If your comment addresses this software, please state in the beginning of your comment that it addresses ''TRI–ME.''

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

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

a. *EDOCKET.* Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. TRI–2003–0001. Please state in the beginning of the comment the specific burden reduction option(s) being addressed by the comment. 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.

b. *E-mail.* Comments may be sent by electronic mail (e-mail) to *oei.docket@epa.gov,* Attention Docket ID No. TRI–2003–0001. Please state in the beginning of the comment the specific burden reduction option(s) being addressed by the comment. 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.

c. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit III.A.2. Please state in the beginning of the comment the specific burden reduction option(s) being addressed by the comment. These electronic submissions will be accepted in MS Word, WordPerfect, or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Office of Environmental Information Docket, Environmental Protection

Agency, Mail Code: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. TRI–2003–0001. Please state in the beginning of the comment the specific burden reduction option(s) being addressed by the comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004, telephone: 202–566–1744, Attention Docket ID No. TRI–2003–0001. Please state in the beginning of the comment the specific burden reduction option(s) being addressed by the comment. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit II.A.

B. 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. Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address only, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: OEI Document Control Officer, Mail Code: 2822T, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460. 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). The EPA will disclose information claimed as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2.

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

Dated: December 22, 2003.

Elaine G. Stanley,

Director, Office of Information Analysis and Access.

[FR Doc. 03–32057 Filed 12–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7603–6]

Intent To Grant Exclusive License

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to grant an exclusive license.

SUMMARY: Pursuant to 35 U.S.C. 207 and 37 CFR part 404, EPA hereby gives notice of its intent to grant an exclusive, royalty-bearing, revocable license to practice the invention described and claimed in the patent application listed below, all U.S. patents issuing therefrom, and all reexamined and reissued patents granted in the United States in connection with such patent application to Analytical Engineering, Incorporated of Columbus, Indiana. The patent application is:

U.S. Patent Application No. 10/306,044, entitled ''Exhaust Aftertreatment System and Method for an Internal Combustion Engine,'' filed November 27, 2002 and claiming priority from the first filed provisional application, filed November 29, 2001.

Normally, 37 CFR 404.7(a)(1) requires an agency to issue both a notice of availability of an invention for exclusive licensing, as well as a notice of intent to grant the exclusive license. However, EPA has authority under the same 37 CFR 404.7(a)(1) to proceed without a notice of availability when expeditious transfer of rights will best serve the interest of the Federal government and the public. Under that authority, EPA has decided not to issue a notice of availability of this invention for licensing. Analytical Engineering, Incorporated is co-owner by assignment from its employee inventors of an undivided interest in the invention. It is unlikely that any other party would be willing to take a license from EPA on a patent application or patent encumbered by co-ownership. Accordingly, EPA is relying on its authority under 37 CFR 404.7(a)(1) to proceed without such notice of availability.

The proposed exclusive license will contain appropriate terms, limitations and conditions in accordance with the limitations and conditions of 35 U.S.C. 209 and 37 CFR 404.5 and 404.7 of the U.S. Government patent licensing regulations.

EPA will negotiate the final terms and conditions and execute the exclusive license, unless within 30 days from the date of this Notice, EPA receives, at the address below, written objections to the grant, together with supporting documentation. The documentation from objecting parties having an interest in practicing the above patent application should include an application for an exclusive or nonexclusive license with the information set forth in 37 CFR 404.8. The EPA Patent Counsel and other EPA officials will review all written responses and then make recommendations on a final decision to the Director of the National Vehicle Fuel Emissions Laboratory, who has been delegated the authority to issue patent licenses under EPA Delegation 1–55.

DATES: Comments to this notice must be received by EPA at the address listed below by January 29, 2004.

FOR FURTHER INFORMATION CONTACT: Laura Scalise, Patent Attorney, Office of General Counsel (Mail Code 2377A), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 564–8303.

Dated: December 10, 2003.

Marla E. Diamond,

Associate General Counsel.

[FR Doc. 03–32058 Filed 12–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7604–5]

Air Quality Criteria for Particulate Matter (External Review Draft)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of drafts of chapters for public review and comment.

SUMMARY: On or about December 29, 2003, the National Center for Environmental Assessment (NCEA), within EPA's Office of Research and Development, will make available for public review and comment revised drafts of Chapters 7 and 8 of EPA's document *Air Quality Criteria for Particulate Matter,* which incorporate revisions made in response to earlier external review of those chapters. Under sections 108 and 109 of the Clean Air Act, the purpose of this document is to provide an assessment of the latest

scientific information on the effects of airborne particulate matter (PM) on the public health and welfare for use in EPA's current review of the National Ambient Air Quality Standards (NAAQS) for PM.

DATES: Comments on the draft chapters must be submitted in writing no later than January 31, 2004.

ADDRESSES: Send the written comments to the Project Manager for Particulate Matter, National Center for Environmental Assessment—RTP (B243–01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

A copy of the revised Chapters 7 and 8 of the *Air Quality Criteria for Particulate Mater* will be available on CD–ROM from NCEA–RTP. Contact Ms. Diane Ray by phone (919–541–3637), fax (919–541–1818), or e-mail (*ray.diane@epa.gov*) to request these chapters. Please provide the document's title, *Air Quality Criteria for Particulate Matter,* and the EPA numbers for each of the two revised chapters (EPA/600/P–99/002aE, EPA/600/P–99/002bE), as well as your name and address, to properly process your request. Internet users will be able to download a copy from the NCEA home page. The URL is *http://www.epa.gov/ncea/.* Hard copies of the revised chapters can also be made available upon request.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Elias, National Center for Environmental Assessment–RTP (B243–01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: 919–541–4167; fax: 919–541–1818; e-mail: *elias.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is in the process of updating and revising, where appropriate, its *Air Quality Criteria for Particulate Matter* as issued in 1996 (usually referred to as the ''Criteria Document''). Sections 108 and 109 of the Clean Air Act require that EPA carry out a periodic review and revision, where appropriate, of the air quality criteria (embodied in the Criteria Document) and national ambient air quality standards (NAAQS) for ''criteria'' air pollutants such as PM. Details of EPA's plans for the review of the NAAQS for PM were initially announced in a previous **Federal Register** noitce (62 FR 55201, October 23, 1997). EPA made a First External Review Draft of the updated *Air Quality Criteria for Particulate Matter* available for review by the Clean Air Act Scientific Advisory Committee (CASAC) and members of the public in October 1999 (64 FR 57884, October 27, 1999). Following that public review period and a meeting of the CASAC in December 1999 (64 FR 61875, November 15, 1999), EPA revised the document as appropriate to incorporate CASAC and public comments, as well as to reflect many new studies on the effects of PM that were not available in time for discussion in the First External Review Draft.

EPA then made a Second External Review Draft of the *Air Quality Criteria for Particulate Matter* available for CASAC and public review in April 2001 (66 FR 18929, April 12, 2001). Following that public review period and a second CASAC meeting in July 2001 (66 FR 34924, July 2, 2001), EPA again revised the document as appropriate to incorporate changes in response to CASAC and public comments and also made further revisions reflecting new studies on effects of particulate matter that had become available between issuance of the First and Second External Review Drafts.

EPA then made a Third External Review Draft of the *Air Quality Criteria for Particulate Matter* available for CASAC and public review in May 2002 (67 FR 31303, May 9, 2002). Following that public review period and a third CASAC meeting in July 2002 (67 FR 41723, June 19, 2002), EPA again revised the document as appropriate to incorporate revisions in response to CASAC and public comments and also made further revisions reflecting new studies on effects of particulate matter that had become available between issuance of the Second and Third External Review Drafts, as well as reanalyses of certain existing studies occasioned after discovery of problems with applications of statistical software.

EPA made a Fourth External review Draft available for CASAC and public review in June 2003 (68 FR 36985).A public meeting with CASAC was held August 25–26, 2003, during which CASAC reached closure on Chapters 1, 2, 3, 4, 5, and 6, with only relatively minor final revisions to be made. No further public review is requested on these chapters. However, CASAC did not reach closure on Chapters 7 (toxicology), 8 (human health), and 9 (integrative synthesis), each of which are to be more extensively revised or, in the case of chapter 9, to be significantly restructured.

EPA is now making revised drafts of Chapters 7 and 8 available for CASAC and public review. These two revised draft chapters will be reviewed by CASAC via a publicly accessible teleconference call in late January, 2004 (date and time to be announced in a subsequent **Federal Register** notice). Following that CASAC teleconference, Chapter 9 will be released for CASAC and public review at a public meeting in early March (date and site to be announced in a later **Federal Register** notice).

Dated: December 22, 2003.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 03–32054 Filed 12–29–03; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7604–4]

Neurotoxicity of Tetrachloroethylene (Perchloroethylene): Discussion Paper

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of discussion document and plans for conducting a consultation workshop on the Neurotoxicity of Tetrachloroethylene.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the availability of an External Review Draft entitled, ''Neurotoxicity of Tetrachloroethylene (Perchloroethylene): Discussion Paper'' (EPA/600//P–03/005A). EPA will accept public comments on the paper within 60 days of the date of this notice. The document was prepared by the EPA's National Center for Environmental Assessment (NCEA) within the Office of Research and Development.

This document serves as background material for an EPA-sponsored workshop designed to consult with neurotoxicologists about the potential adverse effects of perchloroethylene. Versar, Inc., an EPA contractor, will convene a panel of experts and conduct a one-day meeting to discuss the available information and related issues in evaluating the neurotoxic potential of perchloroethylene to humans under environmental exposure conditions. Details of the expert consultation meeting will be announced at a later date.

NCEA will consider the opinions of the individual consultants as well as the submitted written public comments in preparing an Integrated Risk Information System (IRIS) Toxicological Review of Tetrachloroethylene. The IRIS document, which will evaluate all health effects and will estimate population risks, will be peer-reviewed at a subsequent time.

DATES: The sixty-day public comment period begins December 30, 2003, and

ends March 1, 2004. Technical comments must be postmarked by March 1, 2004. An announcement of the date of the consultation meeting will be made in a forthcoming **Federal Register** (FR) notice.

ADDRESSES: The draft document is available primarily via the Internet on the National Center for Environmental Assessment's home page at *http://www.epa.gov/ncea* under the What's New and Publications menus. A limited number of paper copies are available from the Technical Information Staff, NCEA; telephone: 202–564–3261; facsimile: 202–565–0050. If you are requesting a paper copy, please provide your name, mailing address, and the document title. Copies are not available from the contractor.

Comments may be submitted electronically, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Technical Information Staff, National Center for Environmental Assessment; telephone: 202–564–3261; facsimile: 202–565–0050.

SUPPLEMENTARY INFORMATION:

I. How To Get a Copy of the Document and Submit Technical Comments

EPA has established an official public docket for this action under Docket ID No. ORD–2003–0014. 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 Office of Environmental Information (OEI) Docket in the Headquarters EPA Docket Center, (EPA/DC) EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket.

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.

You may submit comments electronically, by mail, by facsimile, or by hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' Late comments may be considered if time permits.

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

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. ORD–2003–0014. 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.

Comments may be sent by electronic mail (e-mail) to *ORDocket@epa.gov,* Attention: Docket ID No. ORD–2003–0014. 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.

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

If you provide comments in writing, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number

pages consecutively with the comments, and submit an unbound original and three copies.

In addition to submitting written comments on the discussion paper, you will also have an opportunity at the consultation workshop to ask the experts their opinions and/or clarification of each issue to be discussed at the workshop. Details of the workshop will be announced in a forthcoming **Federal Register** Notice.

II. Information on the Document

This discussion document and the consultation workshop of neurotoxicology experts are part of the preparation of an IRIS Toxicological Review of Tetrachloroethylene (Perchloroethylene, or perc) by NCEA. In a review of the published literature, NCEA has found that impairment of visual information processing and other adverse neurobehavioral effects have been observed in several studies of employees working in dry cleaning and metal degreasing facilities using perc. Two studies of people living near dry cleaning facilities have also shown neurological effects, and their exposures have been at lower concentrations than the occupationally exposed workers. The discussion document reviews the published reports of neurotoxic effects of perc in humans and animals and discusses the strengths and limitations of the evidence of neurotoxicity. NCEA decided to seek consultation of experts in neurotoxicology to get their opinions about whether these findings for perc and similar findings for other agents imply that perc exposure to the general population results in an appreciable risk of deleterious neurological effects.

Dated: December 22, 2003.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 03–32056 Filed 12–29–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 03–3105]

NPCR, Inc. d/b/a Nextel Partners Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau sought comment on the Nextel Partners Tennessee (Nextel Partners TN) petition. Nextel Partners TN seeks designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered in non-rural wire centers currently served by BellSouth and portions of the rural study area served by United Inter MT–TN (United).

DATES: Comments are due on or before January 9, 2004. Reply comments are due on or before January 23, 2004.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. *See* Supplementary Information for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Karen Franklin, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0494.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's public notice, CC Docket No. 96–45, released October 7, 2003. On June 12, 2003, NPCR, Inc. d/b/a Nextel Partners (Nextel Partners TN) filed with the Commission a petition under section 214(e)(6) of the Communications Act of 1934, as amended. In particular, Nextel Partners TN seeks designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered in those portions of Nextel Partners TN's licensed service area located in rural study areas in Tennessee currently served by BellSouth and United Inter MT–TN (United).

Nextel Partners TN contends that the Tennessee Regulatory Authority (TRA) does not regulate Commercial Mobile Radio Service and presents a letter from TRA acknowledging its lack of jurisdiction. Hence, according to Nextel Partners TN, the Commission has jurisdiction under section 214(e)(6) to consider and grant its petition. Nextel Partners TN also maintains that it satisfies all the statutory and regulatory prerequisites for ETC designation, and that designating Nextel Partners TN as an ETC will serve the public interest.

In accordance with § 54.207(c) of the Commission's rules, Nextel Partners TN requests that the Commission designate Nextel as an ETC in a service area defined along boundaries that differ from the incumbent rural local exchange carrier's study area boundaries. The service area requested by Nextel Partners TN for ETC designation partially covers United's study area. Nextel Partners TN requests a redefinition of United's rural service area so each wire center in United's study area is a separate service area. Nextel Partners TN intends to serve each proposed wire center in its entirety. Nextel Partners TN maintains that the proposed redefinition of service areas for ETC purposes is consistent with the factors to be considered when redefining a rural telephone company service area, as enumerated by the Federal-State Joint Board on Universal Service. (Joint Board). The Wireline Competition Bureau seeks comment on the Nextel Partners TN Petition.

The petitioner must provide copies of its petition to the TRA. The Commission will also send a copy of this public notice to the TRA by overnight express mail to ensure that the TRA is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments as follows: comments are due January 9, 2004 and reply comments are due January 23, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor,

Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Parties filing electronic media should be advised that the Commission released a public notice on August 22, 2003 providing new guidance for mailing electronic media.[1] In brief, electronic media should not be sent through USPS because of the eradiation process USPS mail must undergo to complete delivery. Hand or messenger delivered electronic media for the Commission's Secretary should be addressed for delivery to 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002, and other messenger-delivered electronic media should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

[1] *Reminder—Filing Locations for Paper Documents and Instructions for Mailing Electronic Media,* Public Notice, DA 03–2730 (rel. Aug. 22, 2003).

Federal Communications Commission.

Eric N. Einhorn,

Chief, Wireline Competition Bureau, Telecommunications Access Policy Division.

[FR Doc. 03–31969 Filed 12–29–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 94–129; DA 03–3832]

Joint Petition of Northeast Nebraska Telephone Company and Nebcom, Inc. and Petitions of Great Plains Communications, Inc. and the Nebraska Central Telephone Company for Waiver of the Requirement That a Local Exchange Carrier Verify Inbound Requests of Customers Who Want To Change to an Affiliated Interexchange Carrier

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seeks public comment on petitions filed requesting a waiver of the requirement that a local exchange carrier (LEC) verify the inbound carrier change request(s) when a customer seeks to switch to the LECs interexchange carrier affiliate.

DATES: Interested parties may file comments in this proceeding on or before January 2, 2004. Reply comments may be filed on or before January 20, 2004. Parties that may have already submitted comments in this proceeding need not resubmit those comments unless they choose to update them.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Nancy Stevenson, Consumer & Governmental Affairs Bureau, Policy Division at (202) 418–7039 (voice), or e-mail at *Nancy.Stevenson@fcc.gov.*

SUPPLEMENTARY INFORMATION: When filing comments, please reference CC Docket No. 94–129. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–B204, Washington, DC 20554.

Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted, along with three paper copies, to: Nancy Stevenson, Consumer & Governmental Affairs Bureau, Policy Division, 445 12th Street, SW., Room 4–C763, Washington DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly

labeled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 94–129, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Pursuant to section 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are subject to disclosure.

Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this *public notice* may 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.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (TTY). This *public notice* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/policy.*

Federal Communications Commission.

Nancy Stevenson,

(Acting) Deputy Chief, Policy Division, Consumer & Governmental Affairs Bureau.

[FR Doc. 03–31967 Filed 12–29–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Availability on Transforming Healthcare Quality Through Information Technology (THQIT)—Implementation Grants

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice of availability.

SUMMARY: This notices announces the availability of a Request for Applications (RFA) on Implementation grants to evaluate the effects of health information technology (HIT) on improving patient safety and quality of health care.

The objective of this RFA is to support organization and community-wide implementation and diffusion of HIT and to assess the extent to which HIT contributes to measurable and sustainable improvement in patient safety, cost and overall quality of care. Research resulting from this RFA should inform AHRQ, providers, patients, payers, policymakers, and the public about how HIT can be successfully implemented in diverse health care settings and lead to safer and better health for all Americans.

DATES: The following dates will assist the applicant in timing the development of his/her application:

• Technical Assistance (TA)—Respond by January 27, 2004. TA conference call date: January 29, 2004, at 1 pm e.s.t.

• Letter of Intent Receipt Date—Due to AHRQ February 6, 2004.

• Application Receipt Date—April 22, 2004.

ADDRESSES: The RFA was published on November 20, 2003, in the NIH Guide for Grants and Contracts (NIH Guide). This document is available at *http://www.ahrq.gov* (under Funding Opportunities) *or* at the NIH Guide, *http://grants.nih.gov/grants/guide/rfa-files/RFA-HS-04-011.html.*

More information on the TA, where to send your application, etc. is described in the RFA.

FOR FURTHER INFORMATION CONTACT: Scott Young, M.D., Center for Primary Care, Prevention, and Clinical Partnerships, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, MD 20850, Telephone: (301) 427–1580, FAX: (301) 427–1597, E-mail: *syoung@ahrq.gov.*

It is recommended you carefully review the RFA prior to attendance at the TA session.

SUPPLEMENTARY INFORMATION: With this notice potential applicants are informed that this RFA includes a cost sharing requirement. Specific details of the cost sharing component are included in the RFA.

This RFA uses the U01 Cooperative Agreement mechanism. The funds available for FY 04 for this RFA are up to $24 million. AHRQ intends to fund up to 48 new implementation grants with up to $14 million earmarked for rural and small hospitals. The project period for funded grants is up to three years.

Dated: December 17, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–31958 Filed 12–29–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and quality

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), the Agency for Healthcare Research and Quality (AHRQ) announces meetings of scientific peer review groups. The subcommittees listed below are part of the Agency's Health Services Research Initial Review Group Committee.

The subcommittee meetings will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to involve information concerning individuals associated with the applications, including assessments of their personal qualifications to conduct their proposed projects. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of Subcommittee:* Health Care Research Training.

Date: January 22–23, 2004 (Open from 8 a.m. to 8:15 a.m. on January 22 and closed for remainder of the meeting).

2. *Name of Subcommittee:* Health Care Technology and Decision Sciences.

Date: February 19–20, 2004 (Open from 8 a.m. to 8:15 a.m. on February 19 and closed for remainder of the meeting).

3. *Name of Subcommittee:* Health Research Dissemination and Implementation.

Date: February 23–24, 2004 (Open from 8 a.m. to 8:15 a.m. on February 23 and closed for remainder of the meeting).

4. *Name of Subcommittee:* Health Systems Research.

Date: February 26–27, 2004 (Open from 8 a.m. to 8:15 a.m. on February 26 and closed for remainder of the meeting).

5. *Name of Subcommittee:* Health Care Quality and Effectiveness Research.

Date: February 26–27, 2004 (Open from 8 a.m. to 8:15 a.m. on February 26 and closed for remainder of the meeting).

All the meetings above will take place at: AHRQ, John Eisenberg Building, 540 Gaither road, Conference Center, Rockville, Maryland 20850.

For Further Information Contact: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of the meetings should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Population, AHRQ, 540 Gaither Road, Suite 2000, Rockville, Maryland 20850, Telephone (301) 427–1554. Agenda items for these meetings are subject to change as priorities dictate.

Dated: December 22, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–31957 Filed 12–29–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04060]

Cooperative Agreement for Research on the Association Between Exposure to Media Violence and Youth Violence; Notice of Availability of Funds—Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for cooperative agreements to conduct methodologically sound research on how media violence affects youth violent behavior was published in the **Federal Register** on November 28, 2003, Volume 68, Number 229, pages 66829–66834. The notice is amended as follows:

On page 66833, Column 3, Line 4 in the first paragraph after the ''AR–25'' requirement, delete ''$250,000'' and replace with ''$500,000.''

Dated: December 19, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31835 Filed 12–29–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04053]

Practices To Improve Training Skills of Home Visitors; Notice of Availability of Funds-Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for cooperative agreement to conduct a systematic examination of the impact of home visitor training and factors related to the implementation of an existing efficacious or effective home visiting program on family outcomes of child maltreatment and risk behaviors for youth violence was published in the **Federal Register** on December 1, 2003, Volume 68, Number 230, pages 67171–67176. The notice is amended as follows: On page 67176, Column 1, Line 4, in the first paragraph after ''AR–25'' requirement, delete ''$250,000'' and replace with ''$500,000.''

Dated: December 19, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31834 Filed 12–29–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

HIV Prevention Projects for the Pacific Islands

Announcement Type: New.

Funding Opportunity Number: 04069.

Catalog of Federal Domestic Assistance Number: 93.943.

Key Dates:

Application Deadline: February 2, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under sections 301(a) and 317(k)(2) of the Public Health Service Act, 42 U.S.C., 241 and 247b(k)(2).

Purpose: The purpose of the program is to support HIV prevention projects in the U.S. Affiliated Pacific Island Jurisdictions. HIV prevention programs in these jurisdictions face unique challenges and circumstances. These jurisdictions often lack sufficient resources, program infrastructure, and technical support to fully implement a comprehensive HIV prevention program and to ensure that critical prevention program components are implemented and sustained. These island nations deal with many challenging dynamics that include reaching and supporting prevention activities in locations separated by vast expanses of ocean, highly mobile populations, a lack of primary health care providers and facilities, variable economic and social conditions, and the challenge of adequately managing the migration and movement of regional and international visitors and workers. This program addresses the Healthy People 2010 focus area of HIV infection.

The majority of HIV transmission is by persons unaware of their infection; one quarter of the people in the United States who are infected with HIV do not yet know they are infected. Knowledge of their HIV status would allow these people to receive the benefits of improved treatment and care, as well as ongoing prevention services that can help them avoid infecting others.

CDC is refocusing some HIV prevention activities to reduce the number of new HIV infections in the United States (''Advancing HIV Prevention: New Strategies for a Changing Epidemic—United States,'' MMWR 2003; 52(15): 329–332). This new initiative will put more emphasis on counseling, testing, and referral for the estimated 180,000 to 280,000 persons who are unaware of their HIV infection; partner notification, including partner counseling and referral services; and prevention services for persons living with HIV to prevent further transmission once they are diagnosed with HIV. In addition, since perinatal HIV transmission can be prevented, CDC is strengthening efforts to promote routine, universal HIV screening as a part of prenatal care. All of this will be accomplished through four strategies: (1) Making HIV screening a routine part of medical care; (2) creating new models for diagnosing HIV infection, including the use of rapid testing; (3) improving and expanding prevention services for people living with HIV; and (4) further decreasing perinatal HIV transmission.

Measurable outcomes of the program will be in alignment with the following performance goals for the National Center for HIV, STD and TB Prevention (NCHSTP):

1. Decrease the number of persons at high risk for acquiring or transmitting HIV infection by delivering targeted, sustained, and evidence-based HIV prevention interventions, including prevention of perinatal HIV transmission.

2. Increase, through voluntary counseling and testing, the proportion of HIV-infected people who know they are infected, focusing particularly on populations with high rates of undiagnosed HIV infection by: Incorporating HIV rapid and other test technology where applicable; reconfiguring counseling and testing resources to increase the efficiency of such services; increasing the number of providers who routinely provide HIV screening in health care settings; and increasing the number of partners who receive partner counseling, testing, and referral services.

3. Increase the proportion of HIV-infected people who are linked to appropriate prevention, care, and treatment services.

4. Strengthen the capacity of health department/ministry of health and community-based efforts to implement effective HIV prevention programs and to evaluate them.

To ensure quality programs and measure progress, applicants are required to report on a set of core program performance indicators appropriate for their program activities. (In this and other documents, these may also be referred to as core indicators, program indicators, performance indicators, or simply indicators). Each jurisdiction will set annual target levels of performance for each indicator.

Funded jurisdictions are accountable for achieving their target levels of performance. If a jurisdiction fails to achieve its target, CDC will work with the grantee to determine how to improve performance. CDC actions could include technical assistance, placing conditions or restrictions on the award of funds or, with chronic failure to improve, a reduction in funds.

Activities:

Awardee activities for this program are as follows: Recipients will implement a comprehensive HIV prevention program that includes the following components:

a. HIV prevention program planning and implementation using a formal process that involves meaningful community input and involvement

b. HIV prevention activities:

(1) HIV prevention counseling, testing, and referral services (CTR)

(2) Partner notification, including partner counseling and referral services (hereafter known as PCRS) with strong linkages to prevention and care services

(3) Prevention for HIV-infected persons

(4) Health education and risk reduction (HE/RR) activities

Information on HIV prevention methods (or strategies) can include abstinence, monogamy, *i.e.*, being faithful to a single sexual partner, or using condoms consistently and correctly. These approaches can avoid risk (abstinence) or effectively reduce risk for HIV (monogamy, consistent and correct condom use).

(5) Public information programs

(6) Perinatal transmission prevention

c. Evaluation of major program activities, interventions, and services, including data collection on interventions and clients served

d. Collaboration and coordination with other related programs

e. Laboratory support

f. Core HIV/AIDS epidemiologic and behavioral surveillance

g. Quality assurance

h. Capacity-building activities are a recommended component of a comprehensive HIV prevention program and should be implemented depending upon program needs and availability of resources.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

a. Provide consultation, technical assistance (TA), and support of capacity-building assistance in all aspects of grantee's comprehensive HIV prevention program, including (during the first year of this five-year project period) extensive support and assistance to design, develop, and implement a new model for HIV prevention planning and implementation that will incorporate community input and involvement

b. Work with grantees to assess training needs and provide training to managers, supervisors, and staff of CTR, outreach, or other prevention programs, either directly or through its network of TA providers and STD/HIV prevention training centers

c. Disseminate current information, including best practices, in all areas of HIV prevention; facilitate the adoption and adaptation of effective intervention models through workshops, conferences, and written materials; and provide TA in the development and evaluation of new or innovative prevention models

d. Develop intervention and program evaluation guidelines and program monitoring systems (including core program indicators)

e. Facilitate coordination of activities among other CDC-funded programs, health departments/ministries of health, community-based organizations (CBOs), national/international capacity-building assistance (CBA) providers, international governmental and non-governmental agencies and organizations, and care providers and recipients of Ryan White CARE Act funds

f. Monitor progress toward achieving target levels of performance for each core program indicator, provide feedback, and take appropriate steps when target levels of performance are not met

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year funds: 2004.

Approximate Total Funding: $1,624,005.

Approximate Number of Awards: 6.

Approximate Average Award: $270,667.

Floor of Award Range: $130,330.

Ceiling of Award Range: $541,759.

Anticipated Award Date: April 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by the six health departments/ministries of health of the United States Affiliated Pacific Island Jurisdictions: American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Guam, Republic of the Marshall Islands, and Republic of Palau.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

CDC will accept and review applications with budgets greater than the ceiling of the award range.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity use application form CDC 1246. Forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

You must submit a signed hard copy original and two copies of your application.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access: *http://www.dnb.com/AU/index.asp?event=countrymenu&country=au*

Or: *http://www.dunandbradsteet.com.*

You may call the Dun and Bradstreet Australia office at: 61 3 9828 3448.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

You must include a project narrative with your application forms. Your narrative must be submitted in the following format:

- *Maximum number of pages:* 50 pages. If your narrative exceeds the page limit, only the first pages, which are within the page limit, will be reviewed.
- *Font size:* 12 point unreduced;
- *Paper size:* 8.5 by 11 inches;
- *Page margin size:* one inch;
- Printed only on one side of page;
- Held together only by rubber bands or metal clips; not bound in any other way.
- The Program Announcement title and number must appear in the application.
- Sequentially number all pages in the application and attachments, and include a Table of Contents reflecting major categories and corresponding page numbers.
- Provide only those attachments directly relevant to this application.

Your narrative should address activities to be conducted over the entire project period.

The following information describes program requirements and asks you to describe, in your application, how you will address the requirements. This section also includes core program performance indicators that are required for specific program activities. These indicators will be used to help measure program performance. In your application, you are required to report on the base-line level for each indicator, as well as a one-year interim target and a five-year overall target level of achievement (a technical guide, CDC Technical Assistance Guidelines for Health Department HIV Prevention Program Performance Indicators, is available to assist you in understanding and responding to the core program performance indicators). In subsequent progress reports, you will be required to report on progress in achieving target levels of performance for each core program performance indicator.

If your HIV prevention program cannot currently carry out aspects of a required HIV program activity and, as a result, limits your ability to formulate core program performance indicator baselines and targets, please provide a detailed description of the current status of your jurisdiction's ability to implement that particular program activity. In addition, please also describe your jurisdiction's needs in terms of program capacity development or technical assistance to implement this required HIV program activity.

a. HIV Prevention Program Planning and Implementation Using Community Input and Involvement

(1) As part of activities covered under this announcement, grantees will work with CDC to create and implement a suitable model that has been specifically developed considering the existing HIV prevention capacity and resources in the Pacific. Most of the activities related to the development of this new model must occur during the first year of the five-year project period.

(2) Attend and participate in CDC sponsored and supported consultations and activities provided to develop and construct a new model for community involvement in HIV prevention program planning and implementation. These events will take place in the Pacific and in other locations, as well as through facilitated teleconferences and meetings. Ensure that adequate funds are provided to support the development of this new HIV prevention program planning and implementation model and that your program is sufficiently represented during all phases of the development process

(3) Once a model for community input and involvement has been developed and formalized, all funded grantees must ensure that this process is implemented and supported. Reporting and evaluation requirements regarding the implementation of this required component would be defined and clarified during the five-year project period.

In your application:

Describe your jurisdiction's current process for ensuring that community involvement and input is part of HIV prevention program planning and implementation. Describe barriers, challenges and limitations in the current process or model. Describe ideas or suggestions for a new model that might achieve or increase community involvement in HIV prevention program planning and implementation.

b. HIV Prevention Activities

There are two overall HIV prevention core program performance indicators. Specify a base-line level for the following two core program performance indicators:

- Indicator A.1: Number of newly diagnosed HIV infections;
- Indicator A.2: Proportion of HIV/AIDS cases 13–24 years of age diagnosed each year among all HIV/AIDS cases.

(1) HIV Counseling, Testing, and Referral (CTR) Services

All jurisdictions must provide counseling, testing, and referral services with a focus on diagnosing as many new cases of HIV as possible and implementing HIV CTR strategies that increase opportunities for HIV testing in populations at high risk for HIV infection.

(a) Provide HIV CTR services. These services must be consistent with CDC's most current HIV CTR guidelines (''CDC Revised Guidelines for HIV Counseling, Testing, and Referral,'' MMWR 2001, 50 [RR–19]; 1–58) and should be implemented in order to diagnose as many new HIV infections as possible.

(b) Provide opportunities for persons to receive anonymous HIV CTR services, unless prohibited by law or regulation.

(c) Ensure that appropriate HIV CTR services are provided in settings most likely to reach persons who are likely to be infected, but who are unaware of their status. Settings should include community outreach and other non-traditional sites. These services should include use of rapid and other test technologies (*i.e.*, oral fluid-based test technology), where applicable.

(d) Provide opportunities for high-risk individuals who test HIV-negative to receive appropriate and effective HIV prevention interventions and risk reduction counseling. Information on HIV prevention methods (or strategies) can include abstinence, monogamy, *i.e.*, being faithful to a single sexual partner, or using condoms consistently and correctly. These approaches can avoid risk (abstinence) or effectively reduce risk for HIV (monogamy, consistent and correct condom use).

(e) Ensure that clients receive test results, particularly those who test positive.

(f) Provide support (*e.g.*, financial, technical assistance, training, and coordination) to health care providers to increase the identification of HIV-positive persons through strengthening current CTR services or creating new services. Work with departments of corrections to encourage and, when appropriate, support routine voluntary HIV screening and referral in correctional facilities. Strengthen outreach into communities to increase the number of HIV infections diagnosed by increasing the number of high-risk persons participating in HIV counseling, testing, and referral services.

(g) Collect and report HIV CTR data as will be specified in the new Program Evaluation and Monitoring System (PEMS), including core program performance indicators. Report HIV CTR activities on a quarterly basis as specified in the Technical Reporting Section of this Announcement.

(h) Seek opportunities to integrate and enhance HIV CTR and STD services.

(i) Collect and report data that will provide useful and accurate information on the status and function of the HIV counseling, testing, and referral system. Ensure that there is sufficient capacity to collect and store electronic data and that data are secure.

In your application:

(a) Describe your plan to provide HIV CTR services, including:

- How you will establish or improve efforts to identify newly infected persons and to test persons most at risk for HIV.
- How you will improve the provision of test results (especially positive results).
- How you will expand the availability of HIV CTR services, especially in areas where testing is not currently available and where high-risk populations would seek testing.
- Your plan for providing referrals and tracking the completion of referrals for persons with positive test results.
- How you will provide HIV prevention interventions and risk reduction counseling for high-risk persons who have negative HIV test results.
- How you will work with medical care entities to encourage and support routine HIV screening in high prevalence settings.

(b) Specify a base-line level, one-year interim target, and five-year overall target level of performance for each of the following core program performance indicators:

- Indicator B.1: Percent of newly identified, confirmed HIV-positive test results among all tests reported by CDC-funded HIV counseling, testing, and referral sites.
- Indicator B.2: Percent of newly identified, confirmed HIV-positive test results returned to clients.

(2) Partner Counseling and Referral Services (PCRS)

All recipients must:

(a) Ensure that PCRS is a high priority within the jurisdiction's HIV prevention activities. These services must be consistent with the most current PCRS guidelines as found in HIV Partner Counseling and Referral Services Guidance (December 30, 1998).

(b) Provide PCRS for HIV-infected persons who have been tested anonymously or confidentially in CDC-funded sites. Ideally, PCRS should be offered to all persons with positive test results, regardless of where they were tested. Make a good faith effort to notify sexual or needle-sharing partners. PCRS efforts should be documented. Collaborate with the STD program and other health care providers to provide PCRS.

(c) Develop a plan to implement new techniques and approaches to increase PCRS, using such things as social networks and incentives.

(d) Collect and report PCRS data consistent with core data elements as will be specified in PEMS, including core program indicators.

In your application:

(a) Describe your current system for providing HIV Partner Counseling and Referral Services. Also describe your plan to provide PCRS for individuals who travel and migrate across jurisdictions within the Pacific, Hawaii, and the U.S. mainland, and how you will address the provision of PCRS for clients coming to or from non-health department/non-ministry of health settings.

(b) Specify a base-line level, one-year interim target, and five-year overall target level of performance for each of the following core program performance indicators:

- Indicator C.1: Percent of contacts with unknown or negative serostatus who receive an HIV test after PCRS notification
- Indicator C.2: Percent of contacts with a newly identified, confirmed HIV-positive test among contacts that are tested
- Indicator C.3: Percent of contacts with a known, confirmed HIV-positive test among all contacts

(3) Prevention for HIV-Infected Persons

All recipients must:

(a) Provide prevention services to persons infected with HIV/AIDS. These services could include individual or group HIV risk reduction and prevention counseling.

(b) Provide HIV risk reduction counseling to HIV-positive persons when they are given their test results, and continue to seek opportunities to provide HIV risk reduction counseling and interventions to HIV-positive individuals at intervals following the initial disclosure of test results.

Information on HIV prevention methods (or strategies) can include abstinence, monogamy, *i.e.*, being faithful to a single sexual partner, or using condoms consistently and correctly. These approaches can avoid risk (abstinence) or effectively reduce risk for HIV (monogamy, consistent and correct condom use).

(c) Work with primary care providers in the community that serve persons with or at risk for HIV to integrate HIV prevention services into care and treatment services.

(d) Collect and report data on prevention for HIV-positives, including core indicators, as will be specified in PEMS.

In your application:

(a) Describe your plan to provide prevention services for people living with HIV/AIDS. Describe how you will provide ongoing HIV risk reduction counseling and other interventions to HIV-positive persons.

(b) Describe how you will encourage primary care providers to integrate prevention and care services.

(4) Health Education and Risk Reduction Services (HE/RR)

This includes individual, group, community, and structural level interventions as well as outreach for high-risk seronegative and seropositive individuals.

All recipients must:

(a) Provide HE/RR services or fund providers that:

- Target those most at risk for transmitting or acquiring HIV infection.
- Implement interventions that are based on logic model, scientific theory, or have evidence of demonstrated or probable outcome effectiveness (see CDC's Compendium of HIV Prevention Interventions with Evidence of Effectiveness, 1999).
- Are carried out and directed by written procedures or protocols.
- Are acceptable to and understood by the target population, *i.e.*, they are culturally appropriate.

(b) Develop a plan for how you will work to establish or expand community capacity to provide, or assist the health

department or ministry of health to implement, HIV prevention interventions and activities.

(c) Collect and report data on HE/RR activities including core indicators as will be specified in PEMS.

In your application:

(a) Identify and list priority populations and the HE/RR activities and interventions that will be funded and carried out for each prioritized population in the first year of the five-year project period. This prioritization process should consider all epidemiologic data and other evidence that is known about HIV/AIDS in the jurisdiction, and ensure that HIV positive individuals are the priority for prevention efforts.

(b) Describe your plan to establish and develop community capacity to assist with or provide HIV prevention services and interventions. Identify any existing providers, by prioritized populations and interventions that are currently funded or will be funded in this project period.

(c) Specify base line, one-year interim target, and five-year overall target levels of performance for the following core program indicator:

• Indicator H.3: the mean number of outreach contacts required to get one person to access any of the following services: counseling and testing, STD screening and testing, individual level interventions (ILI), or group level interventions (GLI)

(5) Public Information Programs

All recipients must:

(a) Develop public information programs and campaigns based on local needs with the involvement and input of the community.

(b) Collect and report data on public information activities as will be specified in PEMS.

In your application:

Describe your plan to develop and carry out HIV prevention public information programs. Describe the basic approach and messages that will be developed, including how and where the information will be disseminated. Describe how you will collect and analyze information to determine the scope and reach of public information programs, and how you intend to evaluate program components in order to guide and adjust future activities. Complete this section only if you are requesting program funds to support public information programs.

(6) Perinatal Transmission Prevention

All recipients must:

(a) Work with all health-care providers to promote routine, universal HIV screening to all of their pregnant patients. The Department of Health and Human Services recommends that all pregnant women in the United States be tested for HIV infection (see ''Revised Recommendations for HIV Screening of Pregnant Women,'' MMWR 2001; 50 (RR19); 59–86 and ''Advancing HIV Prevention: New Strategies for a Changing Epidemic—United States,'' MMWR 2003; 52 (15); 329–332).

(b) Work with organizations, institutions and health care workers that provide prenatal and postnatal care for HIV-infected women to ensure that these women are receiving the appropriate HIV prevention counseling, testing, and therapies needed to reduce the risk of perinatal transmission.

In your application:

(a) Describe the current system of perinatal care that exists within the jurisdiction, including:

• Who provides the care.

• How this care is monitored and managed.

• How you will work with health care providers to promote routine, universal HIV screening to their pregnant patients.

• How you will work with organizations and institutions that provide prenatal and postnatal care for HIV-infected women to ensure that they are receiving the appropriate HIV prevention counseling, testing, and therapies needed to reduce the risk of transmission.

(b) Specify base-line level, one-year interim target, and five-year overall target levels of performance for the following core program indicator:

• Indicator D.1: Proportion of women who receive an HIV test during pregnancy.

c. Evaluation

All recipients must:

(1) Conduct program evaluation. Follow the requirements for the new Program Evaluation and Monitoring System (PEMS) that will be specified in a forthcoming HIV program evaluation guidance. PEMS will be developed and implemented during the course of this five-year project period.

(2) Collect and report data for the core program performance indicators and for HIV prevention activities as specified in this Program Announcement and in a forthcoming HIV prevention program evaluation guidance. Respond only to the indicators that are specifically noted and required in this Program Announcement. For each core indicator, provide the information as specified on the indicator reporting form (see CDC Technical Assistance Guidelines for Health Department HIV Prevention Program Performance Indicators and as posted on a CDC Web site).

(3) Describe current HIV program evaluation activities that address the following topics:

• How your jurisdiction will meet the minimum data requirements for counseling, testing, and referral.

• Your current system of data collection and reporting of HIV prevention activities, including data system specifications and data management information systems.

• Procedures for ensuring that data quality and data security are consistent with CDC guidelines.

For 2005 and beyond, develop and implement a comprehensive evaluation plan that includes all of the above elements and addresses issues to be specified in a forthcoming HIV prevention program evaluation guidance. This future evaluation plan should include the following:

• A system for collection of process monitoring data, including client-level information.

• Data entry into CDC's browser-based system or a local system that is compatible with CDC's requirements, as outlined in the most current evaluation guidance.

• Adherence to HIV program evaluation reporting requirements for community input and involvement in the HIV prevention program planning and implementation model and process that will be developed during the first year of the five-year project period.

(4) Identify the prioritized populations and prevention activities funded under this cooperative agreement.

(5) Collect and report data consistent with the CDC requirements to ensure client confidentiality and security.

(6) Use either the CDC data system or compatible local systems to report data electronically as specified in the most recent evaluation guidance.

In your application:

(1) Describe your evaluation of HIV prevention activities for the first year of the five-year project period.

(2) Provide copies of your local data collection instruments, local program evaluation and data management system functions and specifications, and any jurisdiction-wide uniform data reporting forms, if they exist.

d. Collaboration and Coordination

All recipients must:

Coordinate and collaborate with other Pacific Islands (especially those covered under this program announcement), agencies, organizations, and providers to strengthen HIV prevention and care activities and minimize duplication of

effort in the jurisdiction. Meaningful coordination and collaboration efforts are characterized by joint participatory planning to address common areas of service need; development of recommendations for program planning and implementation; development of relevant policy and/or legislative initiatives; identification of specific steps for furthering collaborative efforts within defined time-frames; and outcomes that reflect HIV prevention program goals. At a minimum, recipients are expected to coordinate and collaborate with the following:

(1) STD Prevention Programs

(a) Support efforts to identify persons with STDs that may facilitate the transmission of HIV infection.

• STD diagnosis is funded primarily through the STD prevention cooperative agreement. However, HIV prevention funds may be used to augment STD detection services if there is a documented opportunity to enhance HIV prevention efforts, *e.g.*, encourage and offer screening for syphilis in areas experiencing syphilis outbreaks.

• Funds may be used to underwrite the cost of STD treatment, as it relates to HIV prevention, only on a case-by-case basis, and only after approval by CDC.

• When feasible, HIV counseling and testing sites, including outreach settings, should offer STD diagnostic services and referrals for STD treatment.

(b) Whenever appropriate, incorporate STD prevention messages into HIV prevention messages.

(c) Collaborate with STD programs to provide PCRS.

(2) HIV/AIDS Care Programs

To ensure early treatment and coordinate health education and risk reduction services for HIV-positive individuals, jurisdictions are encouraged to collaborate with providers and planners of care services for persons living with HIV/AIDS, particularly those funded by the Health Resources and Services Administration (HRSA) through its Ryan White CARE Act programs. These programs include Title I Planning Councils; Title II consortia, Special Projects of National Significance, HIV/AIDS CBOs, and community groups; Title III Early Intervention Services Programs; and, Title IV Programs serving children, youth, women and their families. For a list of currently funded CARE Act Programs and for more information on the Ryan White CARE Act, please go to *http://hab.hrsa.gov/.*

(3) Other Programs

Collaboration and coordination should also occur with the following:

• Substance abuse prevention and treatment programs and other drug treatment or detoxification programs.

• Juvenile and adult criminal justice, correctional, and parole systems and programs.

• Hepatitis prevention programs—Support local efforts to integrate viral hepatitis services into existing public health programs serving persons at risk for multiple infections (including HIV, STDs, and hepatitis A, B, and C).

—When possible, HIV prevention services should include screening for hepatitis viruses, *e.g.*, hepatitis A and B in men who have sex with men (MSM) and hepatitis B and C in injection drug users, and provide or link those needing immunizations for hepatitis A and B to such services. HIV funds may be used for hepatitis testing, but not immunizations against hepatitis A or B.

—Collaborate with Hepatitis Coordinators in your jurisdiction to integrate services where feasible.

• TB clinics and programs.

• Public mental health departments and community mental heath centers.

• Family planning and women's health programs, including providers of services to women in high-risk situations.

• Educational agencies: Schools, boards of education, universities' schools of public health, and schools of nursing.

• Other community groups, businesses, and faith-based organizations.

In your application:

Describe your plans to collaborate and coordinate HIV prevention services and activities with the jurisdictions, programs and groups listed above. Also, describe the intended outcomes of your collaboration and coordination efforts, and your plan to strengthen these activities over the five-year project period.

e. Laboratory Support

All recipients should:

Use program funds to support the cost of HIV testing for specimens obtained via counseling and testing activities, including rapid tests and CD4 and viral load tests. Grantees must ensure that their testing laboratories provide tests of adequate quality, report findings promptly, and participate in a laboratory performance evaluation program for HIV 1 antibody testing. Grantees are encouraged to consider using a regional lab to maximize cost effectiveness and test quality. Jurisdictions should establish set protocols for the collection, maintenance, testing, tracking, and shipment of specimens that need laboratory confirmation. Grantees should develop and utilize testing methods and procedures that ensure the most effective testing outcomes. Grantees must ensure that adequate resources and supplies are available to ensure the safety of the blood supply in the jurisdiction. Jurisdictions are encouraged to consider the use of oral fluid-based and rapid HIV test kits.

In your application:

Briefly describe all laboratory support activities funded under this announcement. Describe your current or proposed methods for testing and confirmation of HIV and tell us also how you would expand testing options if laboratory capacity were enhanced and stabilized in the Region. Include in this description a detailed algorithm of how HIV tests are collected and processed, and how decisions are made to determine needs for confirmation.

f. HIV/AIDS Epidemiologic and Behavioral Surveillance

All recipients must:

(1) Respond to the surveillance data needs of HIV prevention program managers and planning bodies, including analysis, interpretation, and presentation of surveillance data; preparation of the epidemiologic profiles; and other reports for use in the support of the implementation and evaluation of HIV prevention activities. Although the Surveillance Cooperative Agreement can provide support to jurisdictions to meet surveillance needs, funds under this announcement may be used to help support unmet HIV/AIDS surveillance activities as described above. Funds may also be used to address data gaps or unmet state or local needs for supplemental surveillance, HIV incidence surveillance, or behavioral surveillance.

(2) Collaborate with surveillance programs to collect data needed for HIV incidence surveillance efforts.

(3) Collaborate with CDC for surveillance activities.

(4) For jurisdictions not yet reporting HIV or AIDS to CDC, determine the steps that are necessary to ensure that accurate, confidential and timely reporting of HIV and AIDS cases can be made to CDC.

In your application:

Describe any surveillance activities you expect to conduct with support provided through this program announcement. Complete this section

only if you are requesting program funds to support this activity.

g. Quality Assurance

Recipients should develop, implement, and maintain quality assurance plans in the following program areas:

(1) CTR and PCRS:

(a) Counseling—Conduct routine, periodic assessments to ensure that the counseling being provided includes the recommended, essential counseling elements. Quality assurance elements may include (but are not limited to) the following components: training and continuing education; supervisor observation with feedback to counselors; case conferences; counselor or client satisfaction evaluations; and periodic evaluation of space, flow, and time concerns.

(b) HIV Testing—Develop and implement a quality assurance system for all CTR and PCRS activities and providers, with special attention to ensuring that HIV-positive clients learn their test results. Develop and implement a quality assurance system for implementing HIV rapid testing.

(c) Referral—Develop and implement a mechanism for assessing the proportion of HIV-positive persons referred for additional services who complete their referrals. Review data and improve process as necessary.

(d) PCRS—Develop, implement, and maintain a system to assess the PCRS program and improve its function, *e.g.,* improving the percentage of persons who receive PCRS, the quality of PCRS interview sessions, and the successful notification of partners.

(2) Health Education and Risk Reduction (HE/RR) Activities:

(a) Develop and implement a mechanism to ensure HE/RR activities are appropriate, understandable and acceptable for the specific populations served.

(b) Develop and maintain a mechanism to ensure the consistency, accuracy, and relevance of information provided to the public through various information dissemination channels, including information about referral services.

(c) Develop or use standard procedures or protocols for interventions implemented by the health department/health ministry or by any subcontracted providers.

(d) Actively monitor services and programs provided by individuals or entities outside of the health department or health ministry. This activity will help to identify training and technical assistance needs and to ensure that interventions are implemented as planned and that program objectives are met.

(e) Use feedback from client satisfaction surveys or other evaluation tools to assess the services provided, including prevention services for people living with HIV/AIDS.

(3) Policies, Procedures, and Training

(a) Develop comprehensive written quality assurance policies and procedures to ensure that all HIV prevention activities are delivered in an appropriate, competent, consistent, and sensitive manner.

(b) Make quality assurance policies and procedures available to all program staff (health department/health ministry and any subcontracted providers).

(c) Deliver training to all staff providing HIV prevention activities, especially those staff providing CTR, PCRS, and HE/RR (health department/health ministry and subcontracted providers).

(d) Train all managers to ensure that quality assurance policies and procedures are followed (health department/health ministry and subcontracted providers).

(4) Data Collection—Develop, implement, and maintain a system to assess the quality of data collection:

In your application:

Describe your quality assurance efforts regarding HIV CTR, PCRS, HE/RR, public information campaigns, data collection, training, program procedures, and any other relevant programmatic areas for which you have quality assurance plans.

h. Recommended Program Activities

This section describes capacity building, a program component that is not required through this program announcement. However, capacity building is recommended to improve the overall quality of your HIV prevention program and should be implemented depending upon program needs and availability of resources. Capacity building activities are as follows:

(1) Conduct a capacity building needs assessment for the jurisdiction's health department/health ministry HIV prevention service providers and other prevention agencies/partners including community-based organizations. This assessment should look at the capacity to provide outreach testing, PCRS, and prevention for people living with HIV.

(2) Develop a comprehensive capacity-building plan based on the assessment.

(3) Provide capacity-building assistance, based on the needs assessment, to HIV prevention service providers, and other prevention agencies/partners. Create linkages with national and international capacity-building assistance providers (CBAs), where necessary and appropriate. Capacity-building assistance may include, but should not be limited to:

(a) Strengthening organizational infrastructure, including financial management and compliance with grant regulations.

(b) Enhancing the design, implementation, and evaluation of HIV prevention interventions.

(c) Developing community infrastructure.

(d) Developing and implementing a new model for HIV prevention program planning that utilizes community involvement and input.

(4) Provide capacity-building assistance to staff of health department/health ministry HIV prevention programs and other staff.

(5) Provide capacity-building assistance to establish or develop community-based agencies or organizations to provide outreach testing and PCRS, including the use of rapid tests.

(6) Increase the capacity of medical providers to provide routine HIV testing, including the use of rapid HIV tests.

(7) Provide capacity-building assistance to develop, pilot, and sustain prevention interventions for persons living with HIV/AIDS and other prioritized target populations.

In your application:

(1) Describe your capacity-building activities in the areas listed above.

(2) Discuss your plans to strengthen your capacity-building activities over the five-year project period of this program announcement.

(3) Discuss how you will assess (initially, as well as ongoing) capacity-building needs throughout the project period.

i. Additional Information To Be Addressed in the Application Content

(1) Other Activities

All recipients must ensure that appropriate health department/ministry of health staff attends CDC-sponsored meetings, *i.e.*, the National HIV Prevention Conference, the United States Conference on AIDS, and any mandatory training sessions addressing specific HIV prevention program requirements under this cooperative agreement.

In your application:

(a) Budget funds provided through this cooperative agreement for three persons to attend at least three CDC-

sponsored conferences or meetings each year. Also, for the first year of this project period, budget funds for meetings/activities related to the development of a new model for HIV prevention program planning and implementation.

(b) Describe any other planned travel or attendance at conferences or meetings not previously addressed.

(2) Summarize Unmet Needs

In your application:

Summarize any HIV prevention needs that will remain unmet even if the total application is funded. Provide an estimate of funds required to meet these needs.

(3) Management and Staffing Plan

All recipients must have the staff and infrastructure to implement the components of a comprehensive HIV prevention program for their jurisdiction. Recipients must maintain appropriate staffing to fulfill their responsibility to support programs and services provided directly by the health department/ministry of health or through community-based organizations or efforts; provide evaluation, and quality assurance; and support a community-driven process for HIV prevention program planning and implementation that will guide the disbursement and monitoring of funds.

In your application:

Describe your management and staffing plans to conduct or support the essential components of your comprehensive HIV prevention program. Please include an organizational chart that reflects the current management structure and a description of the roles, responsibilities, and relationships of all staff in the program, regardless of funding source. Identify the positions supported through this cooperative agreement and those funded through other sources, as well as any unfunded staffing needs.

j. Budget Information

In accordance with Form CDC 0.1246, *http://www.cdc.gov/od/pgo/forminfo.htm* (*http://www.cdc.gov/od/pgo/forms/01246.pdf*), provide a line item budget and narrative justification for all requested costs that are consistent with the purpose, objectives, and proposed program activities. Within this budget, please provide documentation for each cost category.

(1) Line item breakdown and justification for all personnel, *i.e.*, name, position title, annual salary, percentage of time and effort, and amount requested.

(2) Line item breakdown and justification for all contracts, including: (a) Name of contractor, (b) period of performance, (c) method of selection (*i.e.*, competitive or sole source), (d) description of activities, (e) target population and (f) itemized budget.

(3) Requests for any new Direct Assistance Federal assignees include:

- Justification for request.
- The number of assignees requested.
- A description of the position and proposed duties.
- The ability or inability to hire locally with financial assistance.
- An organizational chart and the name of the intended supervisor.
- The availability of career-enhancing training, education, and work experience opportunities for the assignee(s).
- Assignee access to computer equipment for electronic communication with CDC.

(4) Use of Funds/Funding Priorities: Funds may not be used to supplant other funds available for HIV prevention. Funds may not be used to provide direct patient medical care, *e.g.*, ongoing medical management and provision of medications.

(5) Carryover Funds: Carryover funds are available only from the previous 12-month budget period. Carryover funds are not available after the end of the five-year project period.

IV.3. Submission Dates and Times

Application Deadline Date: February 2, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This program announcement is the definitive guide on application format, content, and deadlines. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospect applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html*

IV.5. Funding Restrictions

Funds may not be used to supplant other funds available for HIV prevention. Funds may not be used to provide direct patient medical care, *e.g.*, ongoing medical management and provision of medications.

Funds may be used to underwrite the cost of STD treatment, as it relates to HIV prevention, only on a case-by-case basis, and only after approval by CDC.

HIV funds may be used for hepatitis testing, but not immunizations against hepatitis A or B.

Awards will not allow reimbursement of pre-award costs.

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two copies of your application by mail or express delivery service to: Technical Information management—PA# 04069, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria: You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the

''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation. Compliance with core program performance indicators will fulfill the above requirement.

Your application will be evaluated against the criteria listed below. All criteria are weighted equally.

1. HIV Prevention Program Planning and Implementation Using Community Input and Involvement

Does the applicant describe their jurisdiction's current process for ensuring that community involvement and input is part of HIV prevention program planning and implementation. Describe barriers, challenges and limitations in the current process or model. Describe ideas or suggestions for a new model that might achieve or increase community involvement in HIV prevention program planning and implementation.

2. HIV Prevention Activities

(a) Does the applicant describe their plan to provide HIV CTR, including:

- How the applicant will establish or improve efforts to identify newly infected persons and to test persons most at risk for HIV.
- How the applicant will improve the provisions of test results (especially positive results).
- How the applicant will expand the availability of HIV CTR services, especially in areas where testing is not currently available and where high risk populations would seek testing.
- Does the applicant have a plan for providing referrals and tracking the completion of referrals for persons with positive test results?
- How the applicant will work with medical care entities to encourage and support routine HIV screening in high prevalence settings.

(b) Does the applicant specify a base-line level, one-year interim target, and five-year overall target level of performance for each of the following core program indicators?

- Indicator B.1: Percent of newly identified, confirmed HIV-positive test results among all tests reported by CDC-funded HIV Counseling, testing, and referral sites.
- Indicator B.2: percent of newly identified, confirmed HIV positive test results returned to clients.

3. Partner Counseling and Referral Services (PCRS)

(a) Does the applicant describe their current system for providing HIV Partner Counseling and Referral Services? Also, do they describe their plan to provide PCRS for individuals who travel and migrate across jurisdictions within the Pacific, Hawaii, and the U.S. mainland, and how will they address the provision of PCRS for clients coming to or from non-health department/non-ministry of health settings.

(b) Does the applicant specify a base-line level, one-year interim target, and five-year overall target level of performance for each of the following core program indicators?

- Indicator C.1: Percent of contacts with unknown or negative serostatus who receives an HIV test after PCRS notification.
- Indicator C.2: Percent of contacts with a newly identified, confirmed HIV-positive test among contacts who are tested.
- Indicator C.3: Percent of contacts with a known, confirmed HIV-positive test among all contacts.

4. Prevention for HIV–Infected Persons

(a) Does the applicant describe their plan to provide prevention services for people living with HIV/AIDS? Does the applicant describe how they will provide ongoing HIV risk reduction counseling and other interventions to HIV positive persons?

(b) Does the applicant describe how they will encourage primary care providers to integrate prevention and cares services?

5. Health Education and Risk Reduction Services (HE/RR)

(a) Does the applicant Identify and list priority populations and the health education/risk reduction activities and interventions that will be funded and carried out for each prioritized populations in the first year of the five-year project period? (Use Draft Priority Population Summary Worksheet.) This priorization process should consider all epidemiologic data and other evidence that is known about HIV/AIDS in the jurisdiction, and ensure that HIV positive individuals are the priority for prevention efforts.

(b) Does the applicant describe their plan to establish and develop community capacity to assist with or provide HIV prevention services and interventions? Identify any existing providers, by prioritized populations and interventions that are currently funded or will be funded in this project period.

(c) Specify base-line, one year-year interim target, and five-year overall target levels of performance for the following core program indicator:

- Indicator H.3: The mean number of outreach contacts required to get one person to access any of the following services: counseling and testing, STD screening and testing, individual level interventions (ILI), or group level interventions (GLI).

6. Public Information Programs

(a) Does the applicant describe their plan to develop and carry out HIV prevention public information programs? Do they describe the basic approach and messages that will be developed, including how and where the information will be disseminated? Does the applicant describe how they will collect and analyze information to determine the scope and reach of public information programs, and how they intend to evaluate program components in order to guide and adjust future activities?

7. Perinatal Transmission Prevention

(a) Does the applicant describe the current system of perinatal care that exists within the jurisdiction, including:

- Who provides the care.
- How this care is monitored and managed.
- How they will work with health care providers to promote routine, universal HIV screening to their pregnant patients.
- How they will work with organizations and institutions that provide prenatal and postnatal care for HIV-infected women to ensure that they are receiving the appropriate HIV prevention counseling, testing, and therapies needed to reduce the risk of transmission.

(b) Does the applicant specify base-line level, one-year interim target, and five-year overall target levels of performance for the following core program indicator:

- Indicator D.1: Proportion of women who receive an HIV test during pregnancy.

8. Evaluation

(a) Does the applicant describe their plan for evaluation of HIV prevention activities for the first year of the five-year project period?

(b) Does the applicant provide copies of their local data collection instruments, local program evaluation and data management system functions and specifications, and any jurisdiction-wide uniform data reporting forms, if they exist.

9. Collaboration and Coordination

Does the applicant describe their plans to collaborate and coordinate HIV prevention services and activities with the jurisdictions, programs and groups listed in this announcement? Also, how do they describe the intended outcomes of their collaboration and coordination efforts, and their plan to strengthen these activities over the five-year project period?

10. Laboratory Support

Does the applicant briefly describe all laboratory support activities funded under this announcement? Does the applicant describe their current or proposed methods for testing and confirmation of HIV, and describe also how they would expand testing options if laboratory capacity were enhanced and stabilized in the region? Did they include in this description a detailed algorithm of how HIV tests are collected and processed, and how decisions are made to determine needs for confirmation?

11. HIV/AIDS Epidemiologic and Behavioral Surveillance

Does the applicant describe any surveillance activities they expect to conduct with support provided through this program announcement? [Note to applicant: Complete this only if you are requesting program funds to support this activity.]

12. Quality Assurance

Does the applicant describe their quality assurance efforts regarding HIV CTR, PCRS, HE/RR, public information campaigns, data collection, training, program procedures, and any other relevant programmatic areas for which they have quality assurance plans?

13. Capacity-Building Activities (Recommended Activity Based on Availability of Resources)

(a) Does the applicant describe their capacity-building activities in the areas listed?

(b) Does the applicant discuss their plans to strengthen their capacity-building activities over the five-year project period of this program announcement?

(c) Does the applicant discuss how they would assess (initially, as well as ongoing) capacity-building needs throughout the project period?

14. Other Activities

(a) Does the applicant budget funds through this cooperative agreement for three persons to attend at least three CDC-sponsored conferences or meetings each year? Also, for the first year of this project period, does the applicant budget funds for meetings/activities related to the development of a new model for HIV prevention program planning and implementation?

(b) Does the applicant describe any other planned travel or attendance at conferences or meetings not previously addressed?

15. Unmet Needs

Does the applicant summarize any HIV prevention needs that will remain unmet even if the total application is funded? Do they provide an estimate of funds required to meet these needs?

16. Management and Staffing Plan

Does the applicant describe their management and staffing plan to conduct or support the essential components of their comprehensive HIV prevention program? Does the applicant include an organizational chart that reflects the current management structure and a description of the roles, responsibilities, and relationships of all staff in the program, regardless of funding source? Does the applicant identify the positions supported through this cooperative agreement and those funded through other sources, as well as any unfounded staffing needs?

V.2. Review and Selection Process

As all eligible applicants will be funded, applications will undergo a Technical Acceptability Review.

V.3. Anticipated Announcement and Award Date

Award Date: April 1, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements:

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html*

The following additional requirements apply to this project:

AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14¢Accounting System Requirements
AR–16 Security Clearance Requirement
AR–20 Conference Support

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with a hard copy original, plus two copies of the following reports:

1. Data reports of HIV interventions (including individual and group level); outreach; health communication/public information; HIV counseling, testing, and referral; partner counseling and referral service; are required 45 days after the end of each quarter or as specified in the most recent evaluation guidance. Project areas may request technical assistance to achieve this. Data should be submitted directly to the Program Evaluation Research Branch.

2. This program requires progress reports on a semi-annual basis. The first progress report (an original plus two copies) for each calendar year is due by April 1 of the following year. You will receive specific guidance on what to include at least three months before the due date. Generally, your report should include the following:

a. Base-line and actual level of performance on core and optional indicators

b. Current Budget Period Financial Progress

c. Additional Requested Information

3. The second report (an original and two copies), which is the interim progress report, is due by September 30 of each year. It should include:

a. Current Budget Period Financial Progress

b. Base-line and target level for core and optional indicators

c. Detailed Line-Item Budget and Justification

d. Additional Requested Information

4. Provide CDC with a Financial Status Report (original and two copies),

no more than 90 days after the end of each budget period.

5. Provide CDC with your final financial and performance reports (original and two copies), no more than 90 days after the end of the five-year project period.

6. Submit any newly developed public information resources and materials to the CDC National Prevention Information Network (formerly the AIDS Information Clearinghouse) so that they can be incorporated into the current database for access by other organizations and agencies.

Submit hard copies of materials to: CDC National Prevention Information Network, Attention Database Services, PO Box 6003, Rockville, MD 20849–6003; or submit electronic copies of materials by email to: *info@cdcnpin.org;* Subject: Database Services, For more information call: 1–800–458–5231.

7. HIV Content Review Guidelines

a. Submit completed Assurance of Compliance with the Requirements for Contents of AIDS-Related Written Materials Form (CDC form–0.1113) with your application. This form, which lists the members of your program review panel, can be downloaded from the CDC Web site: *http://www.cdc.gov/od/pgo/forminfo.htm.* The Program Director and authorized business/fiscal official must sign this form. In addition, you must certify that your program review panel represents a reasonable cross-section of the community in which the program is based.

b. You must also include with your application documentation of approval/disapproval by your program review panel of any HIV educational materials that you are currently using. Use the form, Report of Approval/Disapproval for this purpose. This form is attached to this announcement as posted on the CDC Web site. If you have previously sent this information to CDC, it is not necessary to send it again. If you have nothing to submit, you must complete the enclosed form, No Report Necessary. Either the Report of Approval/Disapproval or No Report Necessary must be included with your application, all progress reports, and all continuation requests. In addition to using the Report of Approval/Disapproval, you must certify that accountable jurisdictional health officials independently review the federally-funded HIV prevention materials for compliance with Section 2500 of the Public Health Service Act, and approve the use of such materials in their jurisdiction for directly and indirectly funded organizations.

c. Ensure that a Web page notice be used for those grantees whose Web sites contain HIV/AIDS educational information subject to the CDC content review guidelines. Contact your project officer for a copy of this guidance.

8. Address your organization's compliance with CDC policies for securing approval for CDC sponsorship of conferences. If you plan to hold a conference, you must send a copy of the agenda to CDC's Procurement and Grants Office.

9. If you plan to use materials using CDC's name, send a copy of the proposed material to CDC's Procurement and Grants Office for approval.

Note: Send all reports (except for items 1 and 6) to the Grants Management Specialist identified in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Victoria Rayle, Project Officer, Prevention Program Branch, Division of HIV/AIDS Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road, MS–E58, Telephone: 404–639–4274, E-mail: *vdrl@cdc.gov.*

For budget assistance, contact: Jamie Legier, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2635, E-mail: *bzl3@cdc.gov.*

Dated: December 22, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31972 Filed 12–29–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04012]

HIV Prevention Projects; Notice of Availability of Funds; Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for cooperative agreements for HIV prevention projects was published in the **Federal Register** July 10, 2003, Volume 68, Number 132, pages 41138–41147. The notice is amended as follows:

On page 41138, first column, section ''A. Authority and Catalog of Federal Domestic Assistance Number,'' please amend the CFDA number from 93.943 to 93.340.

Dated: December 22, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31973 Filed 12–29–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04019]

Capacity Building Assistance To Improve the Delivery and Effectiveness of HIV Prevention Services for Racial/Ethnic Minority Populations; Notice of Availability of Funds-Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for cooperative agreements for Capacity Building Assistance to Improve the Delivery and Effectiveness of HIV Prevention Services for Racial/Ethnic Minority Populations was published in the **Federal Register**, Tuesday, December 2, 2003, Volume 68, Number 231, pages 67558–67566. The notice is amended as follows:

Page 67558, second column, please do not include Arizona (AZ) in the South region; please do not include Arkansas (AK) in the West region, but do include AK in the South region.

Dated: December 22, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31974 Filed 12–29–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04057]

Grant for Injury Control Research Center; Notice of Availability of Funds-Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for a grant for an Injury Control Research Center (ICRC) was published in the **Federal Register** on November 26, 2003, Volume

68, Number 228, pages 66442–66447. The notice is amended as follows: On page 66447, Column 1, Section ''VI. Award Administration Information,'' on line 4 in the first paragraph after the ''AR–25'' requirement, delete ''$250,000'' and replace with ''$500,000.''

Dated: December 19, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31838 Filed 12–29–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04054]

Youth Violence Prevention Through Community-Level Change; Notice of Availability of Funds-Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for Youth Violence Prevention Through Community-Level Change was published in the **Federal Register** on December 2, 2003, Volume 68, Number 231, pages 67450–67455. The notice is amended as follows: On page 67453, Column 2, Section ''IV. Application and Submission Information,'' under 5. Funding Restrictions, at the end of the paragraph add the word ''None'' and move Funding Priority and Funding Preference to page 67450, Column 3, Section ''I. Funding Opportunity Description'' after Research Objectives.

Dated: December 19, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31839 Filed 12–29–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Organization Strategies for the Prevention, Early Detection and Control of Chronic Disease by Chief Elected Officials of Cities

Announcement Type: New.

Funding Opportunity Number: 04072.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates: Application Deadline: February 13, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under section 301(a) of the Public Health Service Act, (42 U.S.C. 241(a)).

Purpose: The purpose of the program is to support a national organization in the development and implementation of educational initiatives that can be used by chief elected officials in applying effective strategies to prevent and control cancer and other chronic diseases, chronic disease risk factors, and chronic disease health disparities in their cities. This program addresses the ''Healthy People 2010'' focus areas of: Tobacco Use; Physical Activity and Fitness; Nutrition and Overweight; Public Health Infrastructure; Oral Health; Arthritis; Osteoporosis and Chronic Back Conditions; Educational and Community-Based Programs; Adolescent and School Health; Cancer; Diabetes; Disability and Secondary Condition; Health Communication; Heart Disease and Stroke; Maternal; Infant and Child Health; Substance Abuse. To accomplish the purpose of this program announcement, components of the project are to be addressed as indicated in section ''IV.2. Content and Form of Submission'' of this program announcement.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goals for the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP):

- Promote health and reduce chronic disease associated with diet and weight.
- Improve health, fitness and quality of life through daily physical activity.
- Reduce illness, disability, and death related to tobacco use and exposure to secondhand smoke.
- Increase the proportion of women aged 40 years and older who have received a mammogram within the preceding two years.
- Increase the proportion of adults who receive a colorectal cancer screening examination.
- Increase the proportion of women who receive a Pap test.
- Increase the proportion of cancer survivors who are living 5 years or longer after diagnosis.
- Improve cardiovascular health and quality of life through the prevention, detection, and treatment of risk factors; early identification and treatment of heart attacks and strokes; and prevention of recurrent cardiovascular events.
- Through prevention programs, reduce the disease and economic burden of diabetes, and improve the quality of life for all persons who have or are at risk for diabetes.
- To support the missions of other chronic disease prevention and control programs at the National Center for Chronic Disease Prevention and Health Promotion.

Activities:

Awardee activities for this program are as follows:

a. Develop educational initiatives and provide an informational forum on cancer and other chronic disease prevention and health promotion issues in local communities. This activity may include a diversity of media such as printed materials, websites, and conferences.

b. Provide constituents with accurate, comprehensive and timely information on cancer and other chronic disease prevention and health promotion and control issues to encourage the formulation of educational programming.

c. Participate in CDC-sponsored meetings and events, as appropriate.

d. Coordinate activities with the National Association of County and City Health Officers, and local organizations within the scope of this program announcement, when feasible and appropriate.

e. Establish specific, measurable, and realistic short-term (one year) and long-term (three year) program objectives that are consistent with the purpose of this program announcement. Develop a well-designed evaluation plan of each goal and objective. Performance will be based on the submission of realistic, time-phased, and achievable goals and objectives.

f. Identify and select appropriate staff, based on experience and capability, to successfully implement the program activities.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

a. Partner with recipients in the development, implementation, evaluation, and dissemination of programs designed to improve knowledge and attitudes to prevent and control cancer and other chronic disease within constituent communities.

b. Provide periodic updates about public knowledge, attitudes, and practices regarding chronic disease prevention and control, including up-to-date scientific information.

c. Partner with recipient to identify appropriate and specific venues to share and disseminate information.

d. Partner with recipients in the development of publications and educational materials that relate to chronic disease prevention and health promotion.

e. Identify liaisons with other organizations that are interested in chronic disease prevention and health promotion at the local level.

f. Identify chronic disease and health promotion best practices for specific populations within selected communities.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $300,000 ($150,000 for chronic disease prevention and health promotion and $150,000 for cancer prevention and control).

Approximate Number of Awards: One.

Approximate Average Award: $300,000. (This amount is for the first 12-month budget period, and includes both direct and indirect costs.)

Floor of Award Range: None.

Ceiling of Award Range: $300,000.

Anticipated Award Date: March 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Three years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by:

- Public nonprofit organizations;
- Private nonprofit organizations; and
- Faith-based organizations.

Eligible organizations must have the capacity to coordinate a national collaborative initiative targeting local elected officials. Only organizations with a national reach are eligible to apply.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other Eligibility Requirements

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive and will not be entered into the review process. You will be notified that you did not meet the submission requirements.

If your application is incomplete or non-responsive to the requirements listed below, it will not be entered into the review process. You will be notified that your application did not meet the submission requirements. Applicants should have prior experience working with one or more chronic diseases and with chief elected officials from United States cities with populations of 30,000 or more. In addition, applicants must have the capacity and ability to conduct national programs and activities related to promoting health education, awareness, and information dissemination of chronic disease prevention and control issues in collaboration with chief elected officials of United States cities. The applicant should document eligibility by providing a concise summary that clearly describes (a) status as a national organization; (b) constituency of chief elected officials of cities; and (c) demonstrated outcome/accomplishments from previous chronic disease prevention and control efforts. Sample materials produced can be provided in appendices.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Application: You must include a project narrative with your application forms. Your narrative must be submitted in the following format:

- Maximum number of pages: For both components is 50 pages—if your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Font size: 12 point unreduced;
- Paper size: 8.5 by 11 inches;
- Page margin size: One inch;
- Printed only on one side of page, double spaced;
- Held together only by rubber bands or metal clips, not bound in any other way.

Your narrative should address activities to be conducted for cancer prevention and control and chronic disease prevention and control for the entire project period, and should include the following items in the order listed:

1. Executive Summary

Describe prior experience working with one or more chronic diseases and with chief elected officials from United States cities with populations of 30,000 or more. In Describe the level of capacity and ability to conduct national programs and activities related to promoting health education, awareness, and information dissemination of chronic disease prevention and control issues in collaboration with chief elected officials of United States cities. Document eligibility by providing a concise summary that clearly describes (a) status as a national organization; (b) constituency of chief elected officials of cities; and (c) demonstrated outcome/accomplishments from previous chronic disease prevention and control efforts. Sample materials produced can be provided in appendices.

2. Background and Need

Describe the need for the proposed activities and the context in which the work will be conducted. Provide descriptions of the constituent population and how your organization will play a significant role in chronic disease prevention, either by direct or indirect impact.

3. Method

Submit a plan that describes the methodologies for conducting awardee activities outlined in the Activities section. Identify strategies and activities for increasing the applicant's involvement in promoting and supporting chronic disease prevention and control programs over the next three years.

Explain how planned activities relate to the purpose of this program announcement. The plan should identify and establish a timeline for the completion of each component or major activity. The plan should identify how previous experience in the prevention and control of cancer and other chronic diseases will inform the activities being planned.

4. Goals and Objectives

List goals specifically related to program requirements and indicate expected program outcomes at the end of the three-year project period. Provide objectives that are specific, measurable, feasible, and time phased to be accomplished during the projected 12-month budget period. Objectives should relate directly to the project goals and recipient activities.

Describe goals and objectives in narrative form and provide a timetable, with specific activities that are related to each objective during the projected 12-month budget period. Indicate when each activity will occur, as well as when preparations for activities will occur. Also indicate who will be responsible for each activity and identify staff assigned to each activity.

5. Project Management and Staffing Plan

a. Describe the proposed staffing for the project and submit job descriptions illustrating the level of organizational responsibility for professional staff that will be assigned to the project.

b. In the application appendices, include a curriculum vitae for each professional staff member named in the proposal.

c. Describe the organization's structure and function, how that structure supports health promotion and education activities, activities on the local level, and methods of current communication with members.

6. Evaluation Plan

Describe how each of the activities and their impact will be evaluated. Describe how progress toward meeting project objectives will be monitored.

The evaluation plan should address measures considered critical to determine the success of the plan outlined by the applicant, and results should be used for improvement of the intended plan.

7. Budget and Accompanying Justification

Provide a detailed line-item budget and narrative justification describing operating expenses consistent with the proposed objectives and planned activities. Provide a precise description for each budget item and itemize calculations when appropriate. Applicants should include budget items for travel trips to two CDC sponsored meetings. The budget and accompanying justification will not be counted in the stated page limit.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Curriculum Vitae;
- Job Descriptions;
- Organizational Charts;
- Any other supporting documentation.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement for the federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.* If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Application Deadline Date: February 13, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will, upon receipt of proper documentation, consider the application as having been received by the deadline.

This program announcement is the definitive guide on application format, content, and deadlines. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Funding restrictions, which must be taken into account while writing your budget, are as follows:

- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services.
- Equipment may be purchased, with appropriate justification, including cost comparison of purchase with lease. Although contracts with other organizations are allowable, the recipient of this grant must perform a substantial portion of activities for which funds are requested.
- Cooperative agreement funds may not supplant existing funds from any other public or private source.
- Funds may not be expended for construction, renovation of existing facilities, or relocation of headquarters or affiliates.
- Funds may not be used for clinical services.
- If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement must be less than 12 months of age.
- Pre-award costs will not be reimbursed.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.ogv/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management—PA04072, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various

identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria: Evaluation Criteria (100 points total).

1. Goals and Objectives (30 points)

The extent to which the applicant's plan for achieving the proposed activities appears realistic, feasible and relates to the programmatic requirements and purposes of this program announcement, including the degree to which short-term (one year) and long-term (three year) objectives are specific, time-phased, measurable, realistic and related to identified needs.

2. Project Management and Staffing (20 points)

The degree to which proposed staffing, organizational structure, staff experience and background, training needs or plan, job descriptions and curricula vitae for both proposed and current staff indicate past experience in carrying out similar programs, and the ability to carry out the purposes of the current program.

3. Method (20 points)

The extent to which the applicant describes the methodologies for carrying out the recipient activities as outlined in the program requirements with a corresponding timeline for the completion of each major activity.

4. Evaluation Plan (20 points)

The extent to which the proposed evaluation plan addresses progress toward meeting goals and objectives, assesses impact, and appears to be reasonable and feasible.

5. Background and Need (10 points)

The extent to which the applicant describes the chronic disease burden and specific needs related to the purpose of this program announcement.

6. Budget and Justification (Not scored)

The extent to which the budget is reasonable and consistent with the purpose and activities of the program.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by program staff. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above.

V.3. Anticipated Announcement Award Date

March 1, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR part 74 and part 92. For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project: AR–10 Smoke-Free Workplace Requirements; AR–11 Healthy People 2010; AR–12 Lobbying Restrictions; AR–15 Proof of Non-Profit Status.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm*

VI.3. Reporting Requirements

You must provide CDC with the original, plus two hard copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report and annual progress report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be sent to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

For general questions about the announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For program technical assistance, contact: Jennifer Tucker, 4770 Buford Highway, MS K–40, Atlanta, GA 30341, Telephone: 770–488–6454, E-mail: *jrt5@cdc.gov.*

For business management and budget assistance, contact: Tracey Sims, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2739, E-mail: *atu9@cdc.gov.*

Dated: December 22, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31971 Filed 12–29–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10000, CMS–10091 and CMS–10028A, B, and C]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this

collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Consumer Assessment of Health Plan Survey-Fee for Service (CAHPS–FFS); *Form No.:* CMS–10000 (OMB# 0938–0796); *Use:* Under the Balanced Budget Act of 1997, CMS is required to provide general and plan comparative information to beneficiaries that will help them make more informed plan choices. A CAHPS fee-for-service survey is needed to provide information comparable to those data collected from the CAHPS managed care survey; *Frequency:* Annually; *Affected Public:* Individuals or Households; *Number of Respondents:* 142,920; *Total Annual Responses:* 142,920; *Total Annual Hours:* 47,640.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* UPIN (Unique Physician Identification Number) Participating Physicians Directory; *Form No.:* CMS–10091 (OMB# 0938–0905); *Use:* In November of 2000, CMS launched the Participating Physicians Directory on *http://www.medicare.gov.* This particular directory was created to provide beneficiaries with the names, addresses, and specialties of Medicare participating physicians who have agreed to accept assignment on all Medicare claims and covered services. CMS is adding information from already existing sources; in addition, CMS wants to collect a new data element ''Accepting New Patients Indicator'' which is essential to a beneficiary's search for a physician; *Frequency:* On occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 10,980; *Total Annual Responses:* 10,980; *Total Annual Hours:* 915.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* State Health Insurance Assistance Program (SHIP) Client Contact Form, Public and Media Activity Form, and Resource Report; *Form No.:* CMS–10028A, B, C (OMB# 0938–0850); *Use:* The State Health Insurance Assistance Program (SHIP) Client Contract form will be completed by SHIP counselors at each counseling event in order to collect SHIP performance data. This data will then be accumulated and analyzed to measure SHIP performance; *Frequency:* Semi-annually and annually; *Affected Public:* State, Local, or Tribal Government, Not-for-profit institutions, and Federal Government; *Number of Respondents:* 12,000; *Total Annual Responses:* 1,000,000; *Total Annual Hours:* 116,747.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 18, 2003.

Melissa Musotto,

Acting, Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–32044 Filed 12–29–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–39, CMS–R–243, CMS–R–131, and CMS–10103]

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:* Home health Medicare Conditions of Participation (CoP) Information Collection Requirements and Supporting Regulations in 42 CFR 484.10, 484.12, 484.14, 484.16, 484.18, 484.36, 484.48, and 484.52; *Form No.:* CMS–R–39 (OMB# 0938–0365); *Use:* 42 CFR 484 outlines Home Health Agency Medicare CoP to ensure HHAs meet the Federal patient health and safety regulations; *Frequency:* Annually; *Affected Public:* Business or other for-profit, not-for-profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 7,122; *Total Annual Responses:* 7,122; *Total Annual Hours:* 854,891.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Agreement Application, Health Care Prepayment Plan and Supporting Regulations in 42 CFR 417.800–417.840.; *Form No.:* CMS–R–243 (OMB# 0938–0768); *Use:* An organization must meet certain requirements to be a Health Care Prepayment Plan that is eligible for a Medicare Section 1833 agreement. The application is the collection form to obtain the information from an organization that would allow CMS staff to determine compliance with the regulations.; Frequency: One-time Submission; *Affected Public:* Business or other for-profit, not-for-profit institutions, and State, Local or Tribal Government; *Number of Respondents:* 15; *Total Annual Responses:* 15; *Total Annual Hours:* 1,125.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Advanced Beneficiary Notice and Supporting Regulations in 42 CFR 411.404, 411.406, and 411.408.; *Form No.:* CMS–R–131 (OMB# 0938–0566); *Use:* Physicians, practitioners, suppliers, and providers

furnishing Part A or Part B items or services may bill a patient for items of services denied by Medicare as not reasonable and necessary, under Medicare program standards (Section 1862(a)(1) of title XVIII of the Social Security Act (the Act), or under one of several other statutory bases (Section 1862(a)(9), Section 1814(a)(2)(C), Section 1835(a)(2)(A), Section 1861(dd)(3)(A), Section 1834(j)(1), Section 1834(a)(15), and Section 1834(a)(17)(B) of the Act), if they informed the patient, prior to furnishing the items or services and the patient, after being so informed, agreed to pay for the items or services.; *Frequency:* As-needed; *Affected Public:* Business or other for-profit, not-for-profit institutions, and Individuals or households; *Number of Respondents:* 1,084,932; *Total Annual Responses:* 21,171,480; *Total Annual Hours:* 1,764,290.

4. *Type of Information Request:* New Collection; *Title of Information Collection:* Evaluation of PACE as a Permanent Program and a For-Profit Demonstration; *Form No.:* CMS–10103 (OMB# 0938–NEW); *Use:* The Balanced Budget Act of 1997 (BBA) established PACE as a permanent Medicare program and a state option under Medicaid. It also mandated a for-profit demonstration and a study of the ''quality and cost'' of the permanent program ''under the Medicare and Medicaid programs.'' All PACE Demonstration sites must convert to permanent program sites in 2003. This evaluation will build on the efforts made in the first PACE evaluation (final reports in 2000). Data will be gathered to assess changes in access to care, patient satisfaction, mortality, organizational/operational changes, patient characteristics, outcomes, quality, etc. that have resulted from the BBA legislation. Patient surveys, site surveys, and claims and utilization data gathered at 12 sites will help answer these study questions. Mathematica Policy Research, Inc. is awarded a contract (No. 500–00–0033) to perform this evaluation. A final report is expected in the summer of 2006.; *Frequency:* Other: One-time; *Affected Public:* Individuals or Households, Not-for-profit institutions; *Number of Respondents:* 2,996; *Total Annual Responses:* 2,996; *Total Annual Hours:* 1,723.

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: December 18, 2003.

Melissa Musotto,

Acting, Paperwork Reduction Act Team Leader, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–32045 Filed 12–29–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee for People With Intellectual Disabilities (PCPID): Notice of Meeting

AGENCY: President's Committee for People with Intellectual Disabilities (PCPID), HHS.

ACTION: Notice of meeting.

DATES: Thursday, January 29, 2004, from 8:30 a.m. to 5 p.m. and Friday, January 30, 2004, from 8:30 a.m. to 12 p.m. The full Committee meeting of the President's Committee for People with Intellectual Disabilities will be open to the public.

ADDRESSES: The meeting will be held at the Aerospace Center Building, Aerospace Auditorium, 6th Floor East, 370 L'Enfant Promenade, SW., Washington, DC 20447. Individuals with disabilities who need special accommodations in order to attend and participate in the meeting (*i.e.,* interpreting services, assistive listening devices, materials in alternative format) should notify Executive Director, Salley Atwater, at 202–619–0634 no later than January 16, 2004. Effort will be made to meet special requests received after that date, but availability of special needs accommodations to respond to these requests cannot be guaranteed. All meeting sites are barrier free.

Agenda: The Committee plans to discuss critical issues relating to individuals with intellectual disabilities concerning education and transition, family services and support, public awareness, employment, and assistive technology and information.

FOR FURTHER INFORMATION CONTACT: Sally Atwater, Executive Director, President's Committee for People with Intellectual Disabilities, Aerospace Center Building, Suite 701, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone—(202) 619–0634, Fax—(202) 205–9519, E-mail—*satwater@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: The PCPID acts in an advisory capacity to the President and the Secretary of the U.S. Department of Health and Human Services on a broad range of topics relating to programs, services, and supports for persons with intellectual disabilities. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs, services and supports for persons with intellectual disabilities, and for reviewing legislative proposals that impact the quality of life that is experienced by citizens with intellectual disabilities and their families.

Dated: December 16, 2003.

Sally Atwater,

Executive Director, President's Committee for People with Intellectual Disabilities.

[FR Doc. 03–32053 Filed 12–29–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0549]

Draft Guidance for Industry: Clozapine Tablets: In Vivo Bioequivalence and In Vitro Dissolution Testing, Revision; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Clozapine Tablets: In Vivo Bioequivalence and In Vitro Dissolution Testing.'' This draft guidance provides recommendations for sponsors of abbreviated new drug applications (ANDAs) on the design of bioequivalence studies for generic clozapine products. This draft guidance is being issued because an earlier guidance on this topic published in November 1996 needed to be revised to

reflect current agency recommendations. Because of significant potential adverse effects, the agency no longer recommends in vivo bioequivalence testing in healthy subjects.

DATES: Submit written or electronic comments on the draft guidance by March 1, 2004. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of this draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Lizzie Sanchez, Center for Drug Evaluation and Research (HFD–650), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5847.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Clozapine Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing.'' This draft guidance is intended to provide information to sponsors of ANDAs on the design of bioequivalence studies for generic clozapine products, and revises the recommendations provided in a guidance on the same topic published in November 1996.

In the earlier version of this draft guidance, the agency recommended that doses of clozapine tablets be administered to healthy subjects in bioequivalence studies for generic clozapine products. The earlier guidance also provided the option of conducting studies in the appropriate patient population. Because a high number of healthy subjects in bioeqivalence studies for clozapine products have experienced serious adverse effects such as hypotension, bradycardia, syncope, and asystole during clozapine bioequivalence studies, FDA is no longer recommending such studies be done in healthy subjects.

The draft guidance provides recommendations for two approaches to study the product in the appropriate patient population. One approach is a study design using patients naive to clozapine. This design uses the recommended titration of dosing consistent with the reference product labeling. The alternative study design uses the appropriate patient population already stable on a dose of clozapine. This alternative also appeared in the earlier version of the guidance. The agency believes that the previously recommended design using healthy subjects was adequate to establish bioequivalence of generic clozapine products; however, the safety concerns associated with the use of clozapine in healthy subjects are significant, and the agency is no longer recommending this practice.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the agency's current thinking on studies to demonstrate the bioequivalence of clozapine tablets. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes or regulations.

II. Comments

Interested persons may submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**). Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cder/guidance/index.htm*, or through the Division of Dockets Management website at *http://www.fda.gov/ohrmr/dockets/default.htm*.

Dated: December 17, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–31917 Filed 12–29–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Protection and Advocacy for Individuals with Mental Illness (PAIMI) Final Rule, 42 CFR part 51—(OMB No. 0930–0172—Extension)—These regulations meet the directive under 42 U.S.C. 10826(b) requiring the Secretary to promulgate final regulations to carry out the PAIMI Act. The regulations contain information collection requirements. The Act authorized funds to support activities on behalf of individuals with significant (severe) mental illness (adults) or emotional impairment (children/youth) (42 U.S.C. at 10802(4)). However, only entities designated by the governor of each State and six (6) territories (the American Indian Consortium, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands), and the Mayor of the District of Columbia to protect and advocate the rights of persons with developmental disabilities under Part C of the Developmental Disabilities and Bill of Rights Act (42 U.S.C. 6041 *et seq.*, as amended in 2000) are eligible to receive PAIMI grants (42 U.S.C. at 10802(2)). PAIMI grants are based on a formula prescribed by the Secretary (42 U.S.C. at 10822(a)(1)(A)).

On January 1, each eligible State protection and advocacy (P&A) system is required to prepare and transmit to the Secretary and head of the State Mental Health Agency, in which the system is located, a report describing its activities, accomplishments, and expenditures during the most recently completed fiscal year. Section 10824(a) of the Act requires that the State P&A system's annual reports to the Secretary, shall describe its activities, accomplishments, and expenditures to protect the rights of individuals with mental illness supported with payments from PAIMI allotments, including:

(A) The number of (PAIMI-eligible) individuals with mental illness served;

(B) A description of the types of activities undertaken;

(C) A description of the types of facilities providing care or treatment to which such activities are undertaken;

(D) A description of the manner in which the activities are initiated;

(E) A description of the accomplishments resulting from such activities;

(F) A description of systems to protect and advocate the rights of individuals with mental illness supported with payments from PAIMI allotments;

(G) A description of activities conducted by States to protect and advocate such rights;

(H) A description of mechanisms established by residential facilities for individuals with mental illness to protect such rights; and,

(I) A description of the coordination among such systems, activities and mechanisms;

(J) Specification of the number of systems that are public and nonprofit systems established with PAIMI allotments; and

(K) Recommendations for activities and services to improve the protection and advocacy of the rights of individuals with mental illness and a description of the needs for such activities and services which have not been met by the State P&A systems established under the PAIMI Act. [The PAIMI Rules 42 CFR section 51.32(b) state that P&A systems may place restrictions on case or client acceptance criteria developed as part of its annual PAIMI priorities. However, prospective clients must be informed of any such restrictions at the time they request service].

This summary report must include a separate section, prepared by the PAIMI Advisory Council, that describes the council's activities and its assessment of the operations of the State P&A system (42 U.S.C. 10805(7)). The burden estimate for the annual State P&A system reporting requirements for these regulations is as follows.

42 CFR Citation	Number of respondents	Responses per respondent	Burden per response (hrs.)	Total annual burden
51.8(8)(a)(2) Program Performance Report[1]	57	1	26.0	(1,482)
51.8(8)(a)(8) Advisory Council Report[1]	57	1	10.0	(570)
51.10 Remedial Actions: Corrective Action Plan	7	1	8.0	56
Implementation Status Report	7	3	2.0	42
51.23(c) Reports, materials and fiscal data provided to Advisory Council	57	1	1.0	57
51.25(b)(2) Grievance Procedure	57	1	.5	29
Total	57			184

[1] Burden hours associated with these reports are approved under OMB Control No. 0930–0169.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: (202) 395–6974.

Dated: December 18, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–31975 Filed 12–29–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Evaluation of the Buprenorphine Waiver: Longitudinal Patient Survey—New—The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), Division of Pharmacologic Therapies (DPT), is evaluating a program that permits office-based physicians to obtain Waivers from the requirements of the Narcotic Addict Treatment Act of 1974 (21 U.S.C. 823(g)). Under the Drug Addiction Treatment Act of 2000 (21 U.S.C. 823 (g)(2)), the Waiver Program permits qualifying physicians to prescribe and dispense buprenorphine, a schedule III narcotic drug recently approved by the FDA for the treatment of opiate addiction. Furthermore, the Drug Abuse Treatment Act specifies that the Secretary of the Department of Health and Human Services make a determination of whether: (1) Treatments provided under the Waiver Program have been effective forms of maintenance treatment and detoxification treatment in clinical settings; (2) the Waiver Program has significantly increased (relative to the beginning of such period) the availability of maintenance treatment and detoxification treatment; and, (3) the Waiver Program has adverse consequences for the public health. In addition to the objectives above, the Evaluation of the Buprenorphine Waiver Program will examine other related objectives, including: (1) Describing the impact of the Waiver-based treatment on the existing treatment system; (2) providing information useful to guide and refine the processing/monitoring system being developed and maintained by CSAT/DPT; and (3) providing baseline data to inform future research and policy concerning the medicalization and mainstreaming of addiction treatment.

The evaluation of the Buprenorphine Waiver Program will be accomplished using three survey efforts. The first of these is a mail survey of addiction physicians from the American Society of Addiction Medicine (ASAM) and/or the American Academy of Addiction Psychiatry (AAAP). That survey (approved by OMB under control number 0930–0246) will assess early perceptions of physicians specializing in addiction medicine about whether buprenorphine, as it is prescribed and distributed under the Waiver, is a useful tool in the treatment of substance abuse, and whether they have encountered any negative consequences associated with it.

The Longitudinal Patient Survey will focus on patients who have received buprenorphine and will assess its availability and effectiveness from the patients' point of view. The Survey will collect longitudinal data from a cohort of about 420 buprenorphine patients to assess the effectiveness of buprenorphine therapy. Patients will be recruited through a sample of prescribing physicians' offices. Office staff will give each eligible buprenorphine patient a study brochure that explains the importance of the study, offers an incentive, and gives the patient a toll-free telephone number to call to complete the survey by telephone.

Patients will be asked a series of questions that will provide baseline data for the evaluation. Follow-up data on the services received, satisfaction with the treatment, and outcomes will be collected 30 days and 6 months later. Survey domains include the following: Patient demographics; Buprenorphine dose over time; Items from the short form of the Addiction Severity Index (ASI); Services being received in addition to medications; Needle-sharing and HIV status; Treatment and substance abuse history, in particular prior experience with medication-based treatment for opioid dependence; Experience, satisfaction with, and general knowledge of, buprenorphine.

A third survey will be conducted later, focusing on the clinical practice and perceived effectiveness of buprenorphine among only those physicians who are actively prescribing the medication. A separate clearance request will be submitted for this physician survey.

The estimated response burden for the longitudinal survey of buprenorphine patients over a period of one year is summarized below.

Respondent	Number of respondents	Responses/ respondent	Hours/response	Total hour burden
Physicians	120	12	.08	116
Patient baseline interview	420	1	.75	315
Patient 30-day followup interview	420	1	.67	281
Patient 6-month followup interview	420	1	.67	281
Total	540			993

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: (202) 395–6974.

Dated: December 18, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–31976 Filed 12–29–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1501–DR]

Puerto Rico; Amendment No. 5 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: December 9, 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 Vieques and Culebra 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. 03–31963 Filed 12–29–03; 8:45 am]

BILLING CODE 9110–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1501–DR]

Puerto Rico; Amendment No. 6 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: December 19, 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 Aibonito and Naranjito 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. 03–31964 Filed 12–29–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1503–DR]

Virgin Islands; 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 Territory of the U.S. Virgin Islands (FEMA–1503–DR), dated December 9, 2003, and related determinations.

EFFECTIVE DATE: December 9, 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 December 9, 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 the Territory of the U.S. Virgin Islands, resulting from severe storms, flooding, landslides, and mudslides on November 10–16, 2003, 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. 121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the Territory of the U.S. Virgin Islands.

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 Public Assistance in the designated areas and Hazard Mitigation throughout the Territory of the U.S. Virgin Islands, 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 Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs. You are authorized to make adjustments as warranted to the non-Federal cost shares as provided under the Insular Areas Act, 48 U.S.C. 1469a(d).

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response,

I do hereby determine the following areas of the U.S. Virgin Islands to have been affected adversely by this declared major disaster:

St. Croix, St. John, and St. Thomas, including Water Island for Public Assistance.

All islands within the Territory of the U.S. Virgin Islands 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. 03–31966 Filed 12–29–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1502–DR]

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 Commonwealth of Virginia (FEMA–1502–DR), dated December 9, 2003, and related determinations.

EFFECTIVE DATE: December 9, 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 December 9, 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 Virginia, resulting from severe storms and flooding on November 18–19, 2003, 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 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 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 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, Louis H. Botta, 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 Virginia to have been affected adversely by this declared major disaster:

Bland, Buchanan, Giles, Smyth, and Tazewell Counties, and the Independent City of Galax for Individual Assistance.

All jurisdictions within the Commonwealth of 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. 03–31965 Filed 12–29–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1500–DR]

West Virginia; Amendment No. 6 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: December 9, 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:

Braxton, Lewis, Logan, and Taylor Counties for Individual Assistance (already designated 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. 03–31960 Filed 12–29–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1500–DR]

West Virginia; Amendment No. 7 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: December 11, 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 area 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:

Harrison County 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. 03–31961 Filed 12–29–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1500–DR]

West Virginia; Amendment No. 8 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: December 19, 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 area 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:

Monongalia County 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. 03–31962 Filed 12–29–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–24]

Announcement of Funding Award—FY 2000, Lead-Based Paint Hazard Control; Duke University of Durham, NC

AGENCY: Office of the Secretary—Office of Healthy Homes and Lead Hazard Control.

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of a funding decision made by the Department to the Duke University of Durham, NC. This announcement contains the name and address of the awardee and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Emily Williams, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone (336) 547–2434 x2067. Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Health Homes Demonstration grant for the Duke University of Durham, NC was issued pursuant to Public Law 102–550, Title X, Residential Lead-Based Paint Hazard Reduction Act of 1992.

This notice announces the award of an additional $333,332.00 for a total award of $825,174.00 to the Duke University of Durham, NC, which will be used to extend the grant period and funding of the original grant to include measurements of contaminants in crawlspaces.

The Catalog of Federal Domestic Assistance number for this program is 14,900.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the name, address, and amount of the award as follows:

Duke University, Nicholas School of the Environment and Earth Sciences, 327 North Building, Box 90077, Durham County, Durham, NC 27708–0077.

Total Amount of Grant: $825,174.00.

Dated: December 3, 2003.

Joseph F. Smith,

Deputy Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 03–31912 Filed 12–29–03; 8:45 am]

BILLING CODE 4210–70–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–26]

Announcement of Funding Award—FY 2002 and FY 2003, Lead-Based Paint Hazard Control; National Academy of Sciences

AGENCY: Office of the Secretary—Office of Healthy Homes and Lead Hazard Control.

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of a funding decision made by the Department to the National Academy of Sciences of Washington, DC. This announcement contains the name and address of the awardee and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Peter J. Ashley, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone (202) 755–1785, ext. 115. Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Healthy Homes and Lead-Hazard Control Research grant for the National Academy of Sciences of Washington, DC was issued pursuant to Public Law 102–550, Title X, Residential Lead-Based Paint Hazard Reduction Act of 1992.

This notice announces the award of $700,000.00 to the National Academy of Sciences of Washington, DC, which will be used to fund a committee to review the research challenges and ethical issues that occur during the design and conduct of intervention research to control housing-related health hazards and protect the health of children and families, and compare and contrast them with those of traditional biomedical intervention research conducted on children.

The Catalog of Federal Domestic Assistance number for this program is 14,900.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the name, address, and amount of the award as follows:

National Academy of Sciences, Office of Contracts and Grants, 500 Fifth Street, NW., Washington, DC 20001.

Total Amount of Grant: $700,000.00.

Dated: December 18, 2003.

Joseph F. Smith,

Deputy Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 03–31914 Filed 12–29–03; 8:45 am]

BILLING CODE 4210–70–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4759–FA–25]

Announcement of Funding Award—FY 2000, Lead-Based Paint Hazard Control; President and Fellows of Harvard College of Boston, MA

AGENCY: Office of the Secretary—Office of Healthy Homes and Lead Hazard Control.

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of a funding decision made by the Department to the National Academy of Sciences of Washington, DC President and Fellows of Harvard College of Boston, MA. This announcement contains the name and address of the awardee and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Peter J. Ashley, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone (202) 755–1785, ext. 115. Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Health Homes Demonstration grant for the President and Fellows of Harvard College of Boston, MA was issued pursuant to Pub. L. 102–550, Title X, Residential Lead-Based Paint Hazard Reduction Act of 1992.

This notice announces the award of an additional $202,281.00 for a total award of $1,200,000 to the President and Fellows of Harvard College of Boston, MA, which will be used to provide financial support and technical assistance to support asthma health outcomes and environmental sampling to the Winter of 2003.

The Catalog of Federal Domestic Assistance number for this program is 14,900.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the name, address, and amount of the award as follows:

President and Fellows of Harvard College, Harvard School of Public Health, Office For Sponsored Research, 677 Huntington Avenue, Harvard, MA 02115.

Total Amount of Grant: $1,200,000.

Dated: December 3, 2003.

Joseph F. Smith,

Deputy Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 03–31913 Filed 12–29–03; 8:45 am]

BILLING CODE 4210–70–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
016016	George Carden Circus International, Inc	68 FR 61011; October 24, 2003	December 4, 2003.
072584	Columbia University	68 FR 62096; October 31, 2003	December 3, 2003.
072945	Mitchel Kalmanson	68 FR 43156; July 21, 2003	November 11, 2003.
072948	Mitchel Kalmanson	68 FR 43156; July 21, 2003	November 11, 2003.
073486	Mitchel Kalmanson	68 FR 43156; July 21, 2003	November 11, 2003.
077059	Cincinnati Zoo	68 FR 58125; October 8, 2003	November 17, 2003.
077372	Dr. Duane M. Rumbaugh	68 FR 61011; October 24, 2003	December 9, 2003.
077886	Gary H. Tennison	68 FR 59811; October 17, 2003	November 18, 2003.
078305	Clarence E. Ellis	68 FR 62096; October 31, 2003	December 4, 2003.
078306	T. F. Lambert	68 FR 62096; October 31, 2003	December 4, 2003.

ENDANGERED MARINE MAMMALS AND MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
049136	Xavier University	68 FR 59811; October 17, 2003	December 9, 2003.
077783	Alfredo Julian	68 FR 59812; October 17, 2003	December 4, 2003.
077954	Richard G. Ferrara	68 FR 59812; October 17, 2003	December 4, 2003.

Dated: December 12, 2003.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–32041 Filed 12–29–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Robinson Rancheria of California Ordinance Governing the Regulation and Licensing of Liquor

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Robinson Rancheria of California Ordinance Governing the Regulation and Licensing of Liquor on lands of the Robinson Rancheria. The ordinance regulates and controls the sale, manufacture, and distribution of alcoholic beverages in public places on the Robinson Rancheria as the Robinson Rancheria Citizens Business Council may deem necessary.

EFFECTIVE DATE: This Ordinance is effective on December 30, 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 Business Council of the Robinson Rancheria of California, also known as the Robinson Rancheria of Pomo Indians, adopted a Liquor Ordinance on March 21, 2003. The purpose of this ordinance is to govern the sale, manufacture, and distribution of alcoholic beverages in public places on the Robinson Rancheria, 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.

I certify that the Business Council Resolution No. 03–21–03A, enacting the ''Robinson Rancheria of Pomo Indians of California Liquor Regulation and Licensing Ordinance,'' was duly adopted by the Business Council of the Robinson Rancheria of Pomo Indians on March 21, 2003.

Dated: December 19, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary-Indian Affairs.

The Robinson Rancheria of California liquor ordinance governing sale, manufacture, and distribution of alcoholic beverages in public places on the Robinson Rancheria reads as follows:

Robinson Rancheria of Pomo Indians of California, California Liquor Regulation and Licensing Ordinance

Article I Declaration of Public Policy and Purpose

Section 1.1. The introduction, possession and sale of liquor on the lands of the Robinson Rancheria is a matter of special concern to the Robinson Rancheria of Pomo Indians of California.

Section 1.2. Federal law, 18 U.S.C. 1154, 1161, currently prohibits the introduction of liquor into Indian country, except as provided therein and in accordance with State law as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), and expressly delegates to the tribe the decision regarding when and to what extent liquor transactions shall be permitted on lands subject to the tribe's jurisdiction.

Section 1.3. The Robinson Rancheria Citizens Business Council of the Robinson Rancheria of Pomo Indians of California (''RRCBC'') has the power under Article VIII(j) of the Constitution of the Robinson Rancheria to enact ordinances to safeguard and provide for the health, safety and welfare of the members of the Robinson Rancheria, and has determined that it is in the best interests of the Robinson Rancheria of Pomo Indians of California to enact a tribal ordinance governing the introduction, possession and sale of liquor on the Robinson Rancheria and which limits the purchase, distribution, and/or sale of liquor within the exterior boundaries of the Robinson Rancheria Reservation only to premises licensed and regulated by the RRCBC.

Section 1.4. The RRCBC finds that the sale or other commercial distribution of liquor on land owned or held in trust for individuals would be contrary to the best interests of the Robinson Rancheria of Pomo Indians of California and is therefore prohibited.

Section 1.5. The RRCBC finds that violations of this Ordinance would damage the Robinson Rancheria of Pomo Indians of California in an amount of five hundred dollars ($500) per violation because of the costs of enforcement, investigation, adjudication and disposition of such violations, and that to defray the costs of enforcing this Ordinance the RRCBC may, in its discretion, impose a tax on the sale of liquor on the reservation.

Based upon the foregoing findings and determinations, the Robinson Rancheria of Pomo Indians of California, through the RRCBC, hereby ordains as follows.

Article II Definitions

As used in this title, the following words shall have the following meanings, unless the context clearly requires otherwise.

Section 2.1. ''Alcohol'' means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses or sugar, or other substances including dilutions and mixtures of this substance.

Section 2.2. ''Alcoholic Beverage'' has the same meaning as the term ''liquor'' as defined in Article II, Section 5 of this Ordinance.

Section 2.3. ''Bar'' means any establishment with special space and accommodations for sale by the glass and for consumption on the premises, of liquor, as herein defined.

Section 2.4. ''Beer'' means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than four percent (4%) of alcohol by volume. For the purpose of this title, ''beer'' includes sake (Japanese rice wine), and any such beverage, including ale, stout, and porter, containing more than four percent (4%) of alcohol by weight shall be referred to as ''strong beer.''

Section 2.5. ''Liquor'' means the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented spiritous, vinous, or malt liquor or combinations thereof, and mixed liquor, or a part of which is fermented, spiritous, vinous, or malt liquor, or otherwise intoxicating; and every other liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substances that contains more than one percent (1%) of alcohol by weight, shall be conclusively deemed to be intoxicating.

Section 2.6. ''Liquor Store'' means any store at which liquor is sold in sealed pre-packaged form, and, for the purpose of this Ordinance, includes any store only a portion of which is devoted to the sale of liquor or beer.

Section 2.7. ''Malt liquor'' means beer, strong beer, ale, stout and porter.

Section 2.8. ''Package'' means any container or receptacle used for holding liquor.

Section 2.9. ''Public Place'' includes gaming facilities, eating facilities and commercial or community facilities of every nature which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted access or to which the general public has been invited, and which generally are used by the public.

Section 2.10. ''Sale'' and ''Sell'' means any exchange, barter, and/or traffic in liquor; and also includes the selling of or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor, or of wine, by any person to any person. ''Sale'' and ''Sell'' includes conditional sales contracts, leases with options to purchase, and any other contract under which possession of property is given to the purchaser, buyer or consumer, but title is retained by the vendor, retailer,

manufacturer or wholesaler as security for payment of the purchase price. Specifically included is any transaction whereby, for any consideration, title or possession of alcoholic beverages is transferred from one person or entity to another, and includes the delivery of alcoholic beverages pursuant to an order placed for such beverages, or soliciting or receiving such beverages. ''Sale'' or ''Sell'' does not include the gift of alcoholic beverages among family members or personal acquaintances in non-commercial circumstances,

Section 2.11. ''Spirits'' means any beverage, which contains alcohol obtained by distillation, including wines exceeding seventeen percent (17%) of alcohol by weight.

Section 2.12. ''RRCBC'' means the Robinson Rancheria Citizens Business Council as defined in Article IV of the Constitution of the Robinson Rancheria of Pomo Indians of California.

Section 2.13. ''Tribal Council'' means the enrolled membership of the Robinson Rancheria eighteen years of age or older.

Section 2.14. ''Tribal Land'' means any land within or without the exterior boundaries of the Robinson Rancheria that is held in trust by the United States for the Robinson Rancheria of Pomo Indians of California.

Section 2.15. ''Wine'' means any alcoholic beverage obtained by fermentation of any fruits (grapes, berries, apples, etc.), or fruit juice and containing not more than seventeen percent (17%) of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding seventeen percent (17%) of alcohol by weight.

Article III Powers of Enforcement

Section 3.1. The RRCBC, in furtherance of this Ordinance, shall have the following powers and duties:

(a) To publish and enforce such rules and regulations governing the sale, manufacture and distribution of alcoholic beverages in public places on the Robinson Rancheria as the RRCBC may deem necessary;

(b) To employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the RRCBC to perform its functions under this Ordinance.

(c) To issue licenses permitting the sale, manufacture and/or distribution of liquor on the Robinson Rancheria;

(d) To hold hearings on violations of this Ordinance or for the issuance or revocation of licenses hereunder;

(e) To bring suit in any court of competent jurisdiction to enforce this Ordinance as the RRCBC determines is necessary;

(f) To determine and seek damages for violation of this Ordinance;

(g) To make reports to the Tribal Council at least semi-annually concerning the implementation of this Ordinance;

(h) To set, levy and collect sales taxes and fees on liquor distribution, sales and/or consumption in commercial premises, and the issuance of liquor licenses, and to keep accurate records, books and accounts of such taxes and fees and expenditures therefrom; and

(i) To exercise such other powers as the RRCBC may determine by duly-enacted resolution may be necessary to implement this Ordinance and accomplish its purposes.

Section 3.2 Limitation on Powers. In the exercise of its powers and duties under this Ordinance, the RRCBC and its individual members and staff shall not:

(a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer or distributor, or from any licensee; or

(b) Waive the immunity of the Robinson Rancheria of Pomo Indians of California from suit without the express and separate consent of the RRCBC.

Section 3.3 Inspection Rights. The public places on or within which liquor is sold, distributed or consumed shall be open for inspection by the RRCBC at all reasonable times for the purposes of ascertaining compliance with this Ordinance and other regulations promulgated pursuant thereto. The RRCBC may delegate all or part of its inspection authority to the Robinson Rancheria Gaming Commission or other subordinate tribal entity or agency, or may contract with third parties for this purpose.

Article IV Sale of Liquor

Section 4.1 License Required. No sales of alcoholic beverages shall be made on or within the exterior boundaries of the Robinson Rancheria or other Tribal Land as defined in this Ordinance, except at a business duly licensed by the RRCBC.

Section 4.2 Sales for Cash. All liquor sales on the Robinson Rancheria or other Tribal Land shall be on a cash-only basis, and no credit shall be extended to any person, organization or entity in connection with any such sales, except that this provision does not prevent the payment for purchases with the use of cashier's or personal checks, money orders, payroll checks, or debit cards or credit cards issued by any federally-or state-regulated financial institution.

Section 4.3 Sale for Personal Consumption. Except as may be specifically licensed by the RRCBC, all retail sales of liquor shall be for the personal use and consumption of the purchaser or members of the purchaser's household, including guests, who are over the age of twenty-one (21). Resale of any alcoholic beverage purchased within the exterior boundaries of the Reservation or other Tribal Land is prohibited. Any person who is not licensed pursuant to this Ordinance who purchases an alcoholic beverage within the boundaries of the Reservation or Tribal Land, and re-sells it, whether in the original container or not, shall be guilty of a violation of this Ordinance and shall be subjected to exclusion from the Reservation or other Tribal Land or liability for money damages of up to five hundred dollars ($500), or both, as determined by the RRCBC after giving the alleged violator due notice and an opportunity to be heard concerning the fact of the alleged violation and the appropriateness of any penalty.

Article V Licensing

Section 5.1 Procedure. In order to control the proliferation of establishments on the Reservation that sell or provide liquor by the bottle or by the drink, all persons or entities that desire to sell liquor within the exterior boundaries of the Robinson Rancheria or on other Tribal Land must apply to the RRCBC for a license to sell or provide liquor; provided, however, that no license is necessary to provide liquor for non-commercial purposes within a private single-family residence on the Reservation for which no money is requested or paid.

Section 5.2 State Licensing. No person shall be allowed or permitted to sell or provide liquor on the Robinson Rancheria if s/he does not also have a license from the State of California to sell or provide such liquor. If such license from the State is revoked or suspended, the Tribal license shall automatically be revoked or suspended as well.

Section 5.3 Application. Any person applying for a license to sell or provide liquor on the Robinson Rancheria shall complete and submit an application provided for this purpose by the RRCBC, and pay such application fee as may be set from time to time by the RRCBC for this purpose. Incomplete applications will not be considered.

Section 5.4 Issuance of License. The RRCBC may issue a license if it believes that the issuance of such license would

be in the best interest of the Robinson Rancheria of Pomo Indians of California, the residents of the Robinson Rancheria and the surrounding community. Licensure is a privilege, not a right, and the decision to issue any license rests in the sole discretion of the RRCBC.

Section 5.5 Duration of License. Each license may be issued for a period not to exceed two (2) years from the date of issuance.

Section 5.6 Renewal of License. A licensee may renew its license if it has complied in full with this Ordinance and has maintained its licensure with the State of California; however, the RRCBC may refuse to renew a license if it finds that doing so would not be in the best interests of the health and safety of the members of the Robinson Rancheria of Pomo Indians of California.

Section 5.7 Suspension or Revocation of License. The RRCBC may suspend or revoke a license for reasonable cause upon notice and hearing at which the licensee shall be given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked. The licensee shall have the burden of going forward and proving by a preponderance of the evidence that the RRCBC should not suspend or revoke the license.

Section 5.8 Transferability of Licenses. Licenses issued by the RRCBC shall not be transferable and may only be utilized by the persons or entities in whose name issued.

Article VI Taxes

Section 6.1 Sales Tax. There is hereby levied and shall be collected a tax on each retail sale of alcoholic beverages on the Reservation in the amount of one percent (1%) of the retail sales price. The tax imposed by this section shall apply to all retail sales of liquor on the Reservation, and to the extent permitted by law shall preempt any tax imposed on such liquor sales by the State of California.

Section 6.2 Payment of Taxes to the Tribe. All taxes from the sale of alcoholic beverages to the Robinson Rancheria shall be paid over to the General Treasury of the Robinson Rancheria of Pomo Indians of California and be subject to the distribution by the RRCBC in accordance with its usual appropriation procedures for essential governmental and social services, including operation of the RRCBC and administration of this Ordinance.

Section 6.3 Taxes Due. All taxes upon the sale of alcoholic beverages on the Reservation are due on the first day of the month following the end of the calendar quarter for which the taxes are due. Past due taxes shall accrue interest at eighteen percent (18%) per annum.

Section 6.4 Reports. Along with payment of the taxes imposed herein, the taxpayer shall submit an accounting for the quarter of all income from the sale or distribution of said beverages as well as for the taxes collected.

Section 6.5 Audit. As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of alcoholic beverages on the Reservation. Said review or audit may be done periodically by the RRCBC through its agents or employees whenever in the discretion of the RRCBC such a review is necessary to verify the accuracy of reports.

Article VII Rules, Regulations and Enforcement

Section 7.1. In any proceeding under this title, proof of one unlawful sale or distribution of liquor shall suffice to establish *prima facie* intent or purpose of unlawfully keeping liquor for sale, selling liquor or distributing liquor in violation of this title.

Section 7.2. Any person who shall sell or offer for sale or distribute or transport in any manner any liquor in violation of this Ordinance, or who shall operate or shall have liquor in his/her possession without a license required by this Ordinance, shall be guilty of a violation of this Ordinance and subject to civil damages assessed by the RRCBC. Nothing in this Ordinance shall apply to the possession or transportation of any quantity of liquor by members of the Robinson Rancheria of Pomo Indians of California for their personal or other non-commercial use, and the possession, transportation, sale, consumption or other disposition of liquor outside public places on the Robinson Rancheria shall be governed solely by the laws of the State of California.

Section 7.3. Any person within the boundaries of the Robinson Rancheria who, in a public place, buys liquor from any person other than at a properly-licensed facility shall be guilty of a violation of this Ordinance.

Section 7.4. Any person who sells liquor to a person apparently under the influence of liquor shall be guilty of a violation of this Ordinance.

Section 7.5. No person under the age of twenty-one (21) years shall consume, acquire or have in his/her possession any alcoholic beverages. Any person violating this section in a public place shall be guilty of a separate violation of this Ordinance for each and every drink so consumed.

Section 7.6. Any person who, in a public place, shall sell or provide any liquor to any person under the age of twenty-one (21) years shall be guilty of a violation of this Ordinance for each such sale or drink provided.

Section 7.7. Any person guilty of a violation of this Ordinance shall be liable to pay the Robinson Rancheria of Pomo Indians of California the amount of five hundred dollars ($500) per violation as civil damages to defray the Tribe's cost of enforcement of this Ordinance. The amount of such damages in each case shall be determined by the RRCBC based upon a preponderance of the evidence available to the RRCBC after the person alleged to have violated this Ordinance has been given due notice and an opportunity to respond to such allegations.

Section 7.8. Whenever it reasonably appears to a licensed purveyor of liquor that a person seeking to purchase liquor is under the age of twenty-seven (27) years, the prospective purchaser shall be required to present any one of the following officially-issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

(a) Driver's license of any state or identification card issued by any state Department of Motor Vehicles;

(b) United States Active Duty Military;

(c) Passport; or

(d) Gaming license, work permit or other identification issued by the RRCBC, if said license, permit or identification contains the bearer's correct age, signature and photograph.

Article VIII Abatement

Section 8.1. Any public place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance, and all property kept in and used in maintaining such place, is hereby declared to be a public nuisance.

Section 8.2. The Tribal Chairperson, upon authorization by a majority of the RRCBC, or, if he/she fails to do so, a majority of the Tribal Council acting at a duly-called meeting at which a quorum is present, shall direct the tribal department of public safety or equivalent department of the tribal government to abate any such nuisance. If necessary, the RRCBC shall be authorized to institute and maintain an action in a court of competent jurisdiction in the name of the Robinson Rancheria of Pomo Indians of California to abate and perpetually enjoin any nuisance declared under this title. Upon establishment that probable cause exists

to find that a nuisance exists, restraining orders, temporary injunctions and permanent injunctions may be granted in the cause as in other injunction proceedings, and upon final judgment against the defendant the court may also order the room, structure or place closed for a period of one (1) year or until the owner, lessee, tenant or occupant thereof shall give bond of sufficient sum of not less than twenty-five thousand dollars ($25,000) payable to the Robinson Rancheria of Pomo Indians of California and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of therein in violation of the provision of this Ordinance or of any other applicable tribal law, and that s/he will pay all fines, costs and damages assessed against him/her for any violation of this Ordinance or other Tribal laws. If any conditions of the bond should be violated, the whole amount may be recovered for the use of the Robinson Rancheria of Pomo Indians of California.

Section 8.3. In all cases where any person has been found responsible for a violation of this Ordinance relating to manufacture, importation, transportation, possession, distribution and sale of liquor, an action may be brought in a court of competent jurisdiction to abate as a public nuisance the use of any real estate or other property involved in the violation of this Ordinance, and proof of violation of this Ordinance shall be *prima facie* evidence that the room, house, building, vehicle, structure, or place against which such action is brought, is a public nuisance. Unless a tribal court has been established or designated by contract at the time any such action is to be filed, the RRCBC shall sit as the tribal court for the purpose of ordering the abatement of such nuisance.

Article IX Profits

Section 9.1. The gross proceeds collected by the RRCBC from all licensing of the sale of alcoholic beverages on the Robinson Rancheria, and from proceedings involving violations of this Ordinance, shall be distributed as follows:

(a) First, for the payment of all necessary personnel, administrative costs, and legal fees incurred in the enforcement of this Ordinance; and

(b) Second, the remainder shall be turned over to the General Fund of the Robinson Rancheria of Pomo Indians of California and expended by the RRCBC for governmental services and programs on the Robinson Rancheria.

Article X Severability and Effective Date

Section 10.1. If any provision or application of this Ordinance is determined by judicial review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this title, or to render such provisions inapplicable to other persons or circumstances.

Section 10.2. This Ordinance shall be effective on such date as the Secretary of the Interior certifies this Ordinance and publishes the same in the **Federal Register**.

Section 10.3. Any and all prior enactments of the Robinson Rancheria of Pomo Indians of California that are inconsistent with the provisions of this Ordinance are hereby rescinded and repealed.

Section 10.4. All acts and transactions under this Ordinance shall be in conformity with the laws of the State of California as that term is used in 18 U.S.C. 1154, but only to the extent required by the laws of the United States.

Article XI Amendment

This Ordinance may only be amended by majority vote of the RRCBC attending a duly-noticed meeting at which a quorum is present.

Article XII Certification and Effective Date

This Ordinance was passed at a duly-held, noticed and convened meeting of the Robinson Rancheria Citizens Business Council at which a quorum of at least four (4) members was present, by a vote of 3 for, 0 against and 0 abstaining, on the 21st day of March 2003, as certified and attested to by the Chairperson and Secretary-Treasurer of the Robinson Rancheria of Pomo Indians of California and shall be effective upon approval by the Secretary of the Interior or his designee as provided by Federal law.

Clara Wilson,
Chairperson.

Nicholas Medina,
Secretary-Treasurer.

[FR Doc. 03–32042 Filed 12–29–03; 8:45 am]

BILLING CODE 4310–45–P

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to one year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2003. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectuses leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Conc ID No.	Concessioner name	Park
NACE003	Buzzard Point Boatyard	National Capital Parks-East.
CHOH001	Fletcher's Boat House, Inc	Chesapeake & Ohio Canal NHP.
ROCR003	Golf Course Specialists, Inc	Rock Creek Park.
PRWI001	Prince William Travel Trailer Village, Inc	Prince William Forest Park.
CHOH002	Swain's Lock	Chesapeake & Ohio Canal NHP
NACC006	Thanh Van Vo and Hung Thi Nguyen	National Capital Parks-Central.
NACC009	Thanh Van Vo and Hung Thi Nguyen	National Capital Parks-Central.

EFFECTIVE DATE: January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: December 7, 2003.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–31934 Filed 12–29–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contract for a period of up to one year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: The listed concession authorization will expire by its terms on April 14, 2004. The National Park Service has determined that the proposed short-term extension is necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. This extension will allow the National Park Service to complete and issue a prospectus leading to the competitive selection of a concessioner for a new long-term concession contract covering this operation.

Concid ID No.	Concessioner name	Park
INDE001–94	City Tavern, Concepts by Staib, Ltd	Independence National Historic Park.

EFFECTIVE DATE: January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Management, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: November 11, 2003.

Richard G. Ring

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–31935 Filed 12–29–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to one year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2003. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectus leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Concid ID No.	Concessioner Name	Park
BOST002–88	Boston Concessions Group	Boston National Historic Park.
CACO006–97	Hostelling International	Cape Code National Seashore.
DEWA004–98	DEWA Pepsi-Cola Company	Delaware Water Gap NRA.
FOMC001–95	Evelyn Hill, Inc	Fort McHenry NM & Historical Shrine.
GEWA001–95	GW Birthplace National Memorial Gift Shop	George Washington Birthplace NM.
SAHI001–97	Friends of Sagamore Hill	Sagamore Hill National Historic Site.
SHEN002–90	Potomac Appalachian Trail Club, Inc.	Shenandoah National Park.

EFFECTIVE DATE: Janaury 2, 2004.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: November 11, 2003.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–31936 Filed 12–29–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contract for a period of up to 3 years, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: The listed concession authorization will expire by its terms on or before December 31, 2003. The National Park Service has determined that the proposed short-term extension is necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. This extension will allow the National Park Service to complete and issue a prospectus leading to the competitive selection of a concessioner for a new long-term concession contract covering this operation.

Conc ID No.	Concessioner name	Park
ZION001	Xanterra Parks and Resorts	Zion National Park.

EFFECTIVE DATE: January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: November 25, 2003.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–31937 Filed 12–29–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts

AGENCY: National Park Service, Interior

ACTION: Public notice.

SUMMARY: Pursuant to the terms of existing concession permits, with the exception of construction on National Park Service lands, public notice is hereby given that the National Park Service intends to provide visitor services under the authority of a temporary concession contract with a term of up to 1 year from the date of permit expiration.

SUPPLEMENTARY INFORMATION: Under the provisions of current concession permits, with one exception, and pending the development and public solicitation of a prospectus for a new concession permit, the National Park Service authorizes continuation of visitor services under a temporary concession contract for a period of up to 1 year from the expiration of the current concession permit. The exception precludes construction on National Park Service lands, regardless of whether the current permit authorizes such activity. The temporary contract does not affect any rights with respect to selection for award of a new concession contract.

Conc ID No.	Concessioner name	Park
AMIS002	Forever Resorts, LLC	Amistad National Recreation Area.
AMIS003	Rough Canyon Marina	Amistad National Recreation Area.
BAND001	Bandelier Trading Company	Bandelier National Park.
CURE001	Elk Creek Marina	Curecanti National Recreation Area.
DINO010	Wilkins Firewood and Beverage	Dinosaur National Park.
GLCA001	Wilderness River Adventures	Glen Canyon National Recreation Area.
GLCA021	Banner Health, Page Hospital	Glen Canyon National Recreation Area.
GOSP001	McFarland Distributing	Golden Spike National Historic Area.
GRCA003	Grand Canyon Railroad	Grand Canyon National Park.
GRCA004	Grand Canyon Trail Rides	Grand Canyon National Park.
GRCA005	Verkamps, Inc	Grand Canyon National Park.
GRTE003	Signal Mountain	Grand Canyon National Park.
GRTE009	Exum Mountain Guides	Grand Teton National Park.
LAMR002	Forever Resorts, LLC	Lake Meredith National Recreation Area.
LIBI001	Little Bighorn Institute for Economic Development	Little Bighorn National Historic Site.
PAIS001	Forever Resorts, LLC	Padre Island National Seashore.
PEFO001	Xanterra Parks and Resorts	Petrified Forest National Park.
TICA001	Carl and Betsy Wagner	Timpanogos Cave National Monument.
YELL004	Yellowstone Park Service Stations, Inc	Yellowstone National Park.

EFFECTIVE DATE: January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone, 202/513–7156.

Dated: November 25, 2003.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–31938 Filed 12–29–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contract for a period of up to 2 years, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: The listed concession authorization will expire by its terms on or before December 31, 2003. The National Park Service has determined that the proposed short-term extension is necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. This extension will allow the National Park Service to complete and issue a prospectus leading to the competitive selection of a concessioner for a new long-term concession contract covering this operation.

Conc ID No.	Concessioner name	Park
BRCA003	Xanterra Parks and Resorts	Bryce Canyon National Park.
CACH001	Thunderbird	Canyon de Chelly National Park.

EFFECTIVE DATES: January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: November 25, 2003.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–31939 Filed 12–29–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby give that the National Park Service proposes to extend the following expiring concession contracts for a period of up to 1 year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: The listed concession authorizations will expire by their terms on or before December 31, 2003. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue a prospectus leading to the competitive selection of a concessioner for a new long-term concession contract covering these operations.

Conc ID No.	Concessioner name	Park
BRCA002	Bryce Zion Trail Rides.	Bryce Canyon National Park.
CANY001–020.	Canyonlands River Runners.	Canyonlands National Park.
GRCA002	North Rim, Xanterra Parks and Resorts.	Grand Canyon National Park.
GRTE001	Grand Teton Lodge Company.	Grand Teton National Park.
WHSA001	White Sands Company, Inc.	White Sands National Monument.

EFFECTIVE DATE: January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: December 9, 2003.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–31940 Filed 12–29–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for a period not-to-exceed 1 year from the date of contract expiration.

SUMMARY: Pursuant to the terms of existing contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for a period not-to-exceed 1 year from the date of contract expiration.

SUPPLEMENTARY INFORMATION: The contract listed below has been extended to the maximum allowable under 36 CFR 51.23. Under the provisions of current concession contract and pending the completion of the public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed 1 year under the terms and conditions of the current contract as amended.

Conc ID No.	Concessioner Name	Park
MORU001	Xanterra Parks and Resorts	Mount Rushmore National Memorial.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: December 9, 2003.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–31941 Filed 12–29–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF INTERIOR

National Park Service

Public Notice of Extension

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contract for a period of up to one year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: The listed concession authorization will expire by its terms on or before December 31, 2003. The National Park Service has determined that the proposed short-term extension is necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. This extension will allow the National Park Service to complete and issue a prospectus leading to the competitive selection of a concessioner for a new long-term concession contract covering this operation.

Conc ID No.	Concessioner name	Park
CC–FOSU001–86	Fort Sumter Tours, Inc.	Fort Sumter National Park

EFFECTIVE DATE: January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC, 20240, Telephone 202/513–7156.

Dated: December 9, 2003.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–31942 Filed 12–29–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Public Notice of Extension

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to one year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2003. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Services to complete and issue prospectus leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Conc ID No.	Concession name	Park
CC–BUFF001–99	Buffalo Point	Buffalo National River.
LP–CUVA001–94	American Youth Hostels	Cuyahoga Valley National Park.
CC–HOSP004–88	Libbey Memorial Physical Medicine Center.	Hot Springs National Park.
CP–INDU003–94	Michiana Resources, Inc.	Indiana Dunes National Landmark.
CP–INSRO001–95	The Royale Line, Inc.	Isle Royale National Park.
CP–INSRO007–95	GRPO–ISRO Trans Line, Inc.	Isle Royale National Park.
CC–JEFF001–96	Compass Group USA, Inc.	Jefferson National Expansion Memorial.
CC–OZAR012–88	Akers Ferry Canoe Rental, Inc.	Ozark National Scenic Riverway.
LP–OZAR037–91	Akers Ferry Canoe Rental, Inc.	Ozark National Scenic Riverway.
CC–OZAR001–88	Alley Spring Canoe	Ozark National Scenic Riverway.
CC–OZAR025–97	Big Spring Canoe Rental	Ozark National Scenic Riverway.
CP–OZAR050–97	Big Spring River Camp	Ozark National Scenic Riverway.
CC–OZAR016–89	Carr's Grocery/Canoe Rental	Ozark National Scenic Riverway.
CP–OZAR040–97	Carr's Tube Rental	Ozark National Scenic Riverway.
CP–OZAR011–97	Current River Canoe Rental	Ozark National Scenic Riverway.
CP–OZAR010–97	Deer Run Campground	Ozark National Scenic Riverway.
CP–OZAR013–97	Eminence Canoes, Cottages and Camp	Ozark National Scenic Riverway.
CP–OZAR023–97	Hawthorne Canoe Rental	Ozark National Scenic Riverway.
CP–OZAR002–97	Jack's Fork Canoe Rental	Ozark National Scenic Riverway.
CP–OZAR020–97	Jadwin Canoe Rental, Inc.	Ozark National Scenic Riverway.
CP–OZAR024–97	The Landing Canoe Rental	Ozark National Scenic Riverway.
CP–OZAR036–97	Maggard Canoe/Boat, Inc.	Ozark National Scenic Riverway.
CP–OZAR008–97	Round Spring Canoe Rental	Ozark National Scenic Riverway.
CP–OZAR028–97	Running River Canoe Rental	Ozark National Scenic Riverway.
CP–OZAR007–97	Silver Arrow Canoe Rental, Inc.	Ozark National Scenic Riverway.
CP–OZAR049–97	Smalley's Motel Tube Rental	Ozark National Scenic Riverway.
CP–OZAR018–97	Two Rivers Canoe Rental	Ozark National Scenic Riverway.
CP–OZAR005–97	Wild River Canoe, Inc.	Ozark National Scenic Riverway.
CP–OZAR014–97	Windy's Canoe Rental	Ozark National Scenic Riverway.
CC–SLBE005–86	Manitou Island Transit	Sleeping Bear Dunes National Landmark.
CP–SLBE008–99	Blough Firewood	Sleeping Bear Dunes National Landmark.
CP–THRO001–98	Shadow County Outfitters	Theodore Roosevelt National Park.
LP–WICA002–98	Black Hills Parks and Forest Assn.	Wind Cave National Park

EFFECTIVE DATE: January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: November 25, 2003.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–31943 Filed 12–29–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Public Notice of Extension

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to one year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2003. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectuses

leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Conc ID No.	Concessioner name	Park
BOST002–88	Boston Concessions Group	Boston National Historic Park.
CACO006–97	Hostelling International	Cape Cod National Seashore.
DEWA004–98	DEWA Pepsi-Cola Company	Delaware Water Gap NRA.
FOMC001–95	Evelyn Hill, Inc	Fort McHenry NM & Historical Shrine.
GEWA001–95	GW Birthplace National Memorial Gift Shop.	George Washington Birthplace NM.
SAHI001–97	Friends of Sagamore Hill	Sagamore Hill National Historic Site.
SHEN002–90	Potomac Appalachian Trail Club, Inc	Shenandoah National Park.

EFFECTIVE DATE: January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: November 11, 2003.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–31944 Filed 12–29–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Final Rural Landscape Management Program Environmental Impact Statement for Cuyahoga Valley National Park, Ohio

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the final rural landscape management program environmental impact statement (EIS) for Cuyahoga Valley National Park, Ohio (Park). This notice is being furnished as required by National Environmental Policy Act Regulations 40 CFR 1501.7.

DATES: The required no-action period on this final EIS will expire 30 days after the Environmental Protection Agency has published a notice of availability of the final EIS in the **Federal Register**.

ADDRESSES: Copies of the final EIS are available by request by writing to: Superintendent, Cuyahoga Valley National Park, 15610 Vaughn Road, Brecksville, OH 44141; by phone 440–546–5903; or by e-mail *cuva_superintendent@nps.gov.* A downloadable online version of the document is available at: *http://www.nps.gov/cuva/management/rmprojects/ruraleis/.*

FOR FURTHER INFORMATION CONTACT: Superintendent, Cuyahoga Valley National Park, 15610 Vaughn Road, Brecksville, OH 44141, or by phone 440–546–5903.

SUPPLEMENTARY INFORMATION: The preservation of the rural landscape is central to the Park's legislative mandate. The law that established the Park mandates the ''preservation of the historic, scenic, natural, and recreational values of the Cuyahoga Valley'' (Pub. L. 93–555, 1974). One component of the historic and scenic values of the Park is the rural landscape—lands and structures modified by humans for agricultural use. Throughout the Park's history, efforts to preserve the rural landscape have been sporadic; there has never been a comprehensive program to manage the rural landscape. As a result, many of the Park's rural landscape resources have been lost. Therefore, the Park is proposing to better protect and revitalize this cultural resource by implementing an integrated rural landscape management program, with the goal of more effectively and systematically preserving and protecting the rural landscape resources in the Park. The final EIS describes and analyzes the environmental impacts of several alternative actions. In the Park's preferred alternative (alternative 2—Countryside Initiative), the rural landscape would be managed largely by issuing long-term leases to private individuals for the purpose of conducting sustainable agricultural activities. The final EIS evaluates two additional action alternatives and a no action alternative.

The Draft EIS was released to the public on February 14. Public meetings were held on March 19, from 12–2 p.m. and March 20, from 6–8 p.m. to solicit further comments. The public comment period ended April 15, though comments received through April 29, were considered.

The NPS received 77 formal written comments during the comment period in addition to verbal comments made at public meetings. All written comments are reprinted in full in the final EIS, as are a summary of verbal comments from the meetings. The NPS responses to substantive comments are also provided. The final EIS includes corrections and additions based on the substantive comments received. Additional revisions to correct errata and improve consistency but not affecting the analysis are also included in the final EIS.

The responsible official is Mr. Ernest Quintana, Midwest Regional Director, National Park Service.

Dated: September 15, 2003.

David N. Given,

Acting Regional Director, Midwest Region.

[FR Doc. 03–31932 Filed 12–29–03; 8:45 am]

BILLING CODE 4310–DE–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Field Museum of Natural History, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Field Museum of Natural History, Chicago, IL. The human remains and associated funerary objects were removed from Fort Peck Indian Reservation, MT, and from an unknown location in Montana.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Field Museum of Natural History professional staff in consultation with representatives of Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana.

In July 1900, human remains representing a minimum of two individuals were removed from the Fort Peck Indian Reservation, MT. Field Museum of Natural History records state that anthropologist Stewart Culin removed the human remains from Fort Peck. In 1902, the human remains were transferred to the Field Museum of Natural History from the Free Museum of Science and Art (now the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA) as part of an exchange. No known individuals were identified. The 20 associated funerary objects are 1 bracelet (possibly bone), 3 stones, 1 small piece of dirt or clay, 13 copper alloy bracelets, 1 leather knife sheath, and 1 wooden stick.

Field Museum of Natural History staff consulted with University of Pennsylvania Museum of Anthropology and Archaeology staff who had no additional information about the human remains and associated funerary objects. University of Pennsylvania Museum of Archaeology and Anthropology records, however, indicate that Mr. Culin removed other human remains from a box grave outside of the Fort Peck Indian Reservation at the same time as the human remains and funerary objects held by the Field Museum of Natural History were removed.

The human remains and associated funerary objects have been identified as Native American, based on the identification of Sioux cultural affiliation in museum records and based on identification of origin on the Fort Peck Reservation, MT. The physical condition of the human remains and associated funerary objects indicates that they are of relatively recent historical origin. Field Museum of Natural History records identify the human remains as Sioux. Sioux descendents in Montana are represented by the present-day Assiniboine and Sioux Tribes of the Fort Peck Reservation, Montana.

At an unknown time, the Field Museum of Natural History acquired human remains representing a minimum of one individual. No known individual is identified. No associated funerary objects are present.

Field Museum of Natural History records identify the human remains as those of a ''Montana, Sioux [sic],'' indicating that the collector was aware of the cultural affiliation of the individual. Based on the specific cultural and geographic attribution in the museum records, the human remains are determined to be culturally affiliated with the Sioux tribes. Sioux descendents in Montana are represented by the present-day Assiniboine and Sioux Tribes of the Fort Peck Reservation, Montana.

Officials of the Field Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of the Field Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 20 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Field Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Helen Robbins, Repatriation Specialist, Field Museum of Natural History, 1400 South Lake Shore Drive, Chicago, IL, 60605–2496, telephone (312) 665–7317, before January 29, 2004. Repatriation of the human remains and associated funerary objects to the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana may proceed after that date if no additional claimants come forward.

The Field Museum of Natural History is responsible for notifying the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana that this notice has been published.

Dated: October 30, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–31933 Filed 12–29–03; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Field Office Technical Guidelines

AGENCY: National Park Service, Interior.

ACTION: Proposed Amendment two (Amdt. 2) to Southeast Region Order No. 6, Delegation of Authority, approved August 30, 1977, and as amended April 28, 1989.

SUMMARY: Pursuant to Department of the Interior 200 D.M. 2.4 and 200 D.M. 1.10, the National Park Service announces the proposed Amendment two (Amdt. 2) to Southeast Region Order No. 6, Delegation of Authority, to clarify the authority of Field Land Resources Officers.

FOR FURTHER INFORMATION CONTACT: Patricia A. Hooks, Acting Regional Director, National Park Service, Southeast Region, Atlanta Federal Center, 1924 Building, 100 Alabama Street, SW., Atlanta, GA 30303. Telephone: 404–562–3148.

SUPPLEMENTARY INFORMATION: Proposed Amendment (Amdt. 2) is as follows: Southeast Region Order No. 6, approved August 30, 1977, and published in the **Federal Register** of November 17, 1977, (42 FR 59428), and as amended (Amdt. 1) and published in the **Federal Register** of April 28, 1989, (54 FR 18337), set forth in section 2 certain authority and limitations on authority to officers and employees. This amendment changes paragraph (i) to read as follows: Section 2, Delegation. * * *

(i) Field Land Resources Officers. All Field Land Resources Officers are authorized to execute their land acquisition program, including contracting for acquisition of lands and related properties, and acceptance of offers to sell to, or exchange with the United States lands or interests in land when the amount does not exceed $500,000.00; and to execute all necessary agreements and conveyances incidental thereto; to accept deeds conveying to the United States lands or interests in lands; to approve on behalf of the National Park Service offers of settlement in condemnation cases when the amount involved does not exceed $250,000.00; and to approve claims for reimbursement under Pub. L. 91–646, as amended.

Dated: October 24, 2003.

Charlie Powell,

Acting Regional Director, Southeast Region.

[FR Doc. 03–31931 Filed 12–29–03; 8:45 am]

BILLING CODE 4310–C6–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–494]

In the Matter of Certain Automotive Measuring Devices, Products Containing Same, and Bezels for Such Devices; Notice of Commission Decision not to Review an Initial Determination Granting Complainant's Motion To Amend the Complaint and Notice of Investigation To Add a Respondent to the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on November 26, 2003, granting complainant Auto Meter Products, Inc.'s motion to amend the complaint and notice of investigation to add Blitz Co., Ltd., as a respondent in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3115. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: The Commission issued a notice of investigation dated June 16, 2003, naming Auto Meter Products, Inc. (''Auto Meter'') of Sycamore, Illinois, as the complainant and several companies, including Blitz North America Inc. (''Blitz NA''), as respondents. On June 20, 2003, the notice of investigation was published in the **Federal Register**. 68 FR 37023 (June 20, 2003). Auto Meter's complaint alleges violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain automotive measuring devices, products containing same, and bezels for such devices, by reason of infringement of U.S. Registered Trademark Nos. 1,732,643 and 1,497,472, and U.S. Supplemental Register No. 1,903,908, and infringement of the complainant's trade dress.

On October 2, 2003, Auto Meter moved to amend the complaint and notice of investigation to add Blitz Co., Ltd. as a respondent in the investigation. On October 23, 2003, respondent Blitz NA filed an opposition to Auto Meter's motion concurrently with a motion for an extension of time to file such opposition. On October 24, 2003, Auto Meter filed an opposition to Blitz NA's motion for an extension of time. On October 23, 2003, the Commission investigative attorneys filed a response in support of Auto Meter's motion to amend. No other party responded to Auto Meter's motion to amend.

On November 26, 2003, the ALJ issued an ID (Order No. 11) granting Auto Meter's motion to amend the complaint and notice to add Blitz Co., Ltd. as a respondent in the investigation. No party petitioned for review of that ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: December 22, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–32004 Filed 12–29–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–043]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: January 5, 2004, at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–437 and 731–TA–1060–1061 (Preliminary)(Cabrazole Violet Pigment 23 from China and India)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on January 5, 2004; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before January 12, 2004.)
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 23, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–32224 Filed 12–24–03; 1:55 pm]

BILLING CODE 7020–02–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Qualification and Certification Program

ACTION: Notice.

SUMMARY: The Department of Labor, 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 requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) soliciting comments concerning the extension of the information collection related to the Title 30 CFR 75.153(a)(2) and 77.103(a)(2) require that a program be provided for the qualification of certain experienced personnel as mine electricians. A qualified person is one who has had at least one year of experience in performing electrical work underground in a coal mine, in the surface work area of an underground coal mine, in a surface coal mine, in a noncoal mine, in the mine equipment manufacturing industry, or in any other industry using or manufacturing similar

equipment, and has satisfactorily completed a coal mine electrical training program.

DATES: Submit comments on or before March 15, 2004.

ADDRESSES: Send comments to: Melissa Stoehr, Director of Management Services Division, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet e-mail to *Stoehr.mellissa@dol.gov.* Ms. Stoehr can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Melissa Stoehr, Director of Management Services Division, U.S. Department of Labor, Mine Safety and Health Administration, Room 2134, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Stoehr can be reached at *Stoehr.melissa@dol/gov,* (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Persons performing tasks and certain required examinations at coal mines which are related to miner safety and health, and which required specialized experience, are required to be either ''certified'' or ''qualified''. The regulations recognize State certification and qualification programs. However, where state programs are not available, under the Mine Act and MSHA standards, the Secretary may certify and qualify persons for as long as they continue to satisfy the requirements needed to obtain the certification or qualification, fulfill any applicable retraining requirements, and remain employed at the same mine or by the same independent contractor. Applications for Secretarial certification must be submitted to the MSHA Qualification and Certification Unit in Denver, Colorado. MSHA Form 5000–1 provides the coal mining industry with a standardized reporting format that expedites the certification process while ensuring compliance with the regulations. The information provided on the forms enables the Secretary of Labor's delegate—MSHA, Qualification and Certification Unit—to determine if the applicants satisfy the requirements to obtain the certification or qualification. Persons must meet certain minimum experience requirements depending on the type of certification or qualification applied for.

II. Desired Focus of Comments

MSHA 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 submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''**Federal Register** Documents.''

III. Current Actions

This request for collection of information contains provisions whereby persons may be temporarily qualified or certified to perform tests and examinations; requiring specialized expertise; related to inner safety and health at coal mines.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Qualification and Certification Program.

OMB Number: 1219–0001.

Recordkeeping: MSHA Form 5000–1 is used by instructors, who may be mining personnel, consultants, or college professors, to report to MSHA those miners who have satisfactorily completed a coal mine electrical training program. Based on the information submitted on Form 5000–1, MSHA issues certification cards that identify these individuals as qualified to perform certain tasks at the mine.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Respondents: 3,921.

Estimated Time per Respondent: .083.

Total Burden Hours: 12,765.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $69.

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 at Arlington, Virginia, this 19th day of December, 2003.

Lynnette M. Haywood,

Deputy Director, Office of Administration and Management.

[FR Doc. 03–31980 Filed 12–29–03; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Fee Adjustments for Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of fee adjustments.

SUMMARY: This notice revises our [MSHA Approval and Certification Center (A&CC)] user fees. Fees compensate us for the costs that we incur for testing, evaluating, and approving certain products for use in underground mines. We based the 2004 fees on our actual expenses for fiscal year 2003. The fees reflect changes both in our approval processing operations and in our costs to process approval actions.

DATES: This fee schedule is effective from January 1, 2004, through December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Steven J. Luzik, Chief, Approval and Certification Center (A&CC), 304–547–2029 or 304–547–0400.

SUPPLEMENTARY INFORMATION:

Background

On May 8, 1987 (52 FR 17506), we published a final rule, 30 CFR Part 5—Fees for Testing, Evaluation, and Approval of Mining Products. The rule established specific procedures for calculating, administering, and revising user fees. We have revised our fee schedule for 2004 in accordance with the procedures of that rule and include this new fee schedule below. For approval applications postmarked before January 1, 2004, we will continue to calculate fees under the previous (2003) fee schedule, published on December 31, 2002.

Fee Computation

In general, we computed the 2004 fees based on fiscal year 2003 data. We calculated a weighted-average, direct

cost for all the services that we provided during fiscal year 2003 in the processing of requests for testing, evaluation, and approval of certain products for use in underground mines. From this cost, we calculated a single hourly rate to apply uniformly across all of the product approval categories during 2004.

Dated: December 18, 2003.

John R. Correll,

Deputy Assistant Secretary of Labor for Mine Safety and Health.

FEE SCHEDULE EFFECTIVE JANUARY 1, 2004

[Based on FY 2003 data]

Action title	Hourly rate
Fees for Testing, Evaluation, and Approval of all Mining Products [1]	$63
Retesting for Approval as a Result of Post-Approval Product Audit [2]	
30 CFR Part 15—Explosives Testing	
Permissibility Tests for Explosives:	
Weigh-in	462
Physical Exam: First size	325
Chemical Analysis	1,977
Air Gap—Minimum Product Firing Temperature	460
Air Gap—Room Temperature	352
Pendulum Friction Test	163
Detonation Rate	352
Gallery Test 7	7,436
Gallery Test 8	5,533
Toxic Gases (Large Chamber)	805
Permissibility Tests for Sheathed Explosives:	
Physical Examination	128
Chemical Analysis	1,044
Gallery Test 9	1,944
Gallery Test 10	1,944
Gallery Test 11	1,944
Gallery Test 12	1,944
Drop Test	648
Temperature Effects/Detonation	672
Toxic Gases	580

[1] Full approval fee consists of evaluation cost plus applicable test costs.

[2] Fee based upon the approval schedule in effect at the time of retest.

Note: When the nature of the product requires that we test and evaluate it at a location other than our premises, you must reimburse us for the traveling, subsistence, and incidental expenses of our representative in accordance with standardized government travel regulations. This reimbursement is in addition to the fees charged for evaluation and testing.

[FR Doc. 03–31798 Filed 12–29–03; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 03–159]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted by January 29, 2004.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory affairs; Office of management and Budget; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: GLOBE Program Evaluation.

OMB Number: 2700–.

Type of review: New collection.

Need and Uses: The information collected is needed to guide implementation of the GLOBE Program based on feedback from participating teachers, students, and partners in order to help meet the Program's goal of improving student achievement in mathematics and science.

Affected Public: Individuals or households.

Number of Respondents: 2361.

Annual Responses: 499.

Hours Per Request: 30–90 minutes each.

Annual Burden Hours: 373.

Frequency of Report: Once.

Dated: December 17, 2003.

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–32008 Filed 12–29–03; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (03–160)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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: All comments should be submitted by February 28, 2004.

ADDRESSES: All comments should be addressed to Ms. Celeste Dalton, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Nancy Kaplan, NASA Reports Officer, NASA Headquarters, 300 E Street SW, Code AO, Washington, DC 20546, (202) 358–1372.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) plans to renew an ongoing collection designed to collect information needed to evaluate bids and proposals from offerors to award purchase orders and to use bank cards for required goods and services with an estimated value of $100,000 or less. Bids are requested and evaluated in accordance with the OFPP Policy Act as amended by Pub. L. 96–83, the NASA Space Act, 42 U.S.C. *et seq.* As the need arises for goods and services valued at less than $100,000, NASA follows the procedures set forth in Part 13 of the Federal Acquisition Regulations (FAR) and Part 1813 of the NASA FAR Supplement (NFS) before an order can be awarded. Similarly, quotes voluntarily submitted in response to Request for Quotations (RFQs), contractors must furnish all information required by the FAR, the NFS, and Agency needs. This solicited information is used by NASA project and procurement managers in the selection of contractors for goods and services required to meet the Agency's mission.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA Acquisition Process: Purchase Orders for Goods and Services With an Estimated Value of $100,000 or Less.

OMB Number: 2700–0086.

Type of review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, local, or tribal governments.

Estimated Number of Respondents: 242,955.

Estimated Time Per Response: Varies, depending on type of response. Bank card transactions take an average of 20 minutes per response. Bids take an average of 15 minutes per response.

Estimated Total Annual Burden Hours: 73,152.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information collected has practical utility; (2) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Dated: December 17, 2003.

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–32009 Filed 12–29–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (03–161)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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: All comments should be submitted within by February 28, 2004.

ADDRESSES: All comments should be addressed to Ms. Celeste Dalton, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Nancy Kaplan, NASA Reports Officer, NASA Headquarters, 300 E Street SW, Code AO, Washington, DC 20546, (202) 358–1372.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) plans to renew an ongoing collection, in the form of reports for contracts with a value more than $500,000, designed to monitor contract compliance in support of NASA's mission. The requirements for this information are set forth in the Federal Acquisition Regulation (FAR), the NASA FAR Supplement, and approved mission requirements. NASA technical program and contract management personnel use this information to effectively manage and administer contracts; to measure the contractor's performance; to evaluate contractor management systems; to ensure compliance with mandatory public policy provision; to evaluate and control costs charged against a contract; to detect and minimize conditions conducive to fraud, waste, and abuse; and to form a database for general overview reports to the Congressional and Executive branches.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA Acquisition Process: Reports Required for Contracts With an Estimated Value More Than $500,000.

OMB Number: 2700–0089.

Type of review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, local, or tribal governments.

Estimated Number of Respondents: 1,652.

Estimated Time Per Response: Respondents submit an average of 53 reports annually, requiring an average of 7 hours per report response time, for a total of 371 annual hours per respondent.

Estimated Total Annual Burden Hours: 601,328.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information collected has practical utility; (2) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Dated: December 17, 2003.

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–32010 Filed 12–29–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (03–162)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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: All comments should be submitted by February 28, 2004.

ADDRESSES: All comments should be addressed to Ms. Celeste Dalton, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Nancy Kaplan, NASA Reports Officer, NASA Headquarters, 300 E Street SW, Code AO, Washington, DC 20546, (202) 358–1372.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) plans to renew an ongoing collection designed to collect information needed to evaluate bids and proposals submitted to NASA for the award of contracts with a value less than $500,000 for goods and services in support of NASA's mission, and in response to contractual requirements. Solicitations for bids and proposals, and requirements for contract deliverables, are prepared in accordance with the OFPP Policy Act as amended by Pub. L. 96–83, the NASA Space Act, 42 U.S.C. *et seq.*, and approved mission requirements. As the need arises for goods and services, NASA follows the procedures set forth in Parts 14 and 15 of the FAR for the issuance of Invitation for Bids (IFBs) and Request for Proposals (RFPs) before a contract can be awarded. Similarly, in bids and proposals voluntarily submitted in response to IFBs and RFPs, contractors must furnish all information required by the FAR, the NFS, and Agency needs. This solicited information is used by NASA project and procurement managers to determine the responsiveness of bids and proposals and come to a decision on which contractor can provide the greatest benefit to the Agency and, ultimately, who will be awarded a contract.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA Acquisition Process: Bids and Proposals for Contracts With an Estimated Value Less than $500,000.

OMB Number: 2700–0087.

Type of review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, local, or tribal governments.

Estimated Number of Respondents: 7,900.

Estimated Time Per Response: Varies, depending on type of response. Bids take an average of 250 hours per response. Proposals take an average of 400 hours per response.

Estimated Total Annual Burden Hours: 2,560,000.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information collected has practical utility; (2) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Dated: December 17, 2003.

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–32011 Filed 12–29–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (03–163)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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: All comments should be submitted by February 28, 2004.

ADDRESSES: All comments should be addressed to Ms. Celeste Dalton, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Nancy Kaplan, NASA Reports Officer, NASA Headquarters, 300 E Street, SW., Code AO, Washington, DC 20546, (202) 358–1372.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) plans to renew an ongoing collection designed to collect information needed to evaluate bids and proposals submitted to NASA for the award of contracts with a value greater than $500,000 for goods and services. Solicitations for bids and proposals, and requirements for contract deliverables, are prepared in accordance with the OFPP Policy Act as amended by Pub. L. 96–83, the NASA Space Act, 42 U.S.C. *et seq.* As the need arises for goods and services, NASA follows the procedures set forth in parts 14 and 15 of the FAR for the issuance of Invitation for Bids (IFBs) and Request for Proposals (RFPs) before a contract can be awarded. Similarly, in bids and proposals voluntarily submitted in response to IFBs and RFPs, contractors must furnish all information required by the FAR, the NFS, and Agency needs. This solicited information is used by NASA project and procurement managers to determine the responsiveness of bids and proposals and come to a decision on which contractor can provide the greatest benefit to the Agency and, ultimately, who will be awarded a contract.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA Acquisition Process: Bids and Proposals for Contracts With and Estimated Value More Than $500,000.

OMB Number: 2700–0085.

Type of review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, local, or tribal governments.

Estimated Number of Respondents: 1,313.

Estimated Time Per Response: Varies, depending on type of response. Bids take an average of 400 hours per response. Proposals take an average of 600 hours per response.

Estimated Total Annual Burden Hours: 750,000.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance

of the functions of the agency, including whether the information collected has practical utility; (2) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Dated: December 17, 2003.

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–32012 Filed 12–29–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–155]

National Environmental Policy Act; Outrigger Telescopes Project

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of intent to prepare an environmental impact statement (EIS) and conduct scoping for the Outrigger Telescopes Project.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4231 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA policy and procedures (14 CFR part 1216 subpart 1216.3), NASA intends to prepare an EIS for the proposed Outrigger Telescopes Project (OTP). The EIS will address environmental issues associated with the on-site construction, installation, and operation of four to six 1.8-meter (72-inch) Outrigger Telescopes. NASA proposes to fund the OTP at the W.M. Keck Observatory (WMKO) site within the Astronomy Precinct of the Mauna Kea Science Reserve on the Island of Hawaii, State of Hawaii.

DATES: Interested parties are invited to submit comments on or before February 16, 2004, to assure full consideration during the scoping process.

ADDRESSES: Comments should be addressed to Dr. Carl B. Pilcher, Office of Space Science, Code SZ; NASA Headquarters; 300 E Street, SW., Washington, DC 20546–0001. In addition, electronic comments may be sent to Dr. Carl B. Pilcher at *otpeis@nasa.gov* or by hardcopy facsimile at 202–358–3096.

FOR FURTHER INFORMATION CONTACT: Dr. Carl B. Pilcher, at telephone 877–283–1977 (toll-free), electronically at *otpeis@nasa.gov,* or by hardcopy facsimile at 202–358–3096.

SUPPLEMENTARY INFORMATION: The OTP is a key element in NASA's Origins Program. The Origins Program addresses two fundamental questions: (1) How do galaxies, stars, and planets form? (*i.e.,* ''Where do we come from?''); and (2) Are there planets, aside from ours, that have the conditions necessary to support life? (*i.e.,* ''Are we alone?''). The OTP has four scientific objectives that contribute to achieving the goals of the Origins Program:

- Detect the ''wobble'' of stars due to the gravity of unseen orbiting planetary companions as small as Uranus.
- Make images of disks of gas and dust surrounding young stars and stars that are still forming.
- Make high-resolution images of faint objects outside our galaxy.
- Make high-resolution images of objects within our solar system, including asteroids, comets, and outer planets.

The first of these four objectives can be accomplished with the Outrigger Telescopes alone linked together as an interferometer. (An interferometer combines the light from two or more separate telescopes so that they act like one big telescope.) The last three objectives require that the Outrigger Telescopes be linked as an interferometer to at least one 8-meter or larger telescope.

NASA proposes to fund the OTP at the W.M. Keck Observatory (WMKO) site located within the Astronomy Precinct of the Mauna Kea Science Reserve on the Island of Hawaii. WMKO is the site of the two largest optical telescopes in the world—the twin 10-meter Keck I and Keck II. The OTP, if fully implemented as proposed, would consist of up to six 1.8-meter (72-inch) telescopes placed strategically around the two existing Keck Telescopes.

The California Association for Research in Astronomy (CARA), a non-profit corporation established by the University of California and California Institute of Technology (Caltech), operates and maintains the WMKO. The approximately 2-hectare (5-acre) WMKO site is subleased to Caltech by the University of Hawaii (UH). The WMKO site is located within the Astronomy Precinct (approximately 212 hectares (525 acres)) of the Mauna Kea Science Reserve. The 4,500 hectare (11,000 acre) Science Reserve, is leased to UH by the State of Hawaii.

Because of present funding constraints, only four Outrigger Telescopes would initially be installed and operated, although the foundations for six would be constructed. It is anticipated that the on-site construction and installation of four of the six Outrigger Telescopes, along with on-site construction of the underground structures for Telescopes 5 and 6, would begin early in 2005, with initial operations anticipated in 2006. If funding were available, NASA would intend to complete the on-site construction, installation, and operation of Telescopes 5 and 6, with on-site construction and installation likely to begin no earlier than 2006.

In addition to the WMKO site, alternative sites with at least one existing 8-meter or larger telescope will be considered in the EIS. If NASA decides not to or cannot implement the OTP at the WMKO site or a reasonable alternative site with an existing 8-meter or larger optical telescope, NASA would consider sites where at least the one objective that does not require such a large telescope (*i.e.,*) the survey of stars for ''wobble'' due to the gravity of unseen orbiting planetary companions as small as Uranus) can be achieved. Alternative sites to be considered in the EIS under such a materially reduced science OTP option will include, but not necessarily be limited to, the Mt. Wilson Observatory in Los Angeles County, California, and the Navy Prototype Optical Interferometer (NPOI) site near Flagstaff, Arizona. The No Action alternative will also be addressed.

The EIS will analyze the potential environmental impacts associated with the on-site construction, installation, and operation of the Outrigger Telescopes at the WMKO site and other reasonable alternative sites. The potential environmental impacts at alternative sites for the materially reduced science OTP option will also be evaluated. Environmental issues to be emphasized will include, but not necessarily be limited to, cultural resources, flora and fauna, sewage, and cumulative impacts.

Because it is evident that there is substantial environmental controversy and concern about locating the Outrigger Telescopes on Mauna Kea, public scoping meetings will be held in the State of Hawaii on the following dates:

(a) January 5, 2004, King Kamehameha Beach Hotel; 75–5660 Palani Road, Kailua-Kona, Hawaii 96740 (paid parking at the hotel will be free for attendees);

(b) January 7, 2004, Hawaii Naniloa; 93 Banyan Drive, Hilo, Hawaii 96720 (parking is free);

(c) January 8, 2004, Waimea YMCA; 67–1435 Mamalahoa Hwy., Kamuela, Hawaii 96743 (parking is free);

(d) January 12, 2004, Japanese Cultural Center; 2554 South Beretania Street, Honolulu, Hawaii 96826 (paid parking at the Cultural Center will be free for attendees);

(e) January 13, 2004, Wai-Anae District Park; 85–601 Farrington Highway, Wai-anae, Hawaii 96792 (parking is free).

All of the meetings will begin with an informal open house from 5:15 to 6:15 p.m. The formal meetings to listen to public comments and concerns will begin at 6:30 p.m. NASA is planning to have a Hawaiian language translator at all of the meetings.

NASA will also consider conducting public scoping meetings near reasonable alternative sites in the United States as Wilson and NPOI sites, if there is sufficient public environmental interest and concern.

Written public input and comments on alternatives and environmental issues and concerns associated with the OTP are hereby requested.

Olga M. Dominguez,

Deputy Assistant Administrator for Management Systems.

[FR Doc. 03–32048 Filed 12–29–03; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before January 29, 2004, to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Mr. Jonathan Womer, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on October 1, 2003 (68 FR 56652 and 56653). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Contractor/Agency Reviewer Identification Badge Authorization.

OMB number: 3095–NEW.

Agency form number: NA Form 6000B.

Type of review: Regular.

Affected public: Business or for-profit, Federal government.

Estimated number of respondents: 600.

Estimated time per response: 3 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 30 hours.

Abstract: The collection of information is necessary as a security measure to protect employees, information, and property in NARA facilities, and to facilitate the issuance of badges and cards. Use of the form is authorized by 44 U.S.C 2104. At the NARA College Park facility, individuals receive a proximity card with the identification badge that is electronically coded to permit access to secure zones ranging from a general nominal level to stricter access levels for classified records zones. The proximity card system is part of the security management system that meets the accreditation standards of the Government intelligence agencies for storage of classified information and serves to comply with E.O. 12958.

Dated: December 19, 2003.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 03–31925 Filed 12–29–03; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Office of Presidential Libraries; Proposed Disposal of Superseded Version of Clinton Administration Electronic Mail Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Presidential Records Act notice of proposed disposal of superseded version of Clinton Administration electronic mail records; request for public comment.

SUMMARY: The National Archives and Records Administration (NARA) has identified an incomplete version of Presidential records on electronic media, housed at the National Archives at College Park, Maryland facility, as appropriate for disposal under the provisions of 44 U.S.C. 2203(f)(3). This notice describes the records and our reasons for determining that the records have insufficient administrative, historical, informational, or evidentiary value to warrant their continued preservation, in light of the fact that NARA is maintaining a comprehensive set of the same records on a different set of electronic media. NARA will review timely public comments received on this notice before making a final determination on the disposal of the records.

This notice does not constitute a final agency action, as described in 44 U.S.C. 2203(f)(3), and no Presidential records will be disposed of following this notice. NARA will publish a second notice only after it has considered any comments received during this 45-day notice. The second, 60-day notice will constitute a final agency action, in the event NARA proceeds with disposal.

DATES: Comments must be received by February 13, 2004.

ADDRESSES: Comments regarding the proposed disposal of these Presidential records must be sent in writing to the

Assistant Archivist for Presidential Libraries, National Archives and Records Administration (NL), 8601 Adelphi Road, College Park, Maryland 20740–6001 or by fax to 301–837–3199; or by e-mail to *sharon.fawcett@nara.gov*.

FOR FURTHER INFORMATION CONTACT: Sharon Fawcett at 301–837–3250.

SUPPLEMENTARY INFORMATION: The following materials are proposed for disposal because NARA has determined that they lack continuing administrative, historical, informational, or evidentiary value.

NARA is proposing the disposition of 27,866 class 3480 magnetic tape cartridges, consisting of an incomplete set of e-mail records created from July 15, 1994 through December 1999, and originally captured on the Automated Records Management System (ARMS) as created by staff in the Executive Office of the President (EOP) during the Clinton Administration. ARMS consisted of an electronic recordkeeping system for the preservation of e-mail records and any attachments thereto, plus pager and calendar records. These cartridges were transferred to NARA at the end of the Clinton Administration.

ARMS records on the 27,866 cartridges were in turn subject to reformatting pursuant to a Memorandum of Understanding entered into between NARA and the EOP, signed on October 6 and 8, 1999, respectively (1999 MOU). Under the 1999 MOU, NARA requested that the EOP Office of Administration (OA) convert attachments from hexadecimal to native format. NARA also asked OA to format the files to contain as many records as would fit in a single file. This reformatting resulted in reducing the number of tape cartridges necessary to store the records from approximately 28,000 down to 4,000. Accordingly, OA produced and transferred to NARA a second set of approximately 4,000 tape cartridges in a NARA-preferred format.

The latter reformatted set of cartridges also reflects the results of OA conducting an extensive Tape Restoration Project (TRP), pursuant to a second MOU between NARA and OA entered into on January 11, 2001, aimed at ensuring that a comprehensive set of e-mail records from the Clinton Administration be transferred to NARA. This restoration work has been completed, and as a result a separate and comprehensive set of Clinton Administration Presidential record e-mail records, as well as pager and calendar entries, currently resides on the 4,000 cartridges, in a preservation master copy set, and in an automated database operated and maintained by NARA staff. These latter collections, which incorporate the work of the TRP, contain approximately 1 million additional e-mail records that were not originally captured by ARMS and which are not otherwise preserved on the 27,866 cartridges at issue. (E-mail records on these cartridges separately covered under the Federal Records Act have also been captured on the 4,000 cartridges and will be included in the automated database, and thus may be disposed of under existing Federal Records Act disposition authority.)

The copies of Presidential e-mail records contained on the 27,866 cartridges constitute an incomplete and superseded subset of the Presidential e-mail record series from the Clinton Administration EOP that NARA has otherwise obtained in electronic form. NARA will be fully able to respond to future access requests for Clinton Administration e-mail records from the EOP through the above-described database, and has no need or use for the additional set of these records contained on these cartridges.

Dated: December 19, 2003.

Richard L. Claypoole,

Assistant Archivist for Presidential Libraries.

[FR Doc. 03–31926 Filed 12–29–03; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Calvert Cliffs Nuclear Power Plant, Inc., Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2; Exemption

1.0 Background

Calvert Cliffs Nuclear Power Plant, Inc. (CCNPPI or the licensee) is the holder of Renewed Facility Operating License Nos. DPR–53 and DPR–69, which authorizes operation of Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 (CCNPP1–2). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in Calvert County, Maryland.

2.0 Purpose

Section IV.F.2.b of Appendix E, to 10 CFR part 50 requires each licensee at each site to conduct an exercise of its onsite emergency plan every 2 years and indicates the exercise may be included in the full participation biennial exercise required by paragraph 2.c of the same section. In addition, licensees are to take actions necessary to ensure that adequate emergency response capabilities are maintained during the interval between biennial exercises by conducting drills. Paragraph 2.c requires offsite plans for each site to be exercised biennially with full participation by each offsite authority having a role under the plan. Normally during such biennial full participation exercises, the NRC evaluates onsite and the Federal Emergency Management Agency (FEMA) evaluates offsite emergency preparedness activities. The licensee must coordinate and schedule an exercise that involves multiple governmental agencies at the Federal, State, and local level. Many local response organizations depend on volunteers. In order to accommodate this task, the NRC has allowed licensees to schedule full participation exercises at any time during the calendar biennium. This gives the licensee the flexibility to schedule the exercise within a 12- to 36-month window and still meet the biennial requirement specified in the regulations.

The licensee was scheduled to conduct a biennial full participation exercise on October 21, 2003. The licensee has requested a temporary exemption to 10 CFR part 50, Appendix E, Section IV.F.2.c that would reschedule the planned offsite full-participation emergency exercise from 2003 to 2004 and subsequent exercises would be scheduled biennially from the year 2003. The most recently evaluated biennial full-participation exercise at CCNPP was conducted on September 9, 2002.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under § 50.12(a)(2), special circumstances include, among other things, when application of the regulation in the particular circumstance would not serve, or is not necessary to achieve, the underlying purpose of the rule.

The underlying purpose of 10 CFR part 50, Appendix E, Section IV.F.2.c is to establish requirements for the biennial exercise of offsite emergency

plans for the purpose of exercising employees and offsite authorities having a role under the plan. Where the offsite authority has a role under a radiological response plan for more than one site, it shall fully participate in one exercise every 2 years and shall, at least, partially participate in the other offsite plan exercised in this period.

CCNPPI had previously scheduled a full-participation emergency preparedness exercise to be conducted on October 21, 2003, to meet the requirements of 10 CFR part 50, Appendix E, Section IV.F.2.c. However, preparation for Hurricane Isabel and subsequent recovery efforts have consumed the resources of the Maryland Emergency Management Agency (MEMA) and other local and State agencies having a role under the Emergency Response Plan. The drill occurred, as scheduled, without the State of Maryland and local agency participation.

Calvert Cliffs has previously conducted one full-participation emergency preparedness drill on September 9, 2002. Additionally, site-wide non-state participation drills were conducted on June 24, September 9, and October 21, 2003. Although not evaluated by NRC and FEMA, the June, September, and October 2003 drill results have been critiqued by the CCNPPI emergency response organization and independently by their Nuclear Plant Assessment Department. Issues identified during these drills and critiques are being resolved under the licensee's corrective action program.

Calvert Cliffs has maintained emergency preparedness in accordance with the Emergency Response Plan. Requirements for semi-annual health physics exercises were met by the conduct of the June, September, and October 2003 drills. The requirement for a post-accident sampling exercise was met on October 9, 2003. The annual requirement for an environmental sampling exercise was met on July 28, 2003. A dose assessment office exercise was conducted on October 17, 2003. The annual requirement for a severe accident management exercise was met on October 21, 2003. State and county agencies conducted a FEMA evaluated ingestion pathway exercise on October 22–24, 2003.

The State of Maryland and local governments have maintained radiological emergency preparedness by fully participating in the ingestion pathway exercise on October 22–24, 2003. Additionally, the State agencies participated in the federally evaluated Peach Bottom Atomic Power Station exercise on November 19, 2002. Calvert County Public Safety, Calvert Memorial Hospital, and local rescue squads participated in a simulated contaminated injury drill at CCNPP on August 15, 2002. Two FEMA areas requiring corrective action and one planning issue await final dispositioning pending completion of the next full participation exercise.

CCNPPI has discussed the proposed deferral of the full-participation exercise with FEMA, MEMA, and other local and State agencies having a role under the Emergency Response Plan. All of these agencies have indicated support for the proposed change in light of present circumstances that are beyond their control. Preparation for Hurricane Isabel and subsequent recovery efforts have consumed MEMA and local county resources that would have otherwise been used to support the evaluation scheduled for October 21, 2003.

The NRC has provided flexibility in scheduling full-participation emergency preparedness exercises by allowing licensees to schedule them at any time during the biennial calendar year. This provides a 12- to 36-month window to schedule full-participation exercises while still meeting the biennial requirement specified in the regulations. Conducting the Calvert Cliffs full-participation emergency preparedness exercise in calendar year 2004 places the exercise past the previously scheduled 2003 biennial exercise. However, the interval between biennial exercises would, at the most, be about 25 months, which is within the parameters of the existing general policy and practice.

The licensee states that between October 2003 and September 2004, measures will be taken to maintain emergency preparedness at CCNPP. The existing training and drill schedule currently in place for emergency response activities will remain in place and be adjusted as necessary to ensure the readiness of both onsite and offsite emergency response personnel. For onsite emergency responders, this includes annual training and participation in drills. Calvert Cliffs will conduct quarterly combined functional and/or activation drills and a self-evaluated annual exercise. These drills and the self-evaluated annual exercise satisfy the drill requirements of 10 CFR part 50, Appendix E, IV.F.2.b. Offsite agencies in Maryland are routinely invited to, and actively participate in, these drills and exercises as a training activity for offsite response personnel. Local response groups conduct annual training and participate in emergency operations center drills. Representatives of the Calvert Cliffs plant staff meet routinely with State and local emergency management and support groups. The rescheduling of the biennial exercise has been discussed with these parties and is supported by both State and local representatives. These measures will maintain an acceptable level of emergency preparedness during this period.

The licensee has met the special circumstances criteria of § 50.12(a)(2)(ii), (iv) and (v) of 10 CFR. The circumstances dictating the request for exemption are beyond the licensee's control and the licensee has made a good faith effort to conduct the exercise and comply with the regulations. The activities centered around Hurricane Isabel rendered the conduct of a full-participation exercise impossible. Application of the regulation would not have served the underlying purpose of the rule, which is to train employees and offsite authorities, in that State and local officials were not available to participate in the exercise. Postponement of exercise conduct was a benefit to public health and safety by allowing State and local resources to be applied to hurricane recovery. There is no decrease in safety as the evaluated exercise will be rescheduled in 2004, at a time when full-participation of State and local agencies will be possible and the licensee's drill program will include offsite agency participation as a compensating measure, thus contributing to the justification of the exemption. The exemption only provides temporary relief from the applicable regulation, in that the licensee is planning to conduct the exercise in the next calendar year and has not requested any permanent changes in future exercise scheduling. The regulations of this part do allow for the postponement of exercises and the regulations have been invoked previously for appropriate circumstances. This being the case, the occasional need to postpone exercises was considered as a potential circumstance. The staff has determined that the conduct of the full participation exercise as early as practical in 2004 is prudent.

The NRC staff examined the licensee's rationale to support the exemption request and as set forth above, has determined that the full-participation exercise for year 2003 be deferred to 2004 and subsequent exercises be scheduled biennially from year 2003.

Therefore, the staff concludes that granting an exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Also, special circumstances are present. Therefore, the Commission hereby grants CCNPPI a temporary exemption from the requirements of 10 CFR part 50, Appendix E, Section IV.F.2.c with respect to the rescheduling of the planned offsite full-participation emergency exercise from 2003 to 2004 and subsequent exercises will be scheduled biennially from the year 2003.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 71172).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 22nd day of December, 2003.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–31956 Filed 12–29–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–186, License No. R–103, EA–02–256]

In the Matter of University of Missouri, University of Missouri Research Reactor; Confirmatory Order Modifying License (Effective Immediately)

I

The University of Missouri Research Reactor (MURR) is a research reactor regulated by the U.S. Nuclear Regulatory Commission (NRC). MURR is located on the campus of the University of Missouri (MU) in Columbia Missouri.

II

On December 18, 2001, the NRC initiated an investigation of the University of Missouri (the licensee) to determine if a former senior research scientist at the MURR facility was the subject of employment discrimination and continued retaliation by management for previous protected activities. The NRC Office of Investigations (OI) concluded in Office of Investigations Report No. 4–2001–054 that the former senior research scientist was the subject of employment discrimination and continued retaliation by management for previous protected activities.

By letter dated June 4, 2003, the NRC provided the licensee with its conclusions through issuance of an apparent violation of employee protection requirements and a synopsis of the referenced OI report. During subsequent discussions, NRC and MU agreed in principle regarding acceptable actions that, if performed, should better ensure that personnel involved with MURR will not be subject to employment discrimination or retaliation for engaging in protected activity, including raising safety concerns. The details of the agreement are set forth in Section V of this Order.

III

The licensee has agreed to take certain actions to modify its access authorization procedures to better ensure transparency and clarity, to assess the work environment at MURR, to perform periodic training, and to modify its organization to better ensure that university senior management is appropriately involved in ensuring a safety conscious work environment (SCWE). The agreed-upon actions noted in Section V of this order focus on (1) modifying the chain of command for MURR; (2) development of a long-term plan, which will better ensure a SCWE; and (3) ensuring timely review of access requests and providing for review of access authorization denials by an independent organization.

IV

Since the licensee has committed to take comprehensive actions to address NRC concerns, and since the licensee has committed to assess, train, and develop a long-term plan for ensuring a work environment conducive to employees raising safety concerns or engaging in any form of protected activity without fear of retaliation, the NRC has concluded that its concerns can be resolved through the NRC's confirmation of the licensee commitments as outlined in this Order.

I find that the licensee's commitments as set forth in Section V below are acceptable and necessary and conclude that with these commitments, the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that these commitments be confirmed by this Order. Based on the above and the licensee's consent, this Order is immediately effective upon issuance. The licensee for MURR is required to provide the NRC with a letter summarizing its actions when all of the Section V commitments have been completed.

V

Accordingly, pursuant to Sections 104c, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 50, *it is hereby ordered, effective immediately that:*

1. The licensee shall modify its chain-of-command for MURR to better ensure oversight of its activities by university senior management. It has been agreed that the modification of Figure 6.0 in the MURR Technical Specifications will reflect MURR reporting to the Office of the Provost, who in-turn, reports to the Office of the President, University of Missouri. The requisite technical specification change shall be submitted to the NRC within 30 days of this Order and upon being granted by the NRC, shall be effective no later than 30 days after the date of the NRC's issuance of the license amendment.

2. The licensee shall develop a long-term plan for ensuring a SCWE. This plan, which shall address a minimum of two years, shall include, at a minimum:

(a) Performance of an employee cultural survey developed by an independent consultant or entity. This survey shall be performed annually for not less than two years. During the two year period, the NRC shall be provided an annual report summarizing the findings of the culture assessment, including the questions used, the methodology applied, and any follow-up actions. The NRC would consider the use or partial use of MU's campus departments (*e.g.*, psychology) to constitute an independent entity for purpose of this action, with the stipulation that a separate independent consultant or entity shall review the assessment, including the questions used and the methodology applied, prepared by the MU campus department.

(b) Annual training of MURR employees and other personnel who routinely use the MURR facility on how to better ensure a SCWE. The first two years of the annual training shall be conducted by an independent consultant or entity with expertise in providing SCWE training. The licensee shall designate a specific manager to be responsible for ensuring annual SCWE training. SCWE training shall include, at a minimum:

1. Policies and programs designed to encourage employees to raise concerns, including a description of the multiple pathways for raising concerns.

2. Discussion of NRC regulations and any applicable federal and state laws pertaining to whistleblower protection, including a discussion of protected activities and adverse actions stated in 10 CFR 50.7.

3. Expectations for management to promote a SCWE

4. Expectations for employees to report concerns, especially safety concerns.

5. Other applicable procedures and processes related to implementing and maintaining a SCWE.

6. Additional training for managers and supervisors describing their specific responsibilities and obligations.

The plan for ensuring a SCWE shall be forwarded to the NRC within sixty (60) days after the date of this Order and implementation shall begin no later than ninety (90) days after the date of this Order.

3. Within forty-five (45) days after the date of this Order the licensee will modify MURR's access authorization procedures to better ensure transparency and clarity in its processes. The licensee shall maintain a process for granting access to the facility with two key components. The first component shall focus on the need for access. The second component shall involve routine background checks consistent with industry practices and other requirements contained in NRC regulations. The procedure modifications will, at a minimum, provide for the following:

(a) A requirement that personnel requesting sponsorship discuss the following issues, at a minimum:

—*Basis:* A detailed description of the basis for requesting access (escorted or unescorted) to the facility.

—*Funding:* Source of funding for the subject project; whether funding has already been obtained or when it is anticipated.

—*Resources:* Necessary project resources (*e.g.*, personnel, equipment, reactor time).

—*Benefits to MURR:* Is the subject project a collaborative project which will lead to credit for participation; does the subject project involve collaboration with MURR staff?

—*Strategic:* Is the subject project consistent with MURR's published strategic plan and research priorities?

(b) Any sponsor denying a written request for sponsorship by an applicant shall provide the Director of MURR in writing with the basis for such denial within fifteen (15) days of receipt of such a request.

(c) Access requests shall be addressed by MURR within sixty (60) days and a decision by the Director of MURR provided to the requestor in writing within that time. Requestors being denied access shall be informed in writing of the appeal provisions of (e).

(d) The Provost shall be informed of any denial of access by the Director of MURR.

(e) The Ombudsman Panel shall review any decision by the Director of MURR under (c) upon an appeal request in writing by the applicant within fifteen (15) days of receipt of such a denial. The Ombudsman Panel shall provide a report of recommendations regarding the denial to the Office of the Provost for its reconsideration of the Director's decision within forty-five (45) days of receipt of an appeal request.

4. The licensee shall post this Confirmatory Order at the MURR facility and inform MURR employees of its content.

5. The President of the University of Missouri shall within thirty (30) days of the date of this Order issue a letter to all individuals with access to the MURR facility which affirms the licensee's commitment to an SCWE and which provides a summary of the licensee's policy to promote an SCWE.

The Director, Office of Enforcement may relax or rescind, in writing, any of the above conditions upon a showing by the licensee of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than the licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and must include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, DC 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, to the Director of the Division of Regulatory Improvement Programs at the same address, and to MU. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel by means of facsimile transmission to 301–415–3725 or e-mail to *OGCMailCenter@nrc.gov*. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order shall be sustained. An answer or a request for a hearing shall not stay the effectiveness date of this Order.

Dated this 19th Day of December, 2003.
For the Nuclear Regulatory Commission.

Frank Congel,

Director, Office of Enforcement.

[FR Doc. 03–31954 Filed 12–29–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA–03–042]

In the Matter of Scott P. Wolfe; Order Prohibiting Involvement in Certain NRC-Licensed Activities (Effective Immediately)

I

Scott P. Wolfe held Nuclear Regulatory Commission (NRC) senior operator's license SOP–43723–1. The license authorized Mr. Wolfe to operate the Waterford-3 Steam Electric Station in accordance with the conditions of the license and 10 CFR part 55. The Waterford-3 Steam Electric Station is a nuclear power plant in Killona, Louisiana, and is operated by Entergy Operations, Inc., under the provisions of NRC operating license NPF–38.

II

On May 7, 1990, Mr. Wolfe tested positive for an illegal substance in response to a random fitness-for-duty test. The test results were confirmed positive on May 14, 1990. On June 1, 1990, Mr. Wolfe signed a ''re-entry agreement'' in which he agreed to participate in Entergy Operation, Inc.'s employee assistance program, agreed to abstain from the use of illegal drugs, agreed to periodic unannounced drug and alcohol testing, and confirmed his understanding that a second positive test for drugs or alcohol may result in his employment being terminated.

On July 17, 2003, Mr. Wolfe again tested positive for an illegal substance in response to a random fitness-for-duty test. The test results were confirmed positive on July 21, 2003. On July 25, 2003, Mr. Wolfe's employment with Entergy Operations, Inc., was terminated. On August 21, 2003, Entergy Operations, Inc., requested that Mr. Wolfe's NRC operator's license be terminated. On August 26, 2003, the NRC terminated Mr. Wolfe's senior operator's license.

III

The NRC holds licensed reactor operators to high performance standards and entrusts them with assuring the public health and safety in the operation of nuclear power plants. Licensed reactor operators are expected to comply with all NRC requirements, including the fitness-for-duty requirements of the NRC (10 CFR part 26) and the facility at which they are employed. Mr. Wolfe's actions have violated the NRC's and the public's trust and demonstrated that he can not be relied upon to comply with fitness-for-duty requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Wolfe were permitted at this time to hold an NRC operator's license pursuant to 10 CFR part 55. Therefore, the public health, safety and interest require that Mr. Wolfe be prohibited from applying for or holding an NRC operator's license for a period of three years from the date of this Order. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Wolfe's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 107, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR part 55, and 10 CFR part 26, *it is hereby ordered, effective immediately, that:* Scott P. Wolfe is prohibited for three years from the date of this Order from applying for or holding an NRC license to operate a nuclear power plant pursuant to 10 CFR part 55.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Wolfe of good cause.

V

In accordance with 10 CFR 2.202, Scott P. Wolfe must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Wolfe or other person adversely affected relies and the reasons as to why the Order should not have been issued.

Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to Mr. Wolfe if the answer or hearing request is by a person other than Mr. Wolfe. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Wolfe, or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Wolfe may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated this 10th day of December, 2003.
For the Nuclear Regulatory Commission.

Samuel J. Collins,

Deputy Executive Director for Reactor Programs.

[FR Doc. 03–31955 Filed 12–29–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Dominion Nuclear Connecticut, Inc.; Millstone Power Station, Unit No. 3 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from title 10 of the Code of Federal Regulations (10 CFR) § 54.17(c) for Facility Operating License No. NPF–49, issued to Dominion Nuclear Connecticut, Inc. (DNC), for operation of Millstone Power Station, Unit No. 3 (MP3), located in Waterford, Connecticut. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant a schedular exemption from the provision of 10 CFR 54.17(c), which stipulates that a licensee may not apply for a renewed operating license earlier than 20 years before the current license expires. The exemption would allow DNC to submit a renewal application for MP3 earlier

than 20 years before expiration of its operating license.

The Need for the Proposed Action

The proposed action would allow DNC to submit one application for renewal of the operating licenses of both nuclear units located at the site, with the goal of attaining efficiencies for preparation and review of the application.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the issuance of the proposed exemption will not have a significant environmental impact. The proposed schedular exemption pertains solely to the future submission of an application to renew the MP3 operating license. It causes no changes to the current design or operation of MP3, and imparts no prejudice in the future review of the application for license renewal.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types or amounts of radiological effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for MP3, dated December 1984.

Agencies and Persons Consulted

On November 5, 2003, the NRC staff consulted with the Connecticut official, Mr. Michael Firsick of the Connecticut Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 13, 2002, as supplemented on April 28, 2003, and September 3, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 22nd day of December, 2003.

For the Nuclear Regulatory Commission.

Victor Nerses,

Senior Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–31953 Filed 12–29–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Panel Meetings

January 20 and 21, 2004—Las Vegas, Nevada: The U.S. Nuclear Waste Technical Review Board's panel on the Engineered Barrier System and Panel on the Waste Management System will meet to discuss issues related to the proposed repository at Yucca Mountain in Nevada, including design of the engineered system and information needed to plan for a system to transport high-level radioactive waste spent nuclear fuel to the proposed repository.

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, members of the U.S. Nuclear Waste Technical Review Board's Panel on the Engineered Barrier system and Panel on the Waste Management System will meet in Las Vegas, Nevada, on Tuesday, January 20, and Wednesday, January 21, 2004, respectively. The panels will discuss issues related to the proposed repository at Yucca Mountain in Nevada, including design of the engineered system and information needed as the Department of Energy (DOE) plans a system for transporting high-level radioactive waste and spend nuclear fuel to the proposed repository. The meetings will be open to the public, and opportunities for public comment will be provided. The Board is charged by Congress with reviewing the technical and scientific validity of activities undertaken by the DOE as stipulated in the Nuclear Waste Policy Amendments Act.

The panel meetings will be held at the Crowne Plaza Hotel, 4255 South Paradise Road, Las Vegas, NV 89109; (tel.) 702–369–4400; (fax) 702–369–3770. The Panel on the Engineered Barrier System is scheduled to meet from 8:30 a.m. to 5 p.m. on Tuesday, January 20. The Panel on the Waste Management System is scheduled to meet from 8 a.m. to 6 p.m. on Wednesday, January 21. Meeting times will be confirmed when agendas are issued, approximately one week before the meeting dates.

At the Engineered Barrier System Panel meeting on Tuesday, the DOE will begin with a project update, followed by presentations on preclosure safety analysis and surface and subsurface facility design. In the afternoon, the DOE will present information on the design of the waste package, the drip shield, and the invert. Representatives of Nye County, Nevada, will then present an update on county oversight activities related to the engineered system. The final presentation of the day will be an update on the Office of Civilian Radioactive Waste Management's science and technology program.

On Wednesday, the Waste Management System Panel will consider the information the DOE will need as it plans its transportation system. Invited participants include representatives of the DOE and state and local governments; utilities; truck, rail, and barge operators; and those involved in other transportation campaigns, including WIPP and naval spent fuel.

During the session related to information flow, participants will be asked to address four questions:

1. What are your Key Yucca Mountain transportation safety and security concerns?

2. How have you been able to address those concerns on the basis of the information and resources that the DOE has provided to date?

3. What concerns have you been unable to address? What does the DOE need to provide to allow this to happen?

4. How long will it take you to address those outstanding concerns once the DOE has provided what you need?

A second session on Wednesday will focus on lessons learned in transporting spent nuclear fuel and other radioactive materials. During that session, participants will be asked to address three questions:

1. What were (or are) the objectives and characteristics of the shipping campaign?

2. From a safety and security perspective, what worked (works) well and what did not (does not)?

3. What experiences and lessons learned may be transferable to the Yucca Mountain transportation program?

Time will set aside at the end of each day for public comments. Those wanting to speak are encouraged to sign the ''Public Comment Register'' at the check-in table. A time limit may have to be set on individuals remarks, but written comments of any length may be submitted for the record. Interested parties also will have the opportunity to submit questions in writing to the Board. As time permits, questions relevant to the discussion may be asked by Board members.

Detailed agendas will be available approximately on week before the meeting. Copies of the agendas can be requested by telephone or obtained from the Board's Web site at *http://www.nwtrb.gov.* Transcripts of the meetings will be available on the Board's Web site, by e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes of the Board's staff, beginning on February 24, 2004.

A block of rooms has been reserved at the St. Tropez Hotel for meeting participants. The St. Tropez is located at 455 E. Harmon Avenue, Las Vegas, NV 89109; (tel.) 702–369–5400 and (fax) 702–369–1150. When making a reservation, please state that you are attending the Nuclear Waste Technical Review Board meeting. To receive the meeting rate, reservations should be made by December 31, 2003.

FOR FURTHER INFORMATION CONTACT: The NWTRB: Karyn Severson, External Affairs; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201–3367; (tel.) 703–235–4473; (fax) 703–235–4495; (e-mail) *info@nwtrb.gov.*

Dated: December 19, 2003.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 03–32046 Filed 12–29–03; 8:45 am]

BILLING CODE 6820–AM–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application to Act as Representative Payee; OMB 3220–0052. Under section 12 of the Railroad Retirement Act, the Railroad Retirement Board (RRB) may pay benefits to a representative payee when an employee, spouse or survivor annuitant is incompetent or is a minor. A representative payee may be a court-appointed guardian, a statutory conservator or an individual selected by the RRB. The procedures pertaining to the appointment and responsibilities of a representative payee are prescribed in 20 CFR 266.

The forms furnished by the RRB to apply for representative payee status, and for securing the information needed to support the application follow. RRB Form AA–5, *Application for Substitution of Payee*, obtains information needed to determine the selection of a representative payee who will serve in the best interest of the beneficiary. RRB Form G–478, *Statement Regarding Patient's Capability to Manage Payments*, obtains information about an annuitant's capability to manage payments. The form is completed by the annuitant's personal physician or by a medical officer, if the annuitant is in an institution. It is not required when a court has appointed an individual or institution to manage the annuitant's funds, or in the absence of such appointment, when the annuitant is a minor. The RRB also provides representative payees with a booklet at the time of their appointment. The booklet, RRB Form RB–5, *Your Duties as Representative Payee-Representative Payee's Record*, advises representative payees of their responsibilities under 20 CFR 266.9 and provides a means for the representative payee to maintain records pertaining to the receipt and use of RRB benefits. The booklet is provided for the representative payee's convenience. The RRB also concepts records that were kept by representative payee's as part of a common business practice.

Completion is voluntary. One response is requested of each respondent. The RRB is proposing non-burden impacting formatting and editorial changes to Form AA–5. No changes are proposed for Form G–478 or Booklet RB–5. The estimated completion time(s) is estimated at 17 minutes for Form AA–5, 6 minutes for Form G–478 and 60 minutes for Booklet RB–5. The RRB estimates that approximately 3,000 Form AA–5's, 2,000 Form G–478's and 15,300 RB–5's are completed annually.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzw@RRB.GOV.* Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send e-mail to *Ronald.Hodapp@RRB.GOV.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 03–32047 Filed 12–29–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48957; File No. SR–Amex–2003–24]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 by the American Stock Exchange LLC Relating to the Dissemination of Customer Limit Orders

December 18, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 4, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On May 14, 2003, the Exchange filed Amendment No. 1 to the proposal.[3] On June 12, 2003, the Exchange filed Amendment No. 2 to the proposal.[4] The Commission published the proposal, as amended, for comment in the **Federal Register** on June 26, 2003.[5] The Commission received no comments on the proposal. On December 4, 2003, the Exchange filed Amendment No. 3 to the proposal.[6] In Amendment No. 3, the Amex proposes to replace the proposed rule change as set forth in the original notice in its entirety. The Commission is publishing this notice of Amendment No. 3 to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal, as amended, on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 12, 2003 (''Amendment No. 1'').

[4] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated June 11, 2003 (''Amendment No. 2'').

[5] Securities Exchange Act Release No. 48101 (June 26, 2003), 68 FR 39992 (July 3, 2003) (''Original Notice'').

[6] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated December 3, 2003 (''Amendment No. 3''). In Amendment No. 3, the Exchange proposes to modify the text of the rule proposal so that customer limit orders representing the best bid or offer are disseminated in actual size if less than ten (10) contracts.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to permit the dissemination of customer limit orders representing the best bid or offer (''BBO'') in sizes of less than ten (10) contracts. Below is the text of the proposed rule change as modified by Amendment No. 3. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

Rule 958A. Application of the Firm Quote Rule

(a) No Change

(b) No Change

(c) Obligations of a Responsible Broker or Dealer—

(i) Pursuant to SEC Rule 11Ac1–1 each responsible broker or dealer for each series of each listed option class shall promptly communicate to the Exchange its best bid, best offer, quotation size and aggregate quotation size. No responsible broker or dealer shall communicate a quotation size or aggregate quotation size for less than ten contracts *with the exception that the size of customer limit orders representing the best bid or offer may be disseminated at less than ten (10) contracts, even though the responsible broker or dealer continues to have the obligation to quote a ten contract minimum.* This obligation may be fulfilled by the use of an automated quotation system.

(A) Subject to the provisions of paragraph (d) of this rule, each responsible broker or dealer shall be obligated to execute any customer order in an option series in an amount up to its published quotation size.

(B) Subject to the provisions of paragraph (d) of this rule, each responsible broker or dealer shall be obligated to execute any order for the account of a U.S. registered or foreign broker or dealer in a listed option in an amount up to the quotation size established and periodically published by the Exchange which quotation size shall be for at least one contract.

(C) Subject to the provisions of paragraph (d) of this Rule, each responsible broker or dealer shall comply with the Thirty Second Response provisions set forth in paragraph (d)(3) of SEC Rule 11Ac1–1.

(ii) No Change

(d) No Change

Commentary

.01 No specialist or registered options trader shall be deemed to be a responsible broker or dealer with respect to a published bid or offer that is erroneous as a result of an error or omission made by the Exchange or any quotation vendor. If a published bid or published offer is accurate but the published quotation size (or published aggregate quotation size, as the case may be) associated with it is erroneous as a result of an error or omission made by the Exchange or any quotation vendor, then the specialist and registered options traders responsible for the published bid or published offer shall be obligated as set forth in paragraph (c) of Rule 11Ac1–1 but only to the extent of ten contracts *or in cases where the best bid or offer is represented by a customer limit order the actual size of such order(s) if less than ten contracts.*

.02 No Change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2001, the Exchange amended the firm quote requirement in Exchange Rule 958A to accommodate the application of the SEC Rule 11Ac1–1 (the ''Quote Rule'') under the Act.[7] The amendments to the Commission's Quote Rule in 2000 were made to apply the firm quote requirements to the option exchanges and option market makers, thereby, requiring a corresponding revision to the rules of the options exchanges.[8] At that time, the Amex proposed in Exchange Rule 958A that ''no responsible broker or dealer shall communicate a quotation size or

[7] 17 CFR 240.11Ac1–1; *see* Securities Exchange Act Release Nos. 44145 (April 2, 2001), 66 FR 18662 (April 10, 2001) (notice) and 44383 (June 1, 2001), 66 FR 30959 (June 8, 2001) (approval of File Nos. SR–Amex-2001–18; SR–CBOE–2001–15; SR–ISE–2001–07; SR–6PCX–2001–18; and SR–Phlx–2001–37).

[8] *See* Securities Exchange Act Release No. 43591 (November 17, 2000), 65 FR 75439 (December 1, 2000).

aggregate quotation size for less than ten (10) contracts.''

In applying the Quote Rule to the options markets, the Commission has given the options exchanges the flexibility to determine whether they will collect from responsible brokers or dealers and make available to quotation vendors the size associated with each quotation or choose instead to establish by rule the size for which their disseminated bid and offer in each option series is firm and not collect and disseminate size with each quotation. The Commission has also given the options exchanges the flexibility to disseminate quotations with sizes at which the specialist and registered traders are firm for customer accounts, and, at the same time, establish by rule a different size for which specialists and registered traders must be firm for orders from the accounts of broker-dealers.

As indicated above, the Amex previously determined that it would disseminate a size of ten (10) contracts for all of its option quotations regardless of the underlying ''actual'' size associated with such quote. In connection with the dissemination of option quotations, the Exchange amended and received Commission approval of Exchange Rule 958A requiring that the communicated and disseminated size be a minimum of ten (10) contracts. Therefore, responsible brokers or dealers on the Amex are required to disseminate a minimum size of ten (10) contracts for all options quotations regardless of whether such quotations may represent a customer or broker-dealer order.

The operation of Exchange Rule 958A in paragraph (c)(i)(A) requires that each responsible broker or dealer execute customer orders in an option series in an amount up to its published quotation size. As a result, specialists and registered options traders (''ROTs'') are required to be firm for customer orders of up to 10 contracts regardless of the actual size of the customer order. Paragraph (c)(i)(B) of Exchange Rule 958A provides that specialists and ROTs are obligated to be firm for the account of broker-dealer orders, including foreign broker-dealers, for at least one (1) contract.

The effect of the instant proposal will be that if a customer limit order representing the BBO is for less than ten (10) contracts, the Exchange would no longer disseminate a minimum size of ten (10) contracts, but instead, would disseminate the actual size of the customer limit order(s). As a result, the responsible broker or dealer would not be required to execute a minimum size of ten (10) contracts for a customer order in cases where the disseminated quote is represented by a customer limit order of less than ten (10) contracts. Therefore, under the proposed amendment to Exchange Rule 958A, the responsible broker or dealer will now be firm to customers for less than ten (10) contracts whenever the disseminated quote represents customer limit orders of less than ten (10) contracts.[9] The proposed rule change also provides for a corresponding amendment to Commentary .01 to Exchange Rule 958A so that the specialist and ROT responsible for the published bid or offer is obligated for the size of the customer limit order on the book representing the BBO if less than ten (10) contracts in connection with an erroneous bid or offer that is the result of an error or omission by the Exchange or a quotation vendor.

For purposes of the application of the Options Intermarket Linkage (the ''Linkage''), the Amex represents that the proposal will not affect the Exchange's Linkage Rules. In particular, ''Firm Customer Quote Size'' [10] and ''Firm Principal Quote Size'' [11] as defined in Exchange Rule 940 will not be revised without amendment to the Linkage Plan by all options exchanges and approval by the Commission. The obligation of the specialist to execute at least a size of ten (10) contracts for Linkage Orders will be unchanged by the adoption of this proposal.[12] With respect to automatic executions (''Auto-Ex'') outside of Linkage, the proposed change will not affect the current minimum Auto-Ex size of ten (10) contracts. Accordingly, orders that are not Auto-Ex eligible [13] or are subject to an exception in Exchange Rule 933(f), will be manually handled by the specialist and will receive an execution size of up to the disseminated size of the quoted market.

The Exchange believes that the instant proposal to revise the operation of Exchange Rule 958A so that customer limit orders representing the best bid or offer are disseminated in actual size if less than ten (10) contracts should provide greater transparency to investors and the marketplace because the actual size of orders will be disclosed rather than an artificial minimum size. In addition, the Amex further believes that the proposal to disseminate the actual size of booked customer limit orders representing the BBO will better reflect the true state of liquidity. The Exchange notes, that as a result of the proposed rule change, the responsible broker or dealer would be permitted to disseminate a size of less than ten (10) contracts when the BBO is reflected by customer limit orders. Currently, the responsible broker or dealer is required to disseminate a size of at least ten (10) contracts in all circumstances.

The Exchange submits that the adoption of this proposal will foster increased competition by the Amex against markets that disseminate quotes with actual size. The Auto-Ex system at the Amex available for both customer and broker-dealer orders would not be impacted by this proposal.[14] In

[9] An example of the Rule's current operation is as follows: An Exchange specialist disseminates a market of 2 bid, 2.20 asked, in a particular option series at the minimum size of 10 contracts. An incoming order to buy one contract for 2.10 is entered making the new best bid and offer 2.10 bid, 2.20 asked. The Exchange disseminates 10 contracts as the size of the 2.10 bid. If a market order to sell 10 contracts is then entered in that series, the responsible broker-dealer (generally the specialist) is obligated to buy the 9 contracts at a price of 2.10. The risk of requiring a size of ten (10) contracts to be disseminated is that the specialist is discouraged from increasing guaranteed sizes because of the greater potential liability. This proposal accordingly seeks to reduce this exposure by disseminating the actual size of customer limit orders representing the BBO if less than ten (10) contracts so that the responsible broker or dealer is not obligated to buy the balance between the actual size and the guaranteed size.

[10] Exchange Rule 940(b)(7) defines ''Firm Customer Quote Size'' as the lesser of: (a) The number of option contracts that the Participant Exchange sending a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Public Customer orders entered directly for execution in that market; or (b) the number of option contracts that the Participant Exchange receiving a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Public Customer orders entered directly for execution in that market. The number shall be at least 10.

[11] Exchange Rule 940(b)(8) defines ''Firm Principal Quote Size'' as the number of options contracts that a Participant Exchange guarantees it will execute at its disseminated quotation for incoming Principal Orders in an Eligible Option Class. This number shall be at least 10.

[12] *See* Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (Original Linkage Plan Approval); 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001) (Plan Amendment No. 1 Approval); 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002) (Plan Amendments Nos. 2 and 3 Approval); 47298 (January 31, 2003), 68 FR 6524 (February 7, 2003) (Plan Amendment No. 4 Approval); 47274 (January 29, 2003), 68 FR 5313 (February 3, 2003) (Plan Amendment No. 5 Approval); and 47297 (January 31, 2003), 68 FR 6526 (February 7, 2003) (Approval of Amex Linkage Rules).

[13] The minimum eligible Auto-Ex size is ten (10) contracts while the maximum eligible Auto-Ex size is determined by the Exchange subject to a 500 contract ceiling (except in the case of options on QQQs which may be 2,000 contracts for the two near term months and 1,000 contracts for all other months).

[14] *See* Securities Exchange Act Release Nos. 22610 (November 8, 1985), 50 FR 47480 (November 18, 1985) (pilot program for XMI options); 23544 (August 20, 1986), 51 FR 30601 (August 27, 1986)

Continued

addition, the dissemination of the actual size of customer limit orders representing the BBO should also enable specialists and ROTs to better manage their risks by enabling such specialists and/or ROTs to reflect the size in quotes based on market factors rather than regulatory requirements. The Amex seeks through this proposal to match other option exchanges that currently are able to disseminate actual size market quotations for customer orders.[15] The Exchange believes that this should lead to increased competition on the basis of size among the options exchanges, enabling investors to receive better executions.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act [16] in general, and furthers the objectives of section 6(b)(5)[17] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended by Amendment No. 3, 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. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–Amex–2003–24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2003–24 and should be submitted by January 20, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, 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 exchange.[18] In particular, the Commission finds that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove.[19] The Commission believes that the proposed rule change, as amended, should provide greater transparency to investors and the marketplace and should better reflect the true state of liquidity in the marketplace, because the actual size of customer limit orders representing the best bid or offer will be disclosed rather than an artificial minimum size. In addition, the Commission notes that the proposed rule change is consistent with the rules of other options exchanges.[20] Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,[21] for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[22] that the proposed rule change (SR–Amex–2003–24), as amended, is hereby approved, and Amendment No. 3 is approved, on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31949 Filed 12–29–03; 8:45 am]

BILLING CODE 8010–01–P

(permanent approval of XMI pilot); 24714 (July 17, 1987), 52 FR 28396 (July 29, 1987) (expansion to competitively traded options); and 46479 (September 10, 2002), 67 FR 58654 (September 17, 2002) (automatic execution of broker-dealer option orders). Auto-Ex is an automated execution system that enables member firms to route public customer market and limit orders in options for automatic execution at the bid or offer at the time the order is entered. Auto-Ex executes, at the displayed bid or offer, customer market and immediately executable limit option orders up to a specified number of contracts routed through the Common Message Switch (''CMS'') and the Amex Order File (''AOF''). There are, however, some situations in which orders otherwise eligible for execution on Auto-Ex are routed to the specialist's book, known as the Amex Options Display Book or ''AODB,'' for an execution. These situations occur when (i) the best bid or offer is represented by a limit order on the AODB, (ii) the best bid or offer is locked or crossed, (iii) there is a better bid or offer being displayed by a competing market, or (iv) when certain systems allowable parameters have been exceeded.

[15] *See* Securities Exchange Act Release Nos. 46325 (August 8, 2002), 67 FR 53376 (August 15, 2002) (File No. SR–Phlx–2002–15); 46029 (June 4, 2002), 67 FR 40362 (June 12, 2002) (File No. SR–PCX–2002–30); 45067 (November 16, 2001), 66 FR 58766 (November 23, 2001) (File No. SR–COE–2001–56); and 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003) (File No. SR–CBOE–2002–05).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78f(b)(5).

[20] *See supra* note 15.

[21] 15 U.S.C. 78s(b)(2).

[22] *Id.*

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48959; File No. SR–ISE–2003–38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange, Inc. To Increase the Number of Authorized Shares of Class B Common Stock, Series B–2 from 130 to 160

December 18, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 11, 2003, the International Securities Exchange, Inc. (''Exchange'' or ''ISE'') filed with the Securities and Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to increase the number of authorized shares of Class B Common Stock, Series B–2 from 130 to 160. This increase would result in the creation of 30 additional Competitive Market Maker (''CMM'') Memberships. The text of the proposed rule change is available at the Office of the Secretary, the ISE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The ISE proposes to increase the number of authorized shares of Class B Common Stock, Series B–2 from 130 to 160. This increase would result in the creation of 30 additional CMM Memberships.[3] CMMs are market makers that compete with a Primary Market Maker (''PMM'') and other CMMs to provide liquidity on the Exchange. The Exchange has allocated its listed options into 10 groups or ''Bins,'' and currently assigns one PMM and 13 CMMs to each Bin. Under this proposal, the Exchange will add three additional CMMs to each Bin.

The Board of Directors (''Board'') has established a committee of three directors to sell the additional Memberships, identifying both the purchasers of these Memberships and the price at which these Memberships would be sold. The Board's intent is that the new Memberships be sold to broker-dealers that both would provide market making expertise and liquidity to the Exchange and that have significant customer order flow to send to the Exchange. There are no restrictions or limitations on the price at which the Memberships can be sold. The Exchange would distribute all net proceeds received from these sales to holders of Class A Common Stock by way of a dividend.

The ISE believes that the sale of 30 additional CMM Memberships would increase the depth and liquidity of the Exchange's market. It also would provide more broker-dealers with an opportunity to participate on the Exchange. The Exchange has carefully evaluated its system capacity and believes that it has more than sufficient capacity to be able to handle the increased number of CMM Members without any adverse effects. Finally, the Exchange would require that a purchaser of one of these new Memberships that is not already a CMM to meet all Exchange requirements currently applicable to CMM Members.[4]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[5] in general, and furthers the objectives of section 6(b)(5) of the Act[6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, 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. The Exchange believes that the sale of 30 additional CMM Memberships would increase the depth and liquidity of the Exchange's market and provide more broker-dealers with an opportunity to participate on the Exchange as market makers.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition. The Exchange believes that the proposal will increase competition on the Exchange by increasing the number of market makers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(a) By order approve such proposed rule change; or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–ISE–2003–38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2003–38 and should be submitted by January 20, 2004.

[3] ISE Rule 100(19) defines ''Membership'' as the ''trading privileges associated with a share of Class B Common Stock.''

[4] The ISE states that this proposed rule change is the same as a previous proposal to increase the number of Exchange CMM Memberships approved by the Commission. *See* Securities Exchange Act Release No. 47289 (January 30, 2003), 68 FR 5947 (February 5, 2003) (order approving SR–ISE–2002–28).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31950 Filed 12–29–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48965; File No. SR–NASD–2003–166]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. To Correct Inaccurate Descriptions of the Territorial Boundaries of Two NASD District Offices

December 19, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 12, 2003, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD amended the proposed rule change on December 18, 2003.[3] NASD filed the proposed rule change pursuant to section 19(b)(3)(A)(i) of the Act,[4] and Rule 19b–4(f)(1) thereunder,[5] as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to amend Schedule B to the NASD By-Laws to correct the inaccurate descriptions of the territorial boundaries of two NASD District Offices. The text of the proposed rule change is available at NASD and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would amend Schedule B to the NASD By-Laws to correct inaccurate descriptions of Districts 9 and 10. Before 1997, the New York counties of Orange, Rockland, Putnam, and Westchester were assigned to NASD's District 10 office. In late 1997, during a reorganization of the District Offices, District 11 assumed responsibility for Orange, Rockland, Putnam, and Westchester counties. However, NASD failed to amend Schedule B to reflect this change.

In 2003, NASD conducted its most recent reorganization of the District Offices and, among other things, transferred responsibility for the New York counties of Orange, Rockland, Putnam, and Westchester from District 11 to District 9. After filing a rule change to Schedule B to the NASD By-Laws to reflect the Districts' new descriptions,[6] NASD became aware that the 1997 change was never reflected in Schedule B, and that Schedule B still lists District 10 as being responsible for the New York counties of Orange, Rockland, Putnam, and Westchester. Accordingly, NASD is filing the proposed rule change to amend Schedule B to the NASD By-Laws to accurately align these counties within District 9.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[7] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposal has become effective pursuant to section 19(b)(3)(A)(i) of the Act,[8] and Rule 19b–4(f)(1)[9] thereunder, in that it constitutes a stated policy and interpretation with respect to the meaning of an existing rule. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2003–166. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* December 17, 2003 letter from Patricia M. Albrecht, Assistant General Counsel, Regulatory Policy and Oversight, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (''Amendment No. 1''). In Amendment No. 1, NASD corrected a typographical error in the proposed rule text, and added language to clarify the reason for the proposed rule change. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have begun on December 18, 2003, the day NASD filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A)(i).

[5] 17 CFR 240.19b–4(f)(1)

[6] *See* Securities Exchange Act Release No. 48488 (September 3, 2003), 68 FR 54762 (September 12, 2003) (SR–NASD–2003–138).

[7] 15 U.S.C. 78o–3(b)(6).

[8] 15 U.S.C. 78s(b)(3)(A)(i).

[9] 17 CFR 240.19b–4(f)(1).

comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–166 and should be submitted by January 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31948 Filed 12–29–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48967; File No. SR–NASD–03–191]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Extension of the Short Sale Rule and Continued Suspension of the Primary Market Maker Standards Set Forth in NASD Rule 4612

December 22, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 19, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Nasdaq is proposing to extend the pilot program of the National Association of Securities Dealers' short sale rule retroactively to December 15 and prospectively until June 15, 2004. The Nasdaq is also seeking to continue the suspension of the effectiveness of the Primary Market Maker (''PMM'') standards currently set forth in NASD Rule 4162, also retroactive to December 15, 2003 and prospective through June 15, 2004. The text of the proposed rule change is as follows. Additions are *italicized;* deletions are bracketed.

* * * * *

NASD Rule 3350

(a)–(k) No Change.

(l) This section shall be in effect until *June 15, 2004* [December 15, 2003].

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background and Description of the NASD's Short Sale Rule. Section 10(a) of the Act[3] gives the Commission plenary authority to regulate short sales of securities registered on a national securities exchange, as needed to protect investors. Although the Commission has regulated short sales since 1938, that regulation has been limited to short sales of exchange-listed securities. In 1992, the Nasdaq, believing that short-sale regulation is important to the orderly operation of securities markets, proposed a short sale rule for trading of its National Market securities that incorporates the protections provided by Rule 10a–1 under the Act.[4] On June 29, 1994, the Commission approved the NASD's short sale rule (the ''Rule'') applicable to short sales[5] in Nasdaq National Market (''NNM'') securities on an eighteen-month pilot basis through March 5, 1996.[6] The NASD and the Commission have extended NASD Rule 3350 numerous times, most recently, until December 15, 2003.

The Rule employs a ''bid'' test rather than a tick test because Nasdaq trades are not necessarily reported to the tape in chronological order. The Rule prohibits short sales at or below the inside bid when the current inside bid is below the previous inside bid. The Nasdaq calculates the inside bid from all market makers in the security and disseminates symbols to denote whether the current inside bid is an ''up-bid'' or a ''down-bid.'' To effect a ''legal'' short sale on a down-bid, the short sale must be executed at a price at least $.01 above the current inside bid. The Rule is in effect from 9:30 a.m. until 4:00 p.m. each trading day.

In December of 2002, the Nasdaq modified the method it uses to calculate the last bid by having it refer to the ''Nasdaq Inside'' which is comprised of quotations from all participants in Nasdaq execution systems (*e.g.*, SuperMontage), rather than referring to the National Best Bid and Offer (''NBBO''). The Nasdaq currently calculates and applies the Nasdaq-based bid tick indicator to all SuperMontage trades. With respect to trades executed outside Nasdaq execution systems and reported to the Nasdaq, Nasdaq participants have been permitted to transition from the NBBO-based bid tick to the Nasdaq-based bid tick, provided that each firm select and apply a single bid tick indicator for all such trades executed by that firm. That transition has not been completed and, as explained below, in light of the Commission's proposal of Regulation SHO, the Nasdaq has alerted members that it would not be prudent to transition from the NBBO bid tick to the Nasdaq bid tick at this time.

To reduce the compliance burdens on its members, the Rule also incorporates seven exemptions contained in Rule 10a–1 under the Act,[7] and other exemptions that are relevant to trading

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78a(10)(A).

[4] 17 CFR 240.10a–1.

[5] A short sale is a sale of a security that the seller does not own or any sale that is consummated by the delivery of a security borrowed by, or for the account of, the seller. To determine whether a sale is a short sale members must adhere to the definition of a ''short sale'' contained in Rule 3b–3 of the Act, which is incorporated into Nasdaq's short sale rule by NASD Rule 3350(k)(1).

[6] *See* Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994) (''Short Sale Rule Approval Order'').

[7] 17 CFR 240.10a–1.

on the Nasdaq.[8] For example, in an effort to not constrain the legitimate hedging needs of options market makers, the Rule also contains a limited exception for standardized options market makers. The Rule also contains an exemption for warrant market makers similar to the one available for options market makers.

Background of the Primary Market Maker Standards. To ensure that market maker activities that provide liquidity and continuity to the market are not adversely constrained when the short sale rule is invoked, NASD Rule 3350 provides an exemption for ''qualified'' market makers (*i.e.*, market makers that meet the PMM standards). Presently, NASD Rule 4612 provides that a member registered as a market maker pursuant to NASD Rule 4611 may be deemed a PMM if that member meets certain threshold standards.

Since the Rule has been in effect, the Nasdaq has used three methods to determine whether a market maker is eligible for the market maker exemption. Specifically, from September 4, 1994 through February 1, 1996, Nasdaq market makers that maintained a quotation in a particular NNM security for 20 consecutive business days without interruption were exempt from the Rule for short sales in that security, provided the short sales were made in connection with bona fide market making activity (''the 20-day'' test). From February 1, 1996 until the February 14, 1997, the ''20-day'' test was replaced with a four-part quantitative test known as the PMM standards.[9]

On February 14, 1997, the PMM standards were waived for all NNM securities due to the impact of the Commission's Order Handling Rules and corresponding NASD rule change and system modifications on the operation of the four quantitative standards.[10] For example, among other impacts, the requirement that market makers display customer limit orders adversely affected the ability of market makers to satisfy the ''102% Average Spread Standard''. Since that time all Nasdaq Market Makers have been deemed to be PMMs.

In March 1998, the Nasdaq proposed PMM standards that received substantially negative comments.[11] In light of those comments, Nasdaq staff convened an advisory subcommittee to develop new PMM standards (''Subcommittee'') in August 1998. The Subcommittee met nine times and formulated new PMM standards. NASD/Nasdaq staff requested to meet with the Commission staff and the Subcommittee to receive informal feedback on the new PMM standards. This meeting occurred on December 9, 1998. At the conclusion of the meeting, Commission staff noted the progress made by the Subcommittee and requested time to digest and more carefully analyze the proposed new PMM standards.

On July 29, 1999, members of the Nasdaq staff conducted a conference call with members of the Commission staff to receive feedback on the PMM standards that the Nasdaq presented at the December 9, 1998 meeting. During the meeting, the Commission staff requested that the Nasdaq modify several of the proposed standards and analyze the impact of those modifications on the primary market maker determination. On September 27, 1999, the Nasdaq reported that the NASD Economic Research staff had analyzed data based on the Commission's recommended revisions, and concluded that the Commission's modified standards produced unfavorable results. The Nasdaq requested that the Commission comment on the outcome of this test ''as we intend to communicate your comments to the Subcommittee in an effort to resume the process of developing new standards.''[12]

The Nasdaq suspended development of PMM standards in late-1999 after the Commission signaled to the securities industry that it is considering fundamental changes to Rule 10a–1, changes that could impact the manner in which the Nasdaq and the other markets regulate short sales. In October 1999, the Commission issued a Concept Release on Short Sales in which it sought comment on, among other things, revising the definition of a short sale, extending short sale regulation to non-exchange listed securities, and eliminating short sale regulation altogether. The Nasdaq believed that it would be inappropriate for the Nasdaq to dramatically alter its regulation of short sales while the Commission is considering fundamentally changing Rule 10a–1. At the request of the staff of the Division of Market Regulation, the Nasdaq has resumed development of PMM standards and has been working with the Commission staff towards that goal.

Proposal to Extend the Short Sale Rule and Suspend the PMM Standards. The Nasdaq believes that it is in the best interest of investors to extend the short sale regulation pilot program. When the Commission approved the NASD's short sale rule on a pilot basis, it made specific findings that the Rule was consistent with Sections 11A, 15A(b)(6), 15A(b)(9), and 15A(b)(11) of the Act. Specifically, the Commission stated that, ''recognizing the potential for problems associated with short selling, the changing expectations of Nasdaq market participants and the competitive disparity between the exchange markets and the OTC market, the Commission believes that regulation of short selling of Nasdaq National Market securities is consistent with the Act.''[13] In addition, the Commission stated that it ''believes that the NASD's short sale bid-test, including the market maker exemptions, is a reasonable approach to short sale regulation of Nasdaq National Market securities and reflects the realities of its market structure.''[14] The benefits that the Commission recognized when it first approved NASD Rule 3350 apply with equal force today.

The Nasdaq notes that the Commission has proposed Regulation SHO, a unified short sale rule that, if approved, would apply to Nasdaq-listed

[8] *See* NASD Rule 3350(c)(2)–(8). The Rule also provides that a member not currently registered as a Nasdaq market maker in a security that has acquired the security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of the Rule notwithstanding that such member may not have a net long position in such security if and to the extent that such member's short position in such security is subject to one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities. In addition, the NASD has recognized that Commission staff interpretations to Rule 10a–1 under the Act dealing with the liquidation of index arbitrage positions and an ''international equalizing exemption'' are equally applicable to the NASD's short sale rule.

[9] Under the PMM standards, a market maker was required to satisfy at least two of the following four criteria each month to be eligible for an exemption from the short sale rule: (1) The market maker must be at the best bid or best offer as shown on Nasdaq no less that 35 percent of the time; (2) the market maker must maintain a spread no greater than 102 percent of the average dealer spread; (3) no more than 50 percent of the market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading; or (4) the market maker executes 1 1/2 times its ''proportionate'' volume in the stock. If a PMM did not satisfy the threshold standards after a particular review period, the market maker lost its designation as a PMM (*i.e.* the ''P'' next to its market maker identification was removed). Market makers could re-qualify for designation as a PMM by satisfying the threshold standards in the next review period.

[10] *See* Securities Exchange Act Release No. 38294 (February 17, 1997), 62 FR 8289 (February 24, 1997).

[11] *See* Securities Exchange Act Release No. 39189 (March 30, 1998), 63 FR 16841 (April 6, 1998).

[12] *See* Letter, dated September 27, 1999 from John F. Malitzis, Assistant General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission.

[13] *See* Short Sale Rule Approval Order, *supra* note 2.

[14] *Id.*

securities and would supersede NASD Rule 3350. The Nasdaq has alerted market participants that the adoption of Regulation SHO would impact the regulation of short sales on the Nasdaq and on other markets in a number of ways. The adoption of Regulation SHO would supersede elements of this proposal, including requiring short sales on the Nasdaq to utilize an NBBO-based bid test and eliminating the application of primary market maker standards. The Nasdaq has encouraged firms to analyze the proposal and its impact on their execution and order management systems in anticipation of its adoption.

2. Statutory Basis

The Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[15] in general and with Section 15A(b)(6) of the Act,[16] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Nasdaq does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and Rule 19b-4(f)(6)[18] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[19] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[20] the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Nasdaq seeks to have the proposed rule change become operative on or before December 16, 2003, in order to allow the Pilot to continue in effect on an uninterrupted basis. In addition, under Rule 19b–4(f)(6)(iii),[21] the Nasdaq is required to provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission. The Commission has waived the five-day pre-notice requirement for this proposed rule change. In addition, for the reasons discussed below, the Commission has also waived the thirty-day operative date requirement for this proposed rule change.

The Commission notes that unless extended, the Pilot will expire, and this could disrupt the proper operation of the Nasdaq. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2003–191. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–191 and should be submitted by January 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–32037 Filed 12–29–03; 8:45 am]

BILLING CODE 8010–01–P

[15] 15 U.S.C. 78*o*-3.

[16] 15 U.S.C. 78*o*-3(6).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] *Id.*

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48972; File No. SR–NASD–2003–185]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. to Modify SuperMontage Pricing

December 22, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 11, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to modify the pricing for Nasdaq's SuperMontage system. Pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] Nasdaq has designated the proposed rule change as non-controversial and requests that the Commission waive the 30-day pre-operative requirement contained in SEC

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

Rule 19b–4(f)(6)(iii).[5] If the Commission grants such waiver, Nasdaq will implement the proposed rule change on January 1, 2004.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Rule 7010. System Services

(a)–(h) No change.

(i) Nasdaq National Market Execution System (SuperMontage)

The following charges shall apply to the use of the Nasdaq National Market Execution System (commonly known as SuperMontage) by members:

Order Entry	
Non-Directed Orders (excluding Preferenced Orders)	No charge
Preferenced Orders:	
Preferenced Orders that access a Quote/Order of the member that entered the Preferenced Order).	No charge
Other Preferenced Orders	$0.02 per order entry
Directed Orders	$0.10 per order entry
Order Execution	
Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through the NNMS	
Charge to member entering order:	[$0.003 per share executed (but no more than $120 per trade for trades in securities executed at $1.00 or less per share)]
Average daily shares of liquidity provided through the NNMS by the member during the month:	
400,000 or less	*$0.003 per share executed (but no more than $120 per trade for trades in securities executed at $1.00 or less per share)*
400,001 to 5,000,000	*$0.0027 per share executed (but no more than $108 per trade for trades in securities executed at $1.00 or less per share)*
5,000,001 or more	*$0.0025 per share executed (but no more than $100 per trade for trades in securities executed at $1.00 or less per share)*
Credit to member providing liquidity	$0.002 per share executed (but no more than $80 per trade for trades in securities executed at $1.00 or less per share)
Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that charges an access fee to market participants accessing its Quotes/Orders through the NNMS	[$0.001 per share executed (but no more than $40 per trade for trades in securities executed at $1.00 or less per share)]
Charge to member entering order:	
Average daily shares of liquidity provided through the NNMS by the member during the month:	
400,000 or less	*$0.001 per share executed (but no more than $40 per trade for trades in securities executed at $1.00 or less per share)*
400,001 or more	*$0.001 per share executed (but no more than $40 per trade for trades in securities executed at $1.00 or less per share, and no more than $10,000 per month)*
Directed Order	$0.003 per share executed
Non-Directed or Preferenced Order entered by a member that accesses its own Quote/Order submitted under the same or a different market participant identifier of the member.	No charge
Order Cancellation	
Non-Directed and Preferenced Orders	No charge
Directed Orders	$0.10 per order cancelled

(j)–(u) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to implement reduced pricing for execution of Non-Directed and Preferenced Orders in the Nasdaq National Market Execution System (''NNMS'' or ''SuperMontage''). Nasdaq's current fee schedule for SuperMontage features: (i) A $0.003 per share charge for the execution (in full or in part) of a Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through SuperMontage, (ii) a $0.001 per share charge for the execution (in full or in part) of a Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that charges an access fee, and (iii) a $0.002 per share credit to a member that provides the liquidity for an execution and does not charge an access fee.[6]

Nasdaq states that as part of an ongoing effort to reduce the costs

[5] 17 CFR 240.19b–4(f)(6)(iii). Nasdaq provided written notice of its intent to file the proposed rule change, along a with a brief description and the text of the proposed rule change, on November 26, 2003.

[6] Transactions in a security priced under $1.00 (''low-priced trades'') are subject to a fee and credit cap applicable to trades in excess of 40,000 shares.

incurred by market participants to use Nasdaq services, it proposes to reduce order execution fees for members that provide liquidity through the NNMS. These fees would be reduced in a manner that would make the per share fee charged to a member to access liquidity during a particular month depend on the extent to which such member provided liquidity through the NNMS during that month (regardless of whether such member charges an access fee). Liquidity provision would be measured by adding the number of shares executed through transactions in which the member's Quote/Order was accessed by another market participant.[7] Thus, during a month in which a member provided a daily average of more than 5,000,000 shares of liquidity through the NNMS, the member would pay $0.0025 per share executed in trades in which the member accessed liquidity provided by a market participant that does not charge an access fee (*i.e.*, in which the member's Non-Directed or Preferenced Orders accessed the Quotes/Orders of other market participants).[8] During a month in which a member provided a daily average of 400,001 to 5,000,000 shares of liquidity, the member would pay $0.0027 per share executed in trades in which the member accessed liquidity provided by a market participant that does not charge an access fee.[9] Finally, in a month in which a member provided a daily average of 400,000 or fewer trades, the member would pay the current fee of $0.003 per share executed.[10]

Similarly, the fee paid by a member to access the Quote/Order of a market participant that charges an access fee would depend upon the shares of liquidity provided by the member during the month. During a month in which a member provided a daily average of more than 400,000 shares of liquidity, the member would pay $0.001 per share executed for trades in which the member accessed liquidity provided by a market participant that charges an access fee;[11] however, the member's total monthly charge would be capped at $10,000. During a month in which a member provided a daily average of 400,000 shares of liquidity or less, the member would also pay the current fee of $0.001 per share, but no monthly cap would be applicable.[12]

Nasdaq states that although the proposal will result in members paying fees to access liquidity that vary depending on the extent to which they provide liquidity, Nasdaq strongly believes that the proposal is consistent with the Act and with Commission precedent. Nasdaq believes that the extent to which members provide liquidity through SuperMontage is the single most important factor in determining whether SuperMontage provides an attractive destination, and in turn, whether SuperMontage will generate sufficient revenues to cover the costs of operating and regulating a market. Nasdaq believes a member that offers significant liquidity at prices that establish, or that are near, the national best bid/best offer, makes SuperMontage a more attractive destination for market participants seeking to access liquidity. While many liquidity destinations have used increases in liquidity provider rebates to attract liquidity, Nasdaq believes that higher liquidity rebates are creating distortions in market structure that lead to increased instances of locked and crossed markets. Although Nasdaq's proposed pricing schedule must, for competitive reasons, continue to provide payments for liquidity providers, Nasdaq believes that it is more appropriate to recognize the value of liquidity provision through discounts on the fee for accessing liquidity.

The costs of operating SuperMontage and regulating the Nasdaq market are overwhelming fixed, rather than variable, costs. As SuperMontage's volume increases (*i.e.*, as more and more liquidity is provided through SuperMontage), Nasdaq's costs, on a per share basis, decrease. Accordingly, Nasdaq believes that it is appropriate and equitable to allocate these costs in a manner that takes account of the lower per share costs associated with higher volumes of liquidity provision. Put another way, lower volumes would translate into higher per share costs for market participants; higher volumes reduce per share costs, and Nasdaq believes that the benefits of these reduced costs can and should be made available to those market participants that make the higher volumes possible in the first place. Moreover, there are economies of scope associated with higher volumes of liquidity provision, because trades executed through SuperMontage also have market data revenue and (in some cases) Automated Confirmation Transaction (''ACT'') fees associated with them.

Nasdaq notes that on several occasions in the past, the Commission has approved or allowed the immediate effectiveness of SRO proposals to establish tiered pricing in which the price that different members pay for a service varies, depending on a related variable. For example, Rule 11.10(c) of the NSX (formerly the Cincinnati Stock Exchange) provides that the fee a member pays for agency limit orders depends upon the percentage of public agency market order shares executed during a trading month. Similarly, according to Nasdaq, the New York Stock Exchange's Price List[13] reflects a display device charge for professional subscribers to market data feeds that varies on a per device (rather than a marginal) basis, depending on the number of devices. Thus, a subscriber with few devices pays high fees for each of its devices, while a subscriber with more devices pays lower fees for each of its devices. Nasdaq believes that such pricing structures, like the pricing proposed herein, are entirely appropriate, provided they base the price that a particular member pays upon cost and/or revenue factors associated with providing services to that member.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[14] in general, and with Section 15A(b)(5) of the Act,[15] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers, and other persons using any facility or system which the NASD operates or controls. The proposed rule change bases the fees applicable to accessing liquidity through SuperMontage on the extent to which a member provides liquidity, thereby taking account of the lower per share costs and the economies of scope associated with higher volumes of liquidity provision.

[7] If a particular corporate entity has multiple market participant identifiers (''MPIDs'') associated with the Central Registration Depository (''CRD'') number under which it conducts business, Nasdaq will aggregate shares of liquidity provided through all of its MPIDs. However, Nasdaq will not aggregate one corporate entity's trade reports with those associated with MPIDs assigned to subsidiaries or other affiliates with a different CRD number.

[8] As is true today, a low-priced trade would be subject to a fee cap applicable to trades in excess of 40,000 shares. Accordingly, when the fee that the member pays is $0.0025, the maximum per transaction charge for a low-priced trade would be $100.

[9] When the fee that the member pays is $0.0027, the maximum per transaction charge for a low-priced trade would be $108.

[10] When the fee that the member pays is $0.003, the maximum per transaction charge for a low-priced trade would be $120.

[11] The maximum per transaction charge for a low-priced trade would be $40.

[12] The maximum per transaction charge for a low-priced trade would be $40.

[13] *See www.nyse.com/pdfs/2003pricelist2.pdf.*

[14] 15 U.S.C. 78*o*–3.

[15] 15 U.S.C. 78*o*–3(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) [16] of the Act and Rule 19b–4(f)(6) thereunder.[17] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 30-day operative delay. The Commission finds waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[18] Acceleration of the operative date will allow the proposed price reduction to take effect as quickly as possible and at the beginning of a calendar month, January 1, 2004. Implementation of the pricing change at the beginning of a calendar month will assist Nasdaq in automating the preparation of members' bills for January 2004, since the same pricing schedule would be in effect for each day of the month. It will also assist members' understanding of the bills that they receive for that month.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NASD–2003–185. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–185 and should be submitted by January 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–32038 Filed 12–29–03; 8:45 am]

BILLING CODE 8010–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48973; File No. SR–NASD–2003–190]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Interpret Two Provisions of New NASD Rule 2790 Relating to Initial Public Offerings

December 22, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 19, 2003, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this amended notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is filing with the Commission portions of a *Notice to Members* discussing the application of NASD Rule 2790. The NASD is not proposing any textual changes to the rules of NASD.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 24, 2003, the Commission approved new NASD Rule 2790 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings).[4] As stated in the Commission approval order, NASD will publish a *Notice to Members* discussing the application of its Rule 2790. In consulting with the Commission staff regarding the *Notice,* the Commission staff determined that two provisions in the *Notice* constitute interpretations of NASD Rule 2790 that,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 48701 (October 24, 2003), 68 FR 62126 (October 31, 2003) (approving File No. SR–NASD–99–60).

due to their nature, should be filed as a proposed rule change.

The first provision relates to paragraph (a)(4)(C) of Rule 2790, which provides an exclusion for ''purchases by a broker/dealer (or owner of a broker/dealer), organized as an investment partnership, of a new issue at the public offering price, provided such purchases are credited to the capital accounts of its partners in accordance with paragraph (c)(4).'' This exclusion is intended to allow a hedge fund that registers as a broker-dealer or that has a subsidiary that is a broker-dealer [5] to purchase new issues on the same terms as other investment partnerships. For instance, pursuant to paragraph (a)(4)(C), a JBO hedge fund may purchase new issues so long as the beneficial interests of restricted persons do not exceed in the aggregate 10% of the fund. The NASD recognizes that there are a number of legal structures that a JBO hedge fund can take. Accordingly, the *Notice* will state:

Paragraph (a)(4)(C) refers specifically to ''investment partnership'' because we understand this is the most common organizational form of JBO hedge funds. We believe, however, that the decision to organize as a limited liability company, or some other corporate form, should not undermine the relief granted to hedge funds organized as JBOs or with JBO subsidiaries.

The second provision relates to the preconditions for sale in a fund-of-funds context. Paragraph (b) of Rule 2790 provides, in relevant part, that a member may not sell new issues to any account unless within the previous 12 months it has in good faith obtained a representation from either: (1) The beneficial owners of the account, or a person authorized to represent the beneficial owners of an account, that the account is eligible to purchase new issues in accordance with the rule; or (2) certain conduits (such as a bank, foreign bank, broker-dealer, or investment adviser) that all purchases of new issues are in compliance with the rule.

In a fund-of-funds context, a member must obtain a representation only from a person authorized to represent the beneficial owners of the fund/account that purchases new issues directly from the member (''master fund''). However, in making such a representation, a representative of the master fund would need to ascertain the status of investors of any feeder funds that invest in the master fund. In ascertaining the status of investors of any feeder funds, the NASD will allow the representative of the master fund to rely on information from any feeder fund. To address the practicalities of the certification process, the *Notice* will state:

While the Rule specifies that a member must verify the status of the master fund annually, the Rule does not specify a time period during which a master fund may rely on information from a feeder fund. NASD recognizes that logistical impracticalities may prevent all authorized representatives of feeder funds from verifying information at the same time as the representative of the master fund. Thus, NASD will allow the representative of a master fund to rely on information from any feeder fund that is no more than 12 months old. Similarly, the representative of a feeder fund that in turn receives investments from other feeder funds may rely on information that is no more than 12 months old.

2. *Statutory Basis*

The NASD believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[6] which requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; and, in general, to protect investors and the public interest. The NASD believes that its Rule 2790, as described herein, protects investors and the public interest by: ensuring that members make a bona fide public offering of securities at the public offering price; ensuring that members do not withhold securities in a public offering for their own benefit or use such securities to reward certain persons who are in a position to direct future business to the member; and ensuring that industry ''insiders,'' including members and their associated persons, do not take advantage of their ''insider'' position in the industry to purchase new issues for their own benefit at the expense of public customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD has designated the proposed rule change as ''non-controversial'' pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8] The NASD has represented that the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Rule 19b–4(f)(6) also requires the self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The NASD fulfilled the five-day pre-filing notice requirement.

The NASD has requested that the Commission waive the 30-day pre-operative waiting period, which would make the proposed rule change operative immediately. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day pre-operative period in this case because the proposed rule change provides additional guidance to investors regarding the application of NASD Rule 2790 and will facilitate the implementation of the new rule in the time frame described in the approval order.[9] For these reasons, the Commission hereby waives the 30-day pre-operative period.[10] Therefore, the proposal becomes operative immediately.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[5] Certain hedge funds, or subsidiaries thereof, elect to become registered broker-dealers and share a back office with another broker-dealer. These entities are called joint back office broker-dealers (''JBOs'').

[6] 15 U.S.C. 78o–3(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] *See supra* note 4.

[10] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–190 and should be submitted by January 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–32039 Filed 12–29–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48970; File No. SR–PCX–2003–67]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges

December 22, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 12, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which the Exchange has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend the Floor, Market Maker and Remote Market Maker Fees portion of its Schedule of Fees and Charges (''Schedule''). The text of the proposed change to the fee schedule is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend the Floor, Market Maker and Remote Market Maker portion of its Schedule in order to create a connectivity fee of $300 per line per month.

Currently, the PCX maintains a significant number of telecommunications lines that support connectivity from various routing firms. Thus, the PCX dedicates a significant amount of resources to installation and maintenance. The proposed fee will provide for the recovery of the expenses that the PCX has incurred as part of the initial deployment and ongoing testing of these lines. The Exchange also believes that the proposed fee will indirectly promote efficiency for the PCX as the fee will create a disincentive for firms to retain inactive lines.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[3] in general, and Section 6(b)(4) of the Act,[4] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCX neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and subparagraph (f)(2) of Rule 19b–4 thereunder[6] because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–PCX–2003–67. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. 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

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–67 and should be submitted by January 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–32035 Filed 12–29–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48971; File No. SR–PCX–2003–69]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges

December 22, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 12, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which the Exchange has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend the General Membership Fees and Floor, Market Maker and Remote Market Maker Fees portions of its Schedule of Fees and Charges (''Schedule''). The text of the proposed change to the fee schedule is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend the General Membership Fees and Floor, Market Marker and Remote Market Maker portions of its Schedule in order to make a number of changes to member-related fees. According to the PCX, this proposal would increase existing fees to competitive levels of other self-regulatory organizations (''SROs'') and would introduce new fees to recover costs associated with processes requiring staff research and documentation, and reproduction of materials. Each proposed new fee or amendment is described below.

a. *Initial Membership Fee.* The Exchange proposes to incorporate a flat fee of $1,500 for all seat activations. Currently, the PCX assesses each Member Organization an initial membership fee calculated as 5% of the average price of the last three membership seat sales, with an established per activation minimum of $1,000 and maximum of $4,000. The Exchange proposes to replace the calculation method with a simple flat fee of $1,500 for all Member Organizations and Nominees.[3] The Exchange believes that restructuring this fee will provide much needed simplicity for the membership as well as Exchange staff. Also, this fee amount is substantially similar to the initial membership fee assessed by the Philadelphia Stock Exchange, Inc (''Phlx'').[4]

b. *Statutory Disqualification.* The Exchange proposes to amend the PCX statutory disqualification fee to $2,000 for all applications resulting in statutory disqualification proceedings. The PCX currently assesses $250 to process applications for approved status despite grounds for statutory disqualification. In order to bring this fee up to the competitive levels of other SROs, the Exchange proposes to increase the fee to $2,000 and assess the fee for all applications resulting in statutory disqualification proceedings.[5] Hence, the fee will not be assessed unless the review of the application reveals that such a proceeding is necessary.

c. *Issue Relinquishment Request.* The Exchange proposes to implement a new fee, in the amount of $100 per issue, to cover the cost associated with processing issue relinquishment requests from Lead Market Makers. Each issue relinquishment request, regardless of the number of issues, requires substantial Exchange resources, including dedicated staff time. Therefore, the Exchange believes it is necessary to implement a nominal fee of $100 per issue for cost recovery.

d. *Hard Copy Subscription—PCX Weekly Bulletin.* The Exchange proposes to establish a $200 annual subscription fee applicable to all Members that elect to receive the PCX Weekly Bulletin in a hard copy format as opposed to e-mail.[6] The purpose of this fee is twofold. First, the $200 annual fee is intended to offset the hard copy publication and dissemination cost, as well as the cost of dedicated staff time. Second, the Exchange believes that this fee will result in a positive effect in that it will promote the reduction of paperwork.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCX neither solicited nor received written comments with respect to the proposed rule change.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The initial seat activation fee would apply to each Member Organization as well as each Nominee to a Member Organization, since activation for each Nominee requires a separate administrative process.

[4] *See* Phlx Fee Schedule, Appendix A. The Phlx also assesses a $1,500 fee for initial memberships.

[5] For example, the Chicago Board Options Exchange, Inc. (''CBOE'') assesses a $2,750 fee for applications resulting in statutory disqualification proceedings. *See* CBOE Fee Schedule.

[6] All Members and Member Firms are required to maintain an e-mail address for communication with the Exchange. *See* PCX Rule 1.13.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [9] and subparagraph (f)(2) of Rule 19b–4 thereunder [10] because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–PCX–2003–69. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–69 and should be submitted by January 20, 2004.

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–32036 Filed 12–29–03; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4577]

Bureau of Political-Military Affairs: Directorate of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the twenty-three letters.

FOR FURTHER INFORMATION CONTACT: Mr. Peter J. Berry, Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202 663–2700).

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: November 17, 2003.

Terry L. Davis,

Acting Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

October 31, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c)&(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing agreement of the manufacture of significant military equipment abroad and the license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the Republic of Korea for full-scale production of the T–50 fighter/trainer aircraft for end use by the Republic of Korea Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 118–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 3, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export to Australia of technical data and defense services for the design and manufacture of the 382J/C–130J Composite Center and Outer Wing Flaps for use by the Australian Department of National Defence.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 104–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 4, 2003.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles that are firearms controlled under category I of the United States Munitions List sold commercially under a contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Belgium of bolt-action, lever-action, semi-automatic sporting rifles, and semi-automatic pistols for distribution to the following commercial markets: Austria, Belgium, Denmark, Ireland, Finland, France, Germany, Greece, Iceland, Italy, Luxembourg, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom.

The United States Government is prepared to license the export of these items having

taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 103–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 7, 2003.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the design, development and manufacture in the United Kingdom of the Nuclear-Biological-Chemical Improved Protective Mask for use by the U. S. Special Operations Command.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 108–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 7, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the Czech Republic to support the manufacture of turbine engine parts for use on multiple military aircraft and ground vehicles.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 114–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 14, 2003.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles and to provide defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves providing technical support and exporting defense articles to the United Kingdom for the purpose of upgrading the United Kingdom's Defence Intelligence and Electronic Warfare (IEW) capability in the Soothsayer Programme.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 112–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 14, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of classified and unclassified technical data and assistance to NEC Corporation and NEC Network and Sensor Systems Ltd. of Japan, necessary to integrate the TOW Missile System on the Japanese AH–1S Cobra helicopters for end-use by the Japan Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 120–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 17, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles to Israel to support the manufacture and maintenance of the Modular Azimuth Positioning Land Navigation Systems for end-use in Israel, Canada, Turkey, Sweden, Denmark, Australia, Belgium, Japan, Netherlands, United Kingdom, Finland, Greece, Spain, Portugal, Norway, India, Singapore, and the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 115–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 19, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of classified and unclassified technical data and assistance to the United Kingdom for the JAVELIN Light Forces Anti-Tank Guided Weapons System for end-use by the United Kingdom Ministry of Defence and the United States Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 092–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 19, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification concerns exports of technical data and defense services for sale, delivery, and support of fifty-seven Pratt & Whitney F100–PW–229 engines for the F–16I aircraft for the government of Israel.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 119–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 20, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of classified and unclassified technical data and defense services to Saudi Arabia to support Patriot and Hawk Air Defense Systems for end-use by the Government of Saudi Arabia.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 097–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 21, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of two proposed licenses for the export of defense articles that are firearms controlled under category I of the United States Munitions List sold commercially under a contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 840 M16, 5.56MM caliber semi-auto/full auto rifles and associated equipment to the Ministry of Interior of the United Arab Emirates.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. 105–03 DDTC

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 21, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of two proposed manufacturing license agreements for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles to Italy and Belgium to support the manufacture of NATO E–3A AWACS Group B communication systems in support of the NATO Mid-Term Modernisation Programme.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 106–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 21, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of two proposed licenses for the export of defense articles that are firearms controlled under category I of the United States Munitions List sold commercially under a contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 1,800 M4, 5.56MM caliber semi-auto/full auto carbines, 20 M203 grenade launchers, 40 infrared laser aiming devices and associated equipment to the government of Greece.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 107–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 21, 2003.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the manufacture in Turkey of the LN–93 Inertial Navigation Unit for use on the Turkish Air Force F–16.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 109–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 21, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to South Korea and Germany of technical data, defense services and hardware for the integration of the Korean Electro-Optical Tracking System into the Korean Flying Tiger Vehicles for end-use by the Republic of Korea Army.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 110–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 21, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export to the United Kingdom of technical data and defense services for design, development, analysis, integration and testing of the Joint Strike Fighter weapon system.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 113–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 21, 2003.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the manufacture of the AN/ARC–182(V) VHF/UHF AM FM Radio Sets for the end use by the Japanese Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 116–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 21, 2003.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the transfer of technical data, assistance and manufacturing know-how to Canada for the manufacture of Infrared Detectors for the Paveway II, III, IV and the Enhanced Paveway II and III Weapon System for end-use in the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 121–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 21, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services related to the Rolling Airframe Missile (RAM) MK 31 Guided Missile Weapon System (GMWS) for the KDX–II Destroyer and LPX Transport Programs for end use by the Republic of Korea Ministry of National Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 122–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 21, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to the Kingdom of Saudi Arabia of spare parts and components for C–130 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 123–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 21, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export to NATO countries (United Kingdom, Germany, Spain, Turkey, and The Netherlands) of components and spare parts for UH–1H, CH–47, AB212, CH–53, MD500, UH–60, and SH–60 helicopters.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 124–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 21, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export and launch of a commercial communications satellite, from Pacific/International waters.

The United States Government is prepared to license the export of this item having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 125–03
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

[FR Doc. 03–32052 Filed 12–29–03; 8:45 am]
BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 4532]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC), through the Subcommittee on Standards of Training, Certification and Watchkeeping, will conduct an open meeting at 9:30 a.m. on January 8, 2004. The meeting will be held in Room 6103 of the United States Coast Guard Headquarters Building, 2100 Second Street SW., Washington, DC 20593–0001. The purpose of the meeting is to prepare for the 35th session of the International Maritime Organization (IMO) Sub-Committee on Standards of Training and Watchkeeping (STW), to be held on January 26–30, 2004, at the IMO Headquarters in London, England.

The primary matters to be considered include:

1. Measures to enhance maritime security, training and certification for ship, company and port facility security officers;
2. Watchkeeping at anchor;
3. Large passenger ship safety;
4. Training of crew in launching and recovery operations of fast rescue boats and the means of rescue in adverse weather conditions;
5. Measures to prevent accidents with lifeboats;
6. Education and training requirements for fatigue prevention, mitigation, and management;
7. Requirements for knowledge, skills and training for officers on WIG craft; and
8. Development of competencies for ratings.

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: LCDR Luke Harden, U.S. Coast Guard (G–MSO–1), Room 1210, 2100 Second Street SW., Washington, DC 20593–0001 or by calling; (202) 267–0229.

Dated: December 18, 2003.

Steven Poulin,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 03–32049 Filed 12–29–03; 8:45 am]
BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 4533]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9 a.m. on Monday, January 26, 2004, in Room 6319 of the United States Coast Guard Headquarters Building, 2100 2nd Street SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the 47th Session of the International Maritime Organization (IMO) Sub-Committee on Stability and Load Lines and on Fishing Vessels Safety to be held at IMO Headquarters in London, England from September 13th to 17th.

The primary matters to be considered include:

—Harmonization of damage stability provisions in SOLAS Chapter II–1;
—Large passenger ship safety;
—Review of the Intact Stability Code;
—Revision of the Fishing Vessel Safety Code and Voluntary Guidelines;
—Review of the Offshore Supply Vessel Guidelines;
—Harmonization of the damage stability provisions in other IMO instruments, including the 1993 Torremolinos Protocol (probabilistic method);
—Revision of technical regulations of the 1966 Load Line Convention;
—Review pf the 2000 HSC Code and amendments to the DSC Code and the 1994 HSC Code.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Paul Cojeen, Commandant (G–MSE), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 1308, Washington, DC 20593–0001 or by calling (202) 267–2988.

Dated: December 18, 2003.

Steven D. Poulin,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 03–32050 Filed 12–29–03; 8:45 am]
BILLING CODE 4910–09–P

DEPARTMENT OF STATE

[Public Notice 4576]

Finding of No Significant Impact and Summary Environmental Assessment; Valero Logistics LP Pipeline in Webb County, TX

The proposed action is to issue a Presidential Permit to Valero Logistics Operations LP (Valero) to construct, connect, operate and maintain a 8⅝ inch outer diameter pipeline to convey liquid petroleum gas (''LPG'') across the border from Webb County, Texas to the United States of Mexico. On behalf of Valero, URS Corporation of Austin, Texas, prepared a draft environmental assessment under the guidance and supervision of the Department of State (the ''Department''). The Department placed a notice in the **Federal Register** (68 FR 44560 (July 29, 2003)) regarding the availability for inspection of Valero's Permit application and the draft environmental assessment.

Numerous Federal and state agencies independently reviewed the draft environmental assessment. They include: the United States Section of the International Boundary and Water Commission, the Department of Transportation, the Department of the Interior, the U.S. Fish and Wildlife Service, the Environmental Protection Agency, the Federal Emergency Management Administration, the U.S. Department of Homeland Security, the Department of Defense, the Department of Commerce, the Council on Environmental Quality, the Texas Railroad Commission, the Texas Historical Commission, the Texas Parks and Wildlife Department, and the Texas Commission on Environmental Quality. Prior to publishing the notice, Valero hosted a public meeting on the behalf of the Department of State, where public input on the project was received. No formal written public comments were submitted on the draft environmental assessment.

Comments received from the Federal and state agencies and the public were either responded to directly, or addressed directly by incorporation into the analysis contained in the draft environmental assessment. In addition to inclusion in the analyses of impacts and risks, comments were used to develop measures to be undertaken by Valero to prevent or mitigate potentially adverse environmental impacts, which were included as commitments.

This summary environmental assessment, comments submitted by the Federal and state agencies and the public, responses to those comments, and the draft environmental assessment, as amended, together constitute the Final Environmental Assessment of the proposed action by the Department.

Summary of the Environmental Assessment

I. The Proposed Project

The Department is charged with the issuance of Presidential Permits for the construction, connection, operation and

maintenance of pipelines crossing international boundaries. See Executive Order 11423 of August 16, 1968, 33 FR 11741 (1968), as amended by Executive Order 12847 of May 17, 1993, 58 FR 29511 (1993). Valero Logistics LP (''Valero'') has applied for a Presidential Permit to construct, connect, operate and maintain an 8⅝ inch outer diameter pipeline (''the Dos Laredos Pipeline'') at the U.S.-Mexico border. The pipeline will connect the Valero terminal in Laredo, Texas, with a newly-constructed Valero terminal in the state of Tamaulipas, Mexico. The U.S. portion of the project as described in the final Environmental Assessment consists of approximately 10.6 miles of new pipeline from the Valero terminal to a location on the Rio Grande known as ''La Bota'' in Laredo, approximately 6 miles northwest of downtown Laredo. The Mexican portion consists of approximately 1.5 kilometers of new pipeline from the Rio Grande crossing to the newly constructed Valero Nuevo Laredo terminal.

A significant portion of the route of the Dos Laredos pipeline will utilize existing utility rights of way and cleared fenceline, minimizing the amount of additional environmental impact. The routing has also been designed to avoid, to the maximum extent possible, populated areas of Webb County.

The Dos Laredos pipeline is being designed to transport up to 32,400 barrels (1.36 million gallons) of LPG daily from the U.S. to Mexico. Originally, the pipeline will service Valero's contractual obligation to supply 5,000 barrels a day to MGI Supply Limited, a subsidiary of Pemex-Gas y Petroquimica Basica, with capacity available for future expansion.

II. Alternatives Considered

The Department considered two routing alternatives and one modal alternative to the proposed Dos Laredos Pipeline. These are described in detail in the Final Environmental Assessment and in a summary fashion below.

Alternative 1: The ''no action'' alternative would involve delivery of LPG to Nuevo Laredo via tanker trucks. There are two possible options for this delivery.

The current delivery system involves trucks carrying LPG from the Three Rivers facility to Eagle Pass (approximately 160 miles), crossing the border at Eagle Pass to Piedras Negras, and offloading at a terminal on the Mexican side of the border. A Mexican fleet then transports the LPG the approximately 120 miles from Piedras Negras to Nuevo Laredo to customers.

A second delivery routing could occur after Valero constructs a new LPG terminal to the west of Nuevo Laredo (the planned terminus of the Dos Laredos Pipeline). In this case, tanker trucks would carry LPG approximately 120 miles from Three Rivers to Laredo, cross the border to Nuevo Laredo at the World Trade Bridge, and proceed to the terminal location, where again it would be offloaded for pickup by local service vehicles.

While these ''no action'' alternatives would avoid the minor or temporary noise and air quality impacts associated with the construction of the pipeline, truck transport is not a preferred alternative. An average of 24 tanker trucks carrying LPG to travel from Three Rivers across the border per day would be needed to meet Valero's contractual obligations. This would result in (i) exhaust emissions of nitrogen oxides (NO_X), carbon dioxide (CO_2), sulfur dioxide (SO_2), volatile organic compounds (VOC), and particulate matter (PM) that exceed that of pipeline transport; (ii) extra loads on busy highways and road bridges, (iii) transportation-related environmental degradation, such as noise impacts and water contamination related to operation of a tanker truck fleet, including fueling and maintenance, (iv) a continuing safety risk, including increased exposure to emissions, spills, and accidents during truck loading and unloading operations, and (v) a long-term commitment to moving these hazardous liquids through more heavily populated transportation corridors in Webb County, rather than through pipeline rights-of-way which have been situated in a way which minimizes potential impacts to existing and currently planned communities.

If, as expected over time, population growth in Northern Mexico creates additional demand for cross-border shipments of LPG, the need for additional truck transport would result in greater impacts to the transportation infrastructure, public safety, and air quality. The added travel from tanker trucks, assuming the shorter round trip directly between Three Rivers and Nuevo Laredo (as compared to the current round trip between Three Rivers to Nuevo Laredo through Eagle Pass/Piedras Negras) would produce a substantially higher regional diesel exhaust burden, resulting in emission of 63 tons per year of NO_X, 30 tons per year of CO_2, 11 tons per year of PM, 8 tons per year of VOC, and 2 tons per year of SO_2.

Alternatives 2 and 3: Alternatives 2 and 3 considered for the project involved pipeline routings that roughly parallel the proposed route, to the north and south. The existing fencelines/utility corridors, and desire of local landowners not to have large tracts divided by a newly established pipeline corridor, limited the number of possible alternatives. Both routings would have also involved the laying of a new 8⅝ inch diameter pipeline.

The northern alternative was viewed as not preferred because it required approximately 3 additional miles of pipeline, while not providing substantial relief from any of the impacts documented for the proposed pipeline route.

The southern alternative was also viewed as not preferred. While it required roughly the same pipeline distance as the proposal, it passed through industrial corridors along Killen Industrial Road and Mines Road prior to crossing the river. The existing development within these corridors would have made right-of-way much more difficult to obtain, in light of the City of Laredo's existing ordinance requiring a 25-foot setback between any pipeline and a structure. This ordinance makes siting much more practicable in an undeveloped corridor such as that found along the proposed route.

In addition, neither alternative routing provided avoidance or mitigation of any of the unavoidable impacts attributable to the selected corridor. For these reasons, the Department concluded that these alternate routes were not preferred alternatives.

III. Summary of the Assessment of the Potential Environmental Impacts Resulting From the Proposed Action

A. Impacts of Construction and Normal Operation of the Pipeline

The Final Environmental Assessment contains detailed information on the environmental effects of the Dos Laredos Pipeline and the alternatives outlined above. In particular, the Final Environmental Assessment analyzed the impacts of construction and normal operation of the pipeline on air and sound quality, topography, water resources, soils, mineral resources, biological resources, land use, transportation, socioeconomic resources, and recreation and cultural resources. Based on the detailed environmental assessment and information developed by the Department and other federal and state agencies in the process of reviewing the draft environmental assessment, the Department concluded the following:

i. *Environmental Concerns:* There will be no impacts to or on, *inter alia,*

geology and topography, groundwaters, the Heritage status of the Rio Grande, wetlands, mineral resources, and recreation resources. There will be insignificant, minor or temporary impacts to or on, *inter alia,* noise, surface waters, soils, and protected biological resources. Finally, there will be net benefits to air quality through the elimination of exhaust emissions of CO_2, NO_X, VOC_s, SO_X, and particulate matter that are generated when tankers move fuel across the border. Alternative 1, transporting product by tanker truck in the future will continue these emissions. Alternatives 2 and 3, the routing alternatives, are not judged to represent any major difference in impacts to environmental concerns than the preferred route, although by virtue of being 30% longer Alternative 2 (the northern routing) would result in incrementally higher construction-related impacts.

ii. *Transportation and Land Use:* In consultation with the U.S. Fish and Wildlife Service, certain crossings will be re-aligned or will be directionally drilled to protect riparian bands that may be used by migratory threatened and endangered species. The Dos Laredos Pipeline does not conflict with existing land use plans for Laredo or Webb County. By utilizing existing fenceline and utility line corridors, the pipeline avoids splitting parcels and thereby complicating future development, and minimizes new impacts. Following consultation with local environmental groups, the alignment of the pipeline in the area south and west of FM 1472 was adjusted to minimize impacts to trees adjoining Sombretillo Creek and also to provide (via the maintained right of way) a buffer to keep development away from the creek. When compared with the ''no action alternative'' of continued truck transport, the pipeline represents a net positive benefit to local transportation by removing additional truck traffic from roadways. There are no major transportation issue related differences in impacts between the preferred routing and the two alternatives evaluated.

iii. *Homeland Security:* Compared to the ''no action'' alternative, there will be net benefits to homeland security because the pipeline will reduce the truck traffic volume at border crossings. There are no homeland security related differences in impacts between the preferred routing and the two alternatives evaluated.

iv. *Irreversible and Irretrievable Commitments of Resources:* There is a small increase in the commitment of land resources which are dedicated to transporting LPG due to the establishment of the new pipeline ROW, as compared to the ''no action'' alternative. The preferred alignment is advantageous compared to the two alternatives because Alternative 2 would increase the length of the pipeline (and therefore the commitment of land) by approximately 30%, while not changing the land uses which would be affected, and Alternative 3 while not increasing the length of the pipeline, would require adding new restrictions to land use in an already developed light-industrial corridor.

The operation of the pipeline will greatly reduce the energy requirements for transporting LPG from Three Rivers to Nuevo Laredo in comparison with the ''no action'' alternative. The selection of the preferred alignment will not affect energy requirements for LPG transport to any notable degree when compared with the 2 alternative alignments.

v. *Cumulative Effects:* There are no cumulative impacts to the Nuevo Laredo-Laredo airshed due to consumption of LPG in Mexico, since this supply represents LPG which is already being delivered to Mexico via truck, and the pipeline will only represent a change in delivery system.

A more detailed analysis of each of these factors is provided in the Environmental Assessment, as amended, which addresses issues raised by Federal and state agencies and the public.

B. Impacts Due to Corrosion of the Pipeline or Damage From an Outside Agent

The Final Environmental Assessment also contains detailed assessment of the potential environmental effects of the Dos Laredos Pipeline arising from pipeline integrity issues. A release of LPG from the pipeline, though improbable, would have very different impacts from those associated with construction and normal operation.

i. *Human Health and Safety Concerns:* Potential human health and safety impacts that may result from a release of hazardous liquids include fire or explosion from LPG, and short-term exposure to hazardous vapors resulting from an LPG release.

The potential risks to human health and safety are most concentrated in areas where the pipeline is close to residences, businesses, or transportation corridors. Only two small portions of the Dos Laredos Pipeline will be located in areas where a pipeline accident could result in risk to nearby residences and businesses: (1) At the northern end where it exits the Valero Laredo Terminal and runs along I–35; and (2) near the midpoint of the line where it crosses FM 1472 (Mines Road). A large portion of the pipeline is located in areas where no development is likely in the near future.

Any mode of transporting hazardous liquids shares these potential safety impacts. The probability of accidents resulting in fire or explosion for pipelines on a product-mile basis is 35 times lower than that of tanker transport, and the probability of deaths resulting from hazardous liquids transport in pipelines is 87 times lower than transport by tanker trucks on a product-mile basis. For these reasons, the U.S. Department of Transportation considers pipeline transport to be the safest transportation for hazardous liquids.

In addition, as previously discussed, the Dos Laredos Pipeline will traverse fewer areas where impacts to human health and safety are likely to result from a major accident than the ''no-action'' alternative, and therefore the pipeline will result in substantially lower risks to human health and safety than the ''no action'' alternative. Alternative 2, the northern alternative routing, would result in a slightly higher risk due to the longer length of pipeline; while Alternative 3, the southern alternative routing, would result in a higher risk because it would pass through already developed industrial corridors for much of the alignment.

This pipeline project has incorporated many safety features to address health and safety concerns. These are presented as mitigation measures.

ii. *Environmental Concerns:* The air quality impacts from an accidental product release from the Dos Laredos Pipeline would be short term and would not constitute a significant impact. Groundwater contamination is unlikely to occur from an LPG leak, because the product immediately expands into a gas upon release. Along most of the alignment, release resulting in fire would cause damage to vegetation in the immediate vicinity of the release, but is unlikely to result in widespread fires because of the types and distribution of vegetation. The mesquite and cactus which dominate the uplands sections of the alignment are difficult to burn even during planned fires, usually requiring mechanical preparation of the site and cessation of grazing to build up sufficient fuel, due to the naturally wide spacing and sparse ground cover. A greater fire hazard is present immediately along the Rio Grande where frequent fires occur in bamboo stands, but the pipeline will be directionally drilled to depths greater than the standard 3-foot minimum cover

in this area in order to avoid impacts to the riparian band along the river.

iii. *Possible Conflicts Between the Dos Laredos Pipeline and the Objectives of Federal, Regional, State and Local Use Plans, Policies and Controls for the Area Concerned:* The risks posed by the Dos Laredos Pipeline do not conflict with any local land use plans, policies, or controls.

iv. *Probable Adverse Environmental Effects Which Cannot Be Avoided:* There will be a long-term increase in health and safety risk in the immediate vicinity of the pipeline due to the nature of the product being transported, which represents a shifting of risk from other portions of the county that would handle substantial truck transport of product under the ''No Action'' alternative or the alternative alignment scenarios. Any potential impacts would be mitigated by the measures described below, which are proposed to prevent or mitigate potentially adverse environmental impacts and which Valero intends to take.

v. *Cumulative Effects:* There are two important considerations with respect to the cumulative impacts analysis for the Dos Laredos Pipeline. The first is the cumulative effect of risks to the pipeline, and correspondingly to those living or working near to the pipeline, due to potential accidents on other pipelines in the vicinity. The only major transmission line in the vicinity of the Dos Laredos Pipeline is the Duke Energy Pipeline, which shares a common right-of-way for a ¼ mile stretch of the proposed alignment just north of FM 1472. The second is the cumulative effect of the increased overall risk to surrounding populations from an industrial accident occurring along the right-of-way that results in the release of LPG from the Dos Laredos pipeline, industrial sources or both.

A study of U.S. DOT databases has not revealed any cases where a below ground pipeline has ruptured due to the effects of another accidental release, fire, or explosion of a nearby buried pipeline. No portions of the Dos Laredos pipeline will be above ground in the vicinity of any exposed portions of the Duke Energy pipeline. Therefore the proximity to the Duke Energy pipeline is not considered a significant cumulative impact.

Over much of the alignment there are no heavy industrial activities, particularly those involving hazardous liquids or gases, that would create a cumulative impact in combination with the Dos Laredos Pipeline. The Valero Laredo terminal at the north end of the alignment is situated in an industrialized area, along the railroad and I–35, and has storage tanks for gasoline. No storage of LPG will take place at this facility at this time. The industrial park along FM 1472 which will border a portion of the alignment appears to be dedicated to warehousing and transportation, and there are no current plans to incorporate any heavy industrial uses in the area. These factors all lead to a no significant cumulative impacts assessment.

C. Environmental Justice/Socio-Economic Concerns

The environmental justice assessment for this project analyzed the impact of the potential human, health, socioeconomic, and environmental effects of the Dos Laredos pipeline on minority and low-income populations. The population of Webb County is heavily minority, with dense population areas of the county around Laredo containing a higher percentages of minorities. To the extent that minority and low-income populations reside in the vicinity of the pipeline, they risk exposure to the insignificant, temporary and/or minor potential human health and environmental effects that are discussed in detail in the Final Environmental Assessment and summarized above. These include temporary, minor construction related noise and threats to human safety due to fire or accidental product release.

These risks, however, must be weighed against the benefits that would result from the removal of tanker trucks as the primary mode of LPG transportation. The removal of tanker trucks from roads, particularly border crossings, will increase safety at these highly sensitive locations and route LPG away from more populous areas of town while in transit. Emissions of hazardous air pollutants during LPG transfer operations within the Laredo-Nuevo Laredo airshed will be reduced. It is also worth noting that due to the overall makeup of the Laredo metropolitan area, all of the alternatives for consideration, including the ''no-action'' alternative of tanker truck transport of LPG, will impact primarily low-income and minority populations. There is no evidence to suggest that minority or low-income populations will experience disproportionate adverse impacts as a result of the construction and operation of the Dos Laredos Pipeline. To the contrary, since most of the Dos Laredos Pipeline is situated away from areas where human health and safety could be adversely impacted, while truck transport necessarily takes place in areas where human health and safety are at risk, the pipeline will result in lower risks to the health and safety of minority and low-income populations than the ''no-action'' alternative.

IV. Prevention and Mitigation Measures

In order to control risks associated with outside force, damage, corrosion and leaks, Valero has undertaken or intends to undertake the prevention and mitigation measures listed below. Valero has or will:

- Bury the pipeline a minimum of 3 feet below grade.
- Place and maintain prominent warning markers at all crossings and property lines along the pipeline.
- Participate in all applicable one-call notification systems and coordinate with the local emergency planning committee.
- Conduct regular ROW drive-overs or over flights in order to identify potential pipeline encroachments and unauthorized activities.
- Ensure that a Valero representative is physically present anytime there is construction activity within the pipeline right of way.
- Participate in on-going public education initiatives stressing pipeline safety and damage prevention.
- Use factory-applied fusion-bonded epoxy coating on all pipes.
- Use field applied coating on all welded joints.
- Conduct biennial surveys to determine effectiveness of corrosion control.
- Use a certified impressed current cathodic protection system.
- Use a heavy wall pipe in lieu of cased crossings.
- Use high resolution internal inspection tools (*i.e.*, pigs) at least every five years
- X-ray all girth welds completely.
- Use pipe manufactured at an ISO 9000-certified mill;
- Hydro test pipe in place to 125% of its maximum allowable operating pressure for 8 hours.
- Require that material specification, design, and construction meet or exceed all applicable standards and codes established by API, ASME, DOT/OPS, and TRC.
- Perform comprehensive construction and installation inspection.
- Provide continuous 24-hour monitoring of the Dos Laredos Pipeline from a dispatch and control center.
- Use computers to identify significant operational deviations, and to set-off appropriate alarms.
- Monitor remotely the pressure at the Rio Grande River.
- Provide on-going training and performance certification of employees responsible for pipeline operations and maintenance, as required by the

Operator Qualification regulation of DOT.

• Maintain a SCADA link via satellite to the Valero control center in San Antonio.

• Establish block valve spacing of less than 7.5 miles through industrial, commercial, or residential areas, as recommended under ASME/ANSI B31.4 standards for transport of LPG.

V. Conclusion: Analysis of the Environmental Assessment Submitted by the Sponsor

On the basis of the Final Environmental Assessment, the Department's independent review of that assessment, information developed during the review of the application and Environmental Assessment, comments received by the Department from Federal and state agencies and the public, and measures that Valero has or is prepared to undertake to mitigate prevent potentially adverse environmental impacts, the Department has concluded that issuance of a Presidential Permit authorizing construction of the proposed Dos Laredos Pipeline would not have a significant impact on the quality of the human environment within the United States. Accordingly, a Finding of No Significant Impact is adopted and an environmental impact statement will not be prepared.

The Final Environmental Assessment addressing this action is on file and may be reviewed by interested parties at the Department of State, 2200 C Street NW., Room 3535, Washington, DC 20520 (Attn: Mr. Pedro Erviti, Tel. 202–647–1291).

Dated: December 19, 2003.

Stephen J. Gallogly,

Director, Office of Energy and Commodity Policy, Bureau of Economic and Business Affairs, Department of State.

[FR Doc. 03–32051 Filed 12–29–03; 8:45 am]

BILLING CODE 4710–07–P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: TVA will convene a meeting of the Regional Resource Stewardship Council (Regional Council) to obtain views and advice on the topic of public involvement practices. Under the TVA Act, TVA is charged with the proper use and conservation of natural resources for the purpose of fostering the orderly and proper physical, economic and social development of the Tennessee Valley region. The Regional Council was established to advise TVA on its natural resource stewardship activities. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2, (FACA).

The meeting agenda includes the following:

(1) Discussion of TVA public involvement practices.

(2) Discussion of order public involvement practices.

(3) Public comments on the topic of TVA's public involvement practices.

(4) Regional Council discussion on the topic of TVA's public involvement practices.

(5) Close out of open Council business (advice on TVA's role in recreation from September 2003 meeting).

(6) Regional Council discussion on the future of the Council.

The Regional Council will hear opinions and views of citizens of providing a public comment session. The public comment session will be held from 3 to 4 p.m. EST on Wednesday, January 21, 2004. Citizens who wish to express views and opinions on the topic of TVA's public participation practices may do so during the Public Comment portion of the agenda. Public comments participation is available on a first-come, first-served basis. Speakers addressing the Regional Council are requested to limit their remarks to no more than 5 minutes. Persons wishing to speak are requested to register at the door and are then called on by the Regional Council Chair during the public comment period. Handout materials should be limited to one printed page. Written comments are also invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902.

DATES: The meeting will be held on Wednesday, January 21, 2004, from 8:30 a.m. to 5 p.m. and on Thursday, January 22, 2004, from 8 a.m. to 3 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be held in the auditorium at the Tennessee Valley Authority headquarters, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Sandra L. Hill, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902, (865) 632–2333.

Dated: December 19, 2003.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment, Tennessee Valley Authority.

[FR Doc. 03–31977 Filed 12–29–03; 8:45 am]

BILLING CODE 8120–08–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Andean Trade Preference Act (ATPA), as Amended: Notice Regarding the 2003 Annual Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) received petitions in September 2003 to review certain practices in certain beneficiary developing countries to determine whether such countries are in compliance with the ATPA eligibility criteria. This notice specifies the date of announcement of the results of the preliminary review of those petitions.

FOR FURTHER INFORMATION CONTACT: Bennett M. Harman, Deputy Assistant U.S. Trade Representative for Latin America, Office of the Americas, Office of the United States Trade Representative, 600 17th St., NW., Washington, DC 20508. The telephone number is (202) 395–9446, and the facsimile is (202) 395–9675.

SUPPLEMENTARY INFORMATION: The ATPA (19 U.S.C. 3201 *et seq.*), as renewed and amended by the Andean Trade Promotion and Drug Eradication Act of 2002 (ATPDEA) in the Trade Act of 2002 (Pub. L. 107–210), provides trade benefits for eligible Andean countries. Pursuant to section 3103(d) of the ATPDEA, USTR promulgated regulations (15 CFR part 2016) (68 FR 43922) regarding the review of eligibility of countries for the benefits of the ATPA, as amended.

In a **Federal Register** notice dated August 14, 2003, USTR initiated the 2003 ATPA Annual Review and announced a deadline of September 15, 2003 for the filing of petitions (68 FR 48657). Several of these petitions requested the review of certain practices in certain beneficiary developing countries regarding compliance with the eligibility criteria set forth in sections 203(c) and (d) and section 204(b)(6)(B) of the ATPA, as amended (19 U.S.C. 3203(c) and (d); 19 U.S.C. 3203(b)(6)(B)).

In a **Federal Register** notice dated November 13, 2003, USTR published a list of the responsive petitions filed pursuant to the announcement of the

annual review. The Trade Policy Staff Committee (TPSC) is conducting a preliminary review of these petitions. 15 CFR 2016.2(b) provides for announcement of the results of the preliminary review on or about December 1. 15 CFR 2016.2 also provides for modification of the schedule if specified by **Federal Register** notice. This notice specifies that the results of the preliminary review will be announced March 31, 2004. The results of the preliminary review will be published in the **Federal Register** on or about that date.

Bennett M. Harman,

Deputy Assistant United States Trade Representative for Latin America.

[FR Doc. 03–31927 Filed 12–29–03; 8:45 am]

BILLING CODE 3190–W3–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Notice of Availability and Request for Public Comment on Interim Environmental Review of United States-Australia Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of availability and request for public comment.

SUMMARY: The Office of the U.S. Trade Representative (USTR), on behalf of the Trade Policy Staff Committee (TPSC), seeks comment on the interim environmental review of the proposed U.S.-Australia Free Trade Agreement (FTA). The interim environmental review is available at *http://www.ustr.gov/environment/environmental.shtml.* Copies of the review will also be sent to interested members of the public by mail upon request.

DATES: Comments on the draft environmental review are requested by January 16, 2004 to inform negotiations. Comments received after January 16, 2004 will be taken into account in the preparation of the review of the final agreement.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Questions concerning the environmental review, or requests for copies, should be addressed to David Brooks, Environment and Natural Resources Section, Office of the USTR, telephone (202) 395–7320.

SUPPLEMENTARY INFORMATION: The Trade Act of 2002, signed by the President on August 6, 2002, provides that the President shall conduct environmental reviews of [certain] trade agreements consistent with Executive Order 13121—*Environmental Review of Trade Agreements* (64 FR 63,169, Nov. 18, 1999) and its implementing guidelines (65 FR 79,442, Dec. 19, 2000) and report on such reviews to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. The Order and guidelines are available at *http://www.ustr.gov/environment/environmental.shtml.*

The purpose of environmental reviews is to ensure that policymakers and the public are informed about reasonably foreseeable environmental impacts of trade agreements (both positive and negative), to identify complementarities between trade and environmental objectives, and to help shape appropriate responses if environmental impacts are identified. Reviews are intended to be one tool, among others, for integrating environmental information and analysis into the fluid, dynamic process of trade negotiations. USTR and the Council on Environmental Quality jointly oversee implementation of the Order and Guidelines. USTR, through the Trade Policy Staff Committee (TPSC), is responsible for conducting the individual reviews.

Written Comments

In order to facilitate prompt processing of submissions of comments, the Office of the United States Trade Representative strongly urges and prefers e-mail submissions in response to this notice. Persons submitting comments by e-mail should use the following e-mail address: *FR0407@ustr.gov* with the subject line: ''Australia Interim Environmental Review.'' Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. If submission by e-mail is impossible, comments should be made by facsimile to (202) 395–6143, attention: Gloria Blue.

Written comments will be placed in a file open to public inspection in the USTR Reading Room at 1724 F Street, NW., Washington DC. An appointment to review the file may be made by calling (202) 395–6186. The Reading Room is open to the public from 10–12 a.m. and from 1–4 p.m., Monday through Friday.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 03–32076 Filed 12–29–03; 8:45 am]

BILLING CODE 3190–W3–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Renegotiation Board Interest Rate, Prompt Payment Interest Rate, Contract Disputes Act

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury

ACTION: Notice.

SUMMARY: For the period beginning January 1, 2004 and ending on June 30, 2004, the prompt payment interest rate is 4.000 per centum per annum.

ADDRESSES: Comments or inquiries may be mailed to Crystal Hanna, Team Leader, Borrowings Accounting Team, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia, 26106–1328. A copy of this Notice will be available to download from *http://www.publicdebt.treas.gov.*

DATES: This notice announces the applicable interest rate for the January 1, 2004 to June 30, 2004 period.

FOR FURTHER INFORMATION CONTACT: Stephanie Brown, Manager, Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia, 26106–1328, (304) 480–5181; Crystal Hanna, Team Leader, Borrowings Accounting Team, Office of Public Debt Accounting, Bureau of the Public Debt, (304) 480–5139, Edward C. Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, (304) 480–8692; or Geraldine J. Porco-Hubenko, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, (202) 691–3708.

SUPPLEMENTARY INFORMATION: Although the Renegotiation Board is no longer in existence, other Federal agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 Sec. 2, Public Law 92–41, 85 Stat. 97. For example, the Contract Disputes Act of 1978 Sec. 12,

Public Law 95–563, 92 Stat. 2389 and, indirectly, the Prompt Payment Act of 1982, 31 U.S.C. 3902(a), provide for the calculation of interest due on claims at a rate established by the Secretary of the Treasury for the Renegotiation Board under Public Law 92–41.

Therefore, notice is given that the Secretary of the Treasury has determined that the rate of interest applicable, for the period beginning January 1, 2004 and ending on June 30, 2004, is 4.000 *per centum per annum.* This rate is determined pursuant to the above-mentioned sections for the purpose of said sections.

Dated: December 22, 2003.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 03–31947 Filed 12–29–03; 8:45 am]

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Federal Register

Tuesday,
December 30, 2003

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 983

Pistachios Grown in California; Secretary's Decision and Referendum Order on Proposed Marketing Agreement and Order No. 983; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Docket No. AO–F&V–983–2; FV02–983–01]

Pistachios Grown in California; Secretary's Decision and Referendum Order on Proposed Marketing Agreement and Order No. 983

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes the issuance of a marketing agreement and order (order) for pistachios grown in California, and provides growers with the opportunity to vote in a referendum to determine if they favor promulgation of the order. The proposed order would set standards for the quality of pistachios produced and handled in California by establishing a maximum aflatoxin tolerance level, maximum limits for defects, a minimum size requirement, and mandatory inspection and certification. An eleven-member committee, consisting of eight producers, two handlers, and one public member, would locally administer the program. The program would be financed by assessments on handlers of pistachios grown in the production area. The program would enhance grower returns through the delivery of higher-quality pistachios to consumers.

DATES: The referendum will be conducted from January 12 to February 9, 2004. The representative period for the purpose of the referendum is September 1, 2002, through August 31, 2003.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Post Office Box 1035, Moab, UT 84532, telephone: (435) 259–7988, fax: (435) 259–4945; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938. Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on June 19, 2002, and published in the June 26, 2002, issue of the **Federal Register** (67 FR 43045); Recommended Decision and Opportunity to File Written Exceptions issued on July 23, 2003, and published in the August 4, 2003, issue of the **Federal Register** (68 FR 45990).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

The proposed marketing agreement and order regulating the handling of pistachios grown in California is based on the record of a public hearing held July 23–25, 2002, in Fresno, California. The hearing was held to receive evidence on the proposed marketing order from producers, handlers, and other interested parties located throughout the proposed production area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900). Notice of this hearing was published in the **Federal Register** on June 26, 2002.

The proposal was submitted for consideration to the Department by the Proponents Committee (proponents), a group representing the majority of producers and handlers of pistachios in California. The proponents are independent of the California Pistachio Commission and the Western Pistachio Association.

Provisions of this proposal would provide the California pistachio industry with a tool to regulate the quality of pistachios handled in California. This would include preventing pistachios containing aflatoxin above the proposed permitted maximum tolerance level of 15 parts per billion (ppb) from entering the marketplace. The proposed order would also preclude defective and small pistachios from being sold. Under the proposed order, testing and certification of pistachios for quality (including aflatoxin) would be mandatory. A mandatory regulatory program would provide the industry with an effective means of ensuring product quality, thereby enhancing customer satisfaction.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on July 23, 2003, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by September 3, 2003. That document also announced AMS's intent to request approval of new information collection requirements to implement the program. Written comments on the proposed information collection requirements were due by October 3, 2003.

One exception (and as corrected) was filed during the period provided on behalf of the proponents. The exception expressed general support of the proposed marketing order and requested that several changes be made to the proposed order provisions, including that one proposed definition be revised, one definition be deleted, and several editorial and clarifying changes be made. The specifics of the exception are discussed in the Findings and Conclusions; Discussion of Exceptions section of this document.

Small Business Consideration

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders are unique in that they are normally brought through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms, which include handlers that would be regulated under the proposed pistachio order, are defined as those with annual receipts of less than $5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed pistachio marketing order program on small businesses. The record evidence is that while the program would impose some costs on the regulated parties, those costs would be outweighed by the benefits expected to accrue to the U.S. pistachio industry.

The record indicates that there are approximately 647 pistachio producers, which includes the members of the one

existing pistachio producer cooperative. There are 19 handlers who process pistachios in the production area proposed to be regulated.

Statistics prepared by the California Pistachio Commission and submitted as evidence at the hearing show that 445 California pistachio producers (69% of the total) produce less than 100,000 pounds per year; 100 producers (15%) produce more than 100,000 and less than 250,000 pounds; 43 producers (7%) produce more than 250,000 and less than 500,000 pounds; and 59 producers (9%) grow more than 500,000 pounds.

Using an average grower price of $1.10 per pound, 91 percent of the California pistachio producers receive less than $550,000 annually, and 9 percent receive more than $550,000 annually. Thus, at least 91 percent of these producers would meet SBA's definition of a small agricultural producer.

The record shows that 12 California pistachio handlers (63 percent of the total) handle less than 1,000,000 pounds per year; 4 handlers (21%) handle between 1,000,000 and 10,000,000 pounds; and 3 handlers (16%) handle more than 10,000,000 pounds annually. The largest handler processes over 50 percent of industry production.

Using an average handler price of $1.80 per pound, 63 percent of the pistachio handlers would receive annual receipts of less than $1.8 million, 2 percent would receive between $1.8 and $18.0 million, and 16 percent would receive more than $18.0 million. At least 12 of the pistachio handlers (or 63 percent of the total) could be considered small businesses under SBA's definition.

Record evidence concerning pistachio production and handling costs provide an understanding of the California pistachio industry and potential impacts of implementing the proposed order. Farming pistachios is a costly investment with a significant delay in benefits and an unreliable crop yield.

Although increasing yields have led to an increasing overall value of California pistachio production, producers must maintain a level of return per pound harvested that covers the cost of production in order for their pistachio operations to remain economically viable. Witnesses testified that maintaining a high level of quality product in the market would lead to increasing consumer demand and greater stability in producer returns.

Evidence suggests that poor quality pistachios impact the demand, and the potential growth of demand, for pistachios. Characteristics routinely deemed as ''poor quality'' by customers of the California pistachio industry include small size, and excessive internal and external blemishes. Market studies and customer comments presented by handler witnesses demonstrate that the presence of poor quality pistachios in the marketplace significantly impacts demand in a negative way.

Minimizing the level of aflatoxin in California pistachios is another significant quality factor, as aflatoxin is a known carcinogen. Consumer concerns over aflatoxin can affect their perception of pistachio quality, and therefore negatively impact demand. Moreover, any market disturbances related to aflatoxin in pistachios, regardless of the geographic origin of those pistachios, could have a detrimental effect on the California pistachio industry. A regulatory program limiting the amount of aflatoxin in pistachios could be useful in bolstering consumer confidence in the quality of California pistachios.

Pistachio acreage has been consistently increasing in California, from just over 20,000 bearing acres in 1979 to 78,000 bearing acres in 2001. The number of non-bearing acres (*i.e.* acres less than 7 years old, not yet in full production) has also shown consistent growth in recent years, rising from 13,400 acres in 1995 to 23,500 acres in 2001, a 75 percent increase. Yield per acre has also been steadily rising. Over the 1976–1980 period, average yield per bearing acre measured 1,110 pounds; by 1996–2000, this average had increased to 2,512 pounds.

Higher yields and increasing acreage has resulted in increasing production. According to information submitted by the CPC, production in 2000 totaled 242 million pounds, a 64-percent increase over 1995 production, which totaled 148 million pounds. Moreover, witnesses at the hearing indicated that maturing acreage, absent any additional new plantings, will likely result in a 60-percent increase in California pistachio production over the coming years.

Several witnesses at the hearing testified that, in light of increasing production, future stability of market returns is reliant on continually increasing consumer demand for pistachios. These witnesses stated that strong consumer demand, which is ultimately related to consumer perceptions of product quality, is essential to the continued economic well-being of the California pistachio industry. Moreover, witnesses discussed the importance of implementing a marketing order program that would provide them with a regulatory structure to monitor and assure that minimum quality standards are not compromised as production of California pistachios increases.

The relationship between product quality, consumer demand and producer returns in the pistachio industry was demonstrated at the hearing. Pistachio production is not only costly in terms of initial investment and cultural costs, but it is highly unpredictable in terms of producer returns. Between the initial processes of cleaning, hulling, sorting and drying, a significant portion of the initial volume harvested is reduced. This volume is further reduced as the handling process reaches its final stages of sorting for quality and final preparation for market. Witnesses explained that ultimate pistachio sales are based on approximately 30 percent of the volume initially harvested from the field. Because of this, witnesses stated that the process of extracting the highest quality portion of the harvest, and ensuring consumer satisfaction with that product, is crucial to determining the value of the crop.

Pistachio production is similar to other nut crops in that yield and total production vary substantially from year to year because of the alternate bearing nature of pistachio trees resulting in cyclical high and low production years. Total value and value per acre are generally higher in higher yielding years. Conversely, grower return per pound is generally higher in low yielding years.

Producer returns and total crop value are also dependent on the percentage of harvest that is either ''open shell'' or ''closed shell.'' Each harvest yields a certain percentage of nuts that have not naturally opened prior to cultivation. These nuts are classified as ''closed shell,'' ''shelling stock'' or ''non-splits,'' and have a lower market value than those nuts that are naturally split, or ''open shell.'' The proportion of open-shells is a key factor in year-to-year changes in the total value of production.

Economic evidence presented at the hearing, based on data from the National Agricultural Statistics Service (NASS) and the CPC, indicates that trends for total crop value and value per bearing acre have been increasing over the past 20 years. In 1980, the pistachio crop in California was valued at $55.8 million. By 2000, total crop value had increased more than four-fold, reaching $245 million. These gains are attributed to increases in both total pistachio producing acreage and yield per acre. Average value per bearing acre increased from $1,642 per acre in 1980–1984 to $2,665 per acre in 1996–2000.

According to CPC historical price data, price per pound has gradually decreased over the past 20 years, ranging from a high of $2.05 per pound in 1980 to a low of $0.99 per pound in 2001. According to the record, the proposed order would assist in improving producer returns for pistachios. The proposed order would not only assist in fortifying consumer demand by ensuring consumer satisfaction with product quality, but mandatory quality and aflatoxin requirements are also likely to boost domestic prices by culling lower quality pistachios, which tend to have price-depressing effects, from the market.

A University of California Cooperative Extension study presented as part of record evidence estimates total cost of production in 2001 at $2,643 per acre. According to industry data, the average grower return (value per bearing acre) for 1998–2001 was $2,619. This average revenue estimate is just below the Extension study's $2,643 estimate of typical cost. Record evidence indicates that over that 4-year period, the lowest value per bearing acre was $2,137 in 2001 and the highest was $3,207 in 2000.

Witnesses supplied an additional set of cost estimates, which ranged from a low-cost operation of $2,350 per acre to a high of $3,400 per acre. In their testimony, total costs of production were divided into three categories: The costs of orchard establishment, cultural costs and administrative costs. Establishment costs, or the overall cost to develop an acre of pistachios until revenues exceed growing expenses, were estimated at between $10,000 and $15,000, with an average tree maturation period of 7 years. In order to recover these investment costs, the hearing record states that producers generally target an 11% return on investment, estimated at between $1,100 and $1,650 per acre. Annual per acre cultural costs average between $1,100 and $1,600, once the trees are productive. Administrative costs include the cost of farm management and crop financing, and can vary between $150 and $200 per acre. The sum of cultural and administrative costs therefore range from $1,250 to $1,800.

Grower price per pound averaged approximately $1.10 between 1997 and 2001. Given that $1.10 average grower price and the cost estimates above, a producer would need to harvest an average of at least 2,000 pounds per acre to cover total production costs for the low-cost operation ($2,350 per acre). A producer would need to harvest at least 1,136 pounds per acre to cover the cultural and administrative costs of $1,250 per acre (not including a return on investment).

The CPC Annual Report for Crop Year 2001–2002 reveals that 6 out of 26 California counties with pistachio production yielded on average more than 2,000 pounds per acre between 1998 and 2001. These six counties, which together represented over 88 percent of total California pistachio production in 2000, are Colusa, Sutter, Madera, Fresno, Kings and Kern. Glenn, Butte, Placer, Yolo, Contra Costa, San Joaquin, Calaveras, Stanislaus, Merced, Tulare and Santa Barbara counties yield on average between 1,000 to 2,000 pounds per acre and represent roughly 12 percent of total state production. Shasta, Tehama, Yuba, Solano, Sacramento, San Luis Obispo, Los Angeles, San Bernardino and Riverside counties yield on average less than 1,000 pounds per acre and represent less than one percent of California pistachio production.

Given the assumptions made above, approximately 88 percent of the industry is covering total costs of production. Conversely, roughly 12 percent of the industry is currently covering cultural costs but not generating a return on their investment.

Simulation Model

Record evidence includes an economic analysis presented by Dr. Daniel Sumner, University of California-Davis on the potential impacts of the proposed marketing order provisions if the program were implemented. Dr. Sumner presented a cost-benefit analysis based on a simulation model, the purpose of which was to provide a framework for comparing costs of compliance to the benefits of improved quality through implementation of the standards.

Cost Estimates

Dr. Sumner's presentation focused on the regulatory features of the proposed marketing order: (1) Mandatory testing of pistachios for the presence of aflatoxin, with a maximum allowable tolerance of 15 ppb; and (2) mandatory minimum quality standards. The quality standards would specify minimum size and maximum allowable defects.

According to record testimony, the major costs associated with these features are the cost of aflatoxin testing and the cost of USDA presence in the handlers' plant to inspect and sample lots of pistachios. Expected benefits identified by the witnesses would be the increase in consumer confidence in pistachios as a result of aflatoxin regulation, and the combined increases in consumer demand for pistachios due to mandatory USDA regulation and stringent quality standards.

Dr. Sumner's analysis took into account many of the variables presented in testimony by other witnesses describing typical production and processing costs, and presented a weighted average cost computation for marketing order compliance. The average cost of compliance, as identified by several witnesses and reiterated in Dr. Sumner's analysis, is approximately one half cent per pound of domestic pistachio production, or $0.00525 per pound.

Record evidence suggests that the cost of having a USDA inspector in the plant, including mileage plus the standard fee per hour, is approximately $291 per day for the largest plants (which process about 80 percent of total production). Total production for the domestic market that would be processed by the largest plants (those that process over 10 million pounds annually) is estimated at 136 million pounds. If an average lot is 40,000 pounds (the most common lot size for testing cited by the largest handlers), then 3,400 lots would need to be tested to account for all 136 million pounds (166.67 million pounds times 80 percent). If a USDA official were to test 5.5 lots per day, then 618 person-days would be needed to test all of the lots. Multiplying $291 per day times 618 person-days yields an annual cost of $180,000 for testing 136 million pounds. Dividing the $180,000 annual cost by 136 million pounds yields an estimated cost per pound of $0.0013 for having USDA personnel in the plant to sample and certify that the pistachios meet minimum quality standards. Testimony suggests that this cost estimate is on the high side, since many handlers would already have USDA personnel in their plants to perform other grading services besides certification of lots for minimum quality.

The cost of aflatoxin testing in the witnesses' simulation analysis is estimated at the current rate charged by a private laboratory ($75 per test). Given this rate information, the aflatoxin testing cost per pound would be $0.0019 ($75 divided by the average lot size of 40,000 pounds).

For the largest handlers, the combined cost of aflatoxin testing and paying for the USDA presence in the plants would be equal to the sum of the quality and aflatoxin cost figures outlined above ($0.0013 + $0.0019), or $0.0032 per pound. To account for imprecision of data and other incidental costs, Dr. Sumner's analysis employs a median cost per pound for marketing order compliance, which is slightly higher, or $0.005 per pound. The analysis further

assumes that per unit costs are somewhat higher for smaller plants. Thus, median costs for two categories of smaller plants are estimated at $0.006 and $0.007.

Weighting these cost figures for the three different size categories of plants yields an overall median estimated cost per pound for compliance of $0.00525. In terms of economic theory, this cost increase is represented by an upward shift in the supply curve of about one-half cent, as measured along the vertical axis in a supply-demand graph. The total direct cost of compliance is estimated at $875,000 in the median scenario ($0.00525 times 166.67 million pounds in the domestic market).

Benefit Estimates

The witness's economic analysis takes into account three separate demand benefits, which he considers distinct. The first, and largest, of the demand benefits is higher expected long run average demand due to the reduced chance of an aflatoxin event that would cause a major negative shock to demand. The mandatory aflatoxin testing under the marketing order would reduce the chance of a demand-decreasing market disturbance in the U.S.

Witnesses cited a 1996 pistachio aflatoxin case which occurred in Germany as an example of what could befall the U.S. pistachio industry if aflatoxin were not properly regulated. Widespread negative publicity about aflatoxin in foreign pistachios exported to Germany caused sales revenue to decline by 50 percent for a duration of three years or more. Witnesses estimate that a similar event in the United States could cost the industry over $300 million in gross revenue. Witnesses also pointed out that there were significant additional repercussions on pistachio sales worldwide as word of the German aflatoxin incident spread through the media of other nations, especially in Europe, affecting pistachio sales in those countries.

The witness's analysis assumes that an aflatoxin related market disturbance would cause a more moderate decrease, represented in the median simulation case as a 10 percent decline (18 cents) from the $1.80 per pound typical base price at the handler level.

By requiring aflatoxin testing for all pistachios destined for the domestic market, the marketing order would make the probability of an aflatoxin event less likely. As a starting point, witnesses argued that without mandatory aflatoxin testing through the proposed marketing order, there is a 5-percent annual probability of an aflatoxin related market disturbance. If such an incident were to occur, witnesses estimated that its impact would last for 3 years. Implementation of mandatory testing is then assumed to reduce the probability to 1 percent, a decline of 4 percentage points.

Mandatory testing under the marketing order therefore increases expected demand, or willingness to pay for pistachios, by $0.0216 per pound (4 per cent decline in probability times 18 cents times 3 years).

The witness's analysis includes two additional demand-side benefits. The witness asserts that USDA requirements convey a positive benefit in the market as reflected by the use of this claim in product promotion, labels, and displays. A median increase of $0.0025 in willingness to pay reflects a reasonably conservative estimate of the higher buyer confidence in pistachios due solely to USDA participation in the pistachio quality testing and certification process. The certification gives additional confidence in the quality of the product.

The third demand benefit is higher buyer perception of quality due to minimum standards. Witnesses assume a similarly small magnitude for this estimated increase in willingness to pay ($0.003 per pound).

Summing the median parameters for each of these three demand impacts, the increase in willingness to pay for pistachios supplied to the domestic market is a little under 3 cents per pound ($0.0271). In terms of economic theory, this figure represents an upward shift in the demand curve of nearly 3 cents, as measured along the vertical axis in a supply-demand graph. Most of the impact is from the first benefit, the reduced probability of aflatoxin being found in California pistachios.

Thus the median benefit in terms of increased per unit demand (willingness to pay) is estimated to be substantially larger than the estimated median per unit direct cost of marketing order compliance ($0.0271 versus $0.00525). Expected or average demand is higher, reflecting the lower probability of an aflatoxin event and the average quality and certification effects in the domestic market. Handlers would face higher costs to comply with the proposed requirements.

Simulation Results

These figures for increased cost and increased willingness to pay were combined with different demand and supply elasticities in the simulation model developed by Dr. Sumner to assess the net economic impact of marketing order implementation. The median elasticities used were unitary (−1.0 for demand and 1.0 for supply). The supply response that is modeled is a long run supply response (additional planting) due to the permanent change in market conditions resulting from the marketing order. These assumed elasticities are based on other prior econometric estimates for pistachios and other tree nuts. Witnesses cited a 1999 report by Lucinda Lewis of Competition Economics, Inc., ''Charting a Direction for the U.S. Pistachio Industry,'' which found a −1.14 demand elasticity for pistachios. According to the record testimony, the range of elasticities used in the simulation scenarios are consistent with published economic studies of supply and demand for pistachios and other tree nuts.

The simulation model solves a system of supply and demand equations for a new set of industry prices and quantities from marketing order implementation. As stated above, the total direct cost of compliance is $875,000. In the simulation, there is an upward shift in the market supply curve, representing increased costs to firms in the pistachio market. The magnitude of the price and quantity change from the shift in the supply curve is determined by the higher cost of production (compliance cost) and the elasticity of supply. The resulting computed (simulated) loss to the handler segment of the industry from higher expenses for marketing order compliance is $490,000.

This $490,000 differs from the previously stated $875,000 cost of compliance figure by the amount of an implied price increase and the small equalization effect on the smaller handlers that process 20 percent of the product.

The witness's analysis assumes that with minimum quality requirements the relative position of the smaller firms would improve to match those of other handlers. This is because prior to the new mandatory requirements, these firms are assumed to have fewer quality controls than most other firms, and thus end up selling nuts to the part of the market that buys lower quality nuts at lower prices. The equalization effect resulting from uniform minimum quality specifications is a small positive benefit that offsets some of the cost of compliance for the smaller firms.

On the demand side, the higher willingness to pay is $0.0216 per pound for the reduced probability of aflatoxin in California pistachios, and $0.0055 for the two additional demand-side benefits (higher buyer confidence from USDA certification and higher buyer

perception of quality). The magnitude of the price and quantity change from the shift in the demand curve is determined by the higher willingness to pay and the elasticity of demand.

In the median simulation, the amount sold in the domestic market rises by 1.6 million pounds. The benefit to industry participants is the total value of this increase in domestic sales which is the 1.6 million pound increase in quantity sold multiplied by the higher expected price level resulting from the shifting of the supply and demand curves in the simulation of marketing order impacts.

Using the median supply and demand elasticities in the simulation model, and the median compliance cost and willingness to pay figures, the computed benefit to the handler portion of the market from the reduced chance of an aflatoxin market disturbance is $1.545 million dollars. The value of the two additional demand-side benefits is $.392 million dollars. The total benefit to handlers is thus $1.938 million dollars.

When the loss due to compliance-related expenses ($490,000) is factored in, the resulting net benefit to pistachio handlers from the marketing order is $1.448 million dollars. This $1.448 million dollar estimate of net benefit to handlers is the key result from the witness's cost-benefit analysis.

In economic theory terminology, this part of the simulation is measuring the change in producer surplus. Viewed in terms of a supply-demand graph, producer surplus is the area below the price and above the supply curve. The $1.448 million dollar estimate of net benefit is a measure of the difference between producer surplus at the initial equilibrium (*e.g.* $1.80 average price at the handler level, or $1.10 at the grower level) and the new higher price and quantity after the supply and demand curves have been shifted to represent the median changes in cost (supply) and willingness to pay (demand).

TABLE 1.—SIMULATION OF PISTACHIO MARKETING ORDER IMPACTS ON PRODUCERS/HANDLERS

[Annual net costs and benefits with median parameter values]

Benefit 1: Reduced chance of aflatoxin event	$1,545,000
Benefit 2: USDA certification	178,000
Benefit 3: Improved quality perception	214,000
Total benefit	1,938,000
Impact of cost of compliance	−490,000
Net Total	1,448,000

It should be noted that although the witness asserts that Benefit 2 and Benefit 3 are conceptually distinct, one could argue that there is significant overlap between the value of USDA certification and improved quality perception on the part of pistachio buyers and consumers. However, the assumed benefits are small in both cases, and if either of the benefit figures is eliminated, net estimated benefits to handlers still exceed one million dollars.

Cost-benefit studies which use economic welfare analysis also typically include consumer impacts, and the witness's economic analysis includes a parallel set of computations for the buyer/consumer segment of the pistachio industry. The largest demand-side benefit, the reduced chance of an aflatoxin event, is estimated at $2.586 million. The combined value of the two additional demand-side benefits is $.655 million, yielding a total benefit estimate of $3.241 million. Subtracting the estimated impact on buyers/consumers of introducing added costs of marketing order compliance ($245,000) yields a buyer/consumer net benefit estimate of $2.996 million. A key aspect of this economic analysis is that consumer willingness to pay for pistachios rises as consumer confidence improves from the higher quality standards imposed by the order. With the demand and supply elasticities used in the analysis, the benefits to the domestic buyers/consumers in this simulation are larger than benefits to the handler side of the market.

In economic theory terminology, this part of the simulation is measuring the change in consumer surplus. Viewed in terms of a supply-demand graph, consumer surplus is the area above the price and below the demand curve. The $2.996 million dollar estimate of net benefit is a measure of the difference between consumer surplus at the initial equilibrium and the new price and quantity after the supply and demand curves have been shifted to represent the median changes in cost (supply) and willingness to pay (demand).

Summing the producer/handler and buyer/consumer net benefits ($2.996 + $1.448) yields a $4.444 million median estimated value of the marketing order to the economy.

Estimated Impacts on Small Producers

The proposed marketing order would not impose any direct compliance costs on producers. The direct impact is on the handlers who would be required to pay for testing and inspection. Producers would be affected to the extent that they may have to discard more low quality nuts than previously, if they produce quantities of nuts below the proposed size and quality standard. Witnesses stated there is no evidence that the proportion of low quality nuts is correlated with farm size.

Additionally, the record shows that handler costs of compliance are typically reflected in handler payments to producers. Witnesses stated that the anticipated benefit derived from increased consumer demand would offset the cost of compliance to producers.

Witnesses stated that most producers sell to large handlers (which handle 80 percent of production). Distinguishing among handlers by size does not indicate different economic impacts on individual farms, which are distributed broadly across handlers.

Witnesses also pointed out that there is substantial inter-handler competition in the pistachio industry, with at least 10 handlers out of 19 competing for producers' pistachios (with the remainder presumably processing for their own account). Given the distribution of producers across processing firms and the level of competition, the overall cost-benefit results may be taken as the impact on the full size range of producers.

Based on a farm price of $1.10 and a handler price of $1.80, producers receive about 60 percent of the revenue in the industry, and are likely (given certain supply elasticities) to receive more than 60 percent of the estimated handler net benefits. Producer total gain (out of the estimated $1.448 million in net benefits to the handler segment) is thus at least $870,000 per year ($1.448 million times 0.60). This is distributed across producers in proportion to output, with no differential impact on smaller or larger producers.

Based on the hearing record, AMS therefore concludes that pistachio producers would benefit from implementation of the proposed order. Further, there is no evidence of differing economic impacts between small and large producers.

Estimated Impact on Small Handlers

Most compliance costs are uniform across handlers, but some differences could be correlated with the size of a handler's operation. Two relevant points are the number of lots ready to be tested per day and the lot size to be tested. Larger firms, which are more likely to have larger lot sizes for testing and to have more lots ready per day (up to about 5), may experience some savings relative to firms with smaller lot sizes and fewer lots to be tested at one time.

The proposed marketing order includes provisions to reduce

compliance costs for small handlers. Firms that handle less than 1,000,000 pounds per year would be subject to simplified aflatoxin testing procedures. Additionally, they would be exempt from testing for remaining minimum quality requirements. This should reduce the expenses for smaller handlers.

Some other handlers, which process substantially more, may face somewhat higher costs for at least part of their production. Those handlers are likely, however, to have more than $5 million in total revenue, and would thus not be classified as small business entities.

Table 2 shows that the compliance costs and net economic impacts for different sizes of handlers. A positive net economic impact would exist for all handler groups.

TABLE 2.—DISTRIBUTION OF ECONOMIC EFFECTS ACROSS HANDLERS OF DIFFERENT SIZES

[Pistachio marketing order simulation results with median parameter values]

Handler group*	Direct compliance cost	Net economic impact
Higher Volume/Lower Compliance Costs	$ −667,000	$1,178,000
Medium Volume/Compliance Costs	−150,000	208,000
Lower Volume/Higher Compliance Costs	−58,000	61,000
Total	−875,000	1,447,000

*80%, 15%, and 5%, respectively, of total quantity of pistachios marketed annually.

The above table shows that the net economic impact is in direct proportion to the volume of pistachios handled by each handler group. For example, the largest handler group, accounting for 80 percent of the pistachios marketed, would reap about 81 percent of the benefits of the program. AMS therefore concludes that the program would not have a disproportionate impact on small entities.

The cost and benefit estimates presented above focus on a single set of results using median parameter values. The witness's economic analysis involved simulating a number of scenarios, using alternative values for compliance costs, benefits, and elasticities of supply and demand. All scenarios, even the low benefit, high cost scenarios, indicated positive net economic impacts.

The witness's analysis concludes that the proposed marketing order would require minimal adjustments in current processing activities and would yield large estimated benefits. The simulation results indicate that costs of compliance are small relative to benefits for all firms, and that both small and large entities are likely to benefit significantly. Producers are likely to share net producer benefits in proportion to production. Large and small handlers both gain from the marketing order, also in proportion to the volumes handled. Some of the smallest handlers could have larger net benefits per unit because of the provision allowing special lower-cost testing arrangements.

The witness's net benefit analysis represents a reasonable, plausible set of estimates of the economic impact of mandatory aflatoxin testing and minimum quality standards through promulgation of a Federal marketing order. The median cost and benefit figures explained during the hearing are considered to adequately represent estimates of the economic impact of implementation of the proposed program and its regulatory provisions.

The proposed order would impose some reporting and recordkeeping requirements on handlers. However, handler testimony indicated that the expected burden that would be imposed with respect to these requirements would be negligible. Most of the information that would be reported to the committee is already compiled by handlers for other uses and is readily available. Reporting and recordkeeping requirements issued under the peanut aflatoxin certification program (7 CFR part 996) impose an average annual burden on each regulated handler and importer of about 8 hours. It is reasonable to expect that a similar burden may be imposed under this proposed marketing order on the estimated 19 handlers of pistachios in California.

The record evidence also indicates that the benefits to small as well as large handlers are likely to be greater than would accrue under the alternatives to the order proposed herein, namely no marketing order, or an order without the proposed combination of quality, size and aflatoxin regulation.

In determining that the proposed order and its provisions would not have a disproportionate economic on a substantial number of small entities, all of the issues discussed above were considered. Based on hearing record evidence and USDA's analysis of the economic information provided, the proposed order provisions have been carefully reviewed to ensure that every effort has been made to eliminate any unnecessary costs or requirements.

Although the proposed order may impose some additional costs and requirements on handlers, it is anticipated that the order will help to strengthen demand for California pistachios. Therefore, any additional costs would be offset by the benefits derived from expanded sales benefiting handlers and producers alike. Accordingly, it is determined that the proposed order would not have a disproportionate economic impact on a substantial number of small handlers or producers.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the ballot material that will be used in conducting the referendum has been submitted to and approved by OMB. The forms to be used for nomination and selection of the initial administrative committee have also been reviewed and approved by OMB.

Any additional information collection and recordkeeping requirements that may be imposed under the order would be submitted to OMB for approval. Those requirements would not become effective prior to OMB approval.

Civil Justice Reform

The marketing agreement and order proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed agreement and order would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

Findings and Conclusions; Discussion of Exceptions

The findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the August 4, 2003, issue of the **Federal Register** (68 FR 45990) are hereby approved and adopted subject to the following additions and modifications.

Material Issue Number 5(a)—Other Definitions

Based upon the exception filed, the findings and conclusions under material issue number 5(a) of the Recommended Decision (pertaining to the definition of ''assessed weight'') are revised by adding the following seven paragraphs after the fourteenth paragraph of that section:

In its exception, the proponents asked that the definition of ''assessed weight'' be revised to include a reference to § 983.39(b)(4) and (5), the sections that pertain to the maximum level of defects allowable in certified pistachios.

Proponents commented that the Recommended Decision definition of ''assessed weight'' differs from that which was published in the Notice of Hearing as the words ''edible inshell'' were removed in the former. Proponents agreed with the change. However, proponents commented that the elimination of those words makes the definition unclear as to what standards are to be used in determining ''assessed weight.'' The proponents recommend that this uncertainty be eliminated by incorporating into the definition a reference to § 983.39(b)(4) and (5).

By referring to § 983.39 (b)(4) and (5) in the definition of ''assessed weight,'' the applicable maximum defects allowed by that section are incorporated into ''assessed weight.'' This reference makes clear that the ''assessed weight'' is determined after the test for defects is completed. This would also make this definition consistent with the determination of the weight of pistachios presently used by handlers to calculate their payments to producers. In § 983.53, the ''* * *assessed weight of pistachios received by the handler'' in each year would be used to determine each handler's pro-rata share of the expenses authorized by the Department for the operation of the proposed order.

The proponents' exception has merit, and § 983.6 of the proposed order has been revised accordingly.

Based upon the exception filed, the findings and conclusions under material issue number 5(a) of the Recommended Decision (pertaining to the definition of ''districts'') are revised by adding the following four paragraphs after the twenty-fourth paragraph of that section:

In its exception, proponents commented that the committee should be required to obtain a vote of at least seven concurring members in order to recommend any future changes in district boundaries, and that such requirement should be included in the definition of ''districts''. Proponents noted that this requirement was part of the process by which the industry reached a consensus on the proposed marketing order program.

Section 983.34 of the proposed order sets forth voting requirements for committee actions. That section provides that any recommendation for a change in the establishment of the committee (which would include revisions in district boundaries) would require at least seven concurring votes. It is not necessary to repeat this requirement under the definition of ''districts.''

The proponents' exception also stated that at least seven concurring votes should be required only if the recommended change is not based on an action of the California Pistachio Commission (CPC) to change district boundaries. If the change were based on a CPC action, only a simple majority vote would be required.

While the CPC's definition of districts could be considered by the committee in drawing up marketing order districts, any recommendation to change marketing order districts would be evaluated by USDA on its own merits. Thus, the same committee voting requirements would be appropriate for any recommendation to change district boundaries. Further, there was no testimony at the hearing in support of the lower voting threshold for some recommendations to change district boundaries. For these reasons, the proponents' exception relative to the definition of the term ''districts'' is denied.

Based upon the exception filed, the findings and conclusions under material issue number 5(a) of the Recommended Decision (pertaining to the definition of ''edible pistachios'') are revised by adding the following paragraph after the twenty-sixth paragraph of that section:

The proponents' exception recommended that the definition of ''edible pistachios'' in proposed § 983.13 be deleted. As previously discussed, the term ''edible pistachios'' has been deleted from § 983.6 and is not used elsewhere in the proposed order. Thus, this definition is not needed and should be deleted. This modification has been made.

Material Issue Number 5(d)—Quality and Inspection Requirements

Based upon the exception filed, the findings and conclusions under material issue number 5(d) of the Recommended Decision (pertaining to the aflatoxin requirements) are revised by adding the following four paragraphs at the end of the section entitled ''Proposed Aflatoxin Provisions.''

In its exception, the proponents suggested that § 983.38(b) be amended to specify that any recommendation by the committee for a change in the maximum allowable aflatoxin level would require a vote of at least seven concurring committee members.

Section 983.46 of the proposed order sets forth voting requirements for committee actions. That section states that any changes in the aflatoxin requirements require a vote of at least seven committee members. It is not necessary to repeat the voting requirement in § 983.38(b).

The proponents also took exception to the requirement (in § 983.46) that any change in the aflatoxin provisions of the proposed order must be because of ''changed conditions''.

While we agree that the language, ''by reason of changed conditions'' in § 983.46 is not necessary, we do note, as stated in a previous paragraph, that § 983.38(b) provides authority for changing the allowable level of aflatoxin in the event industry conditions change or research shows that a change in the aflatoxin level would be appropriate. Accordingly, § 983.46(a) is modified by deleting the words ''by reason of changed conditions.''

Based upon the exception filed, the findings and conclusions under material issue number 5(d) of the Recommended

Decision are revised by adding the following two paragraphs at the end of the section entitled ''Aflatoxin Testing Procedures.''

In its exception, the proponents requested two editorial changes in proposed § 983.38: one in paragraph (d)(3) and another in paragraph (d)(4). In paragraph (d)(3), the word ''and'' between the terms ''High Pressure Liquid Chromatograph (HPLC)'' and ''Vicam Method (Aflatest)'' should be replaced with a comma. Proponents state that these are two separate tests and should not be run together to appear as though it is one test, or that both are required. This change has been incorporated into the language of the proposed order.

In paragraph (d)(4) of § 983.38, the word ''accreditation'' should be changed to ''accredited.'' The next to the last sentence should therefore begin, ''The accredited laboratory shall * * *'' This recommendation is consistent with the definition of ''accredited laboratory'' in § 983.1 and has been incorporated into the language of the proposed order.

Based upon the exception filed, the findings and conclusions under material issue number 5(d) of the Recommended Decision (pertaining to the minimum quality requirements) are revised by adding the following paragraph after the eighth paragraph of the section entitled ''Proposed Minimum Quality Levels.''

The proponents' exception requested that the definition of the term ''loose kernels'' in § 983.39(b)(1) be revised by eliminating the word ''edible.'' As previously discussed, a definition of the term ''edible'' has been deleted from the proposed order as unnecessary. Thus, this change is needed as a conforming change and is being incorporated in the definitions section of the order.

Rulings on Exceptions

In arriving at the findings and conclusions and the regulatory provisions of this decision, the exceptions to the Recommended Decision were carefully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are denied.

Marketing Agreement and Order

Annexed hereto and made a part hereof is the document entitled ''Order Regulating the Handling of Pistachios Grown in California.'' This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400) to determine whether the issuance of the annexed order regulating the handling of pistachios grown in California is approved or favored by growers, as defined under the terms of the order, who, during the representative period were engaged in the production of pistachios in the proposed production area.

The representative period for the conduct of such referendum is hereby determined to be September 1, 2002 through August 31, 2003.

The agents of the Secretary to conduct such referendum are hereby designated to be Kurt Kimmel, Regional Manager, California Marketing Field Office, and Rose Aguayo, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102 B, Fresno, California, 93721; telephone (559) 487–5901.

List of Subjects in 7 CFR Part 983

Marketing agreements, Pistachios, Reporting and recordkeeping requirements.

Dated: December 11, 2003.

A. J. Yates,

Administrator, Agricultural Marketing Service.

Order Regulating the Handling of Pistachios Grown in California [1]

Findings and Determinations

Pursuant to the provisions of the Agricultural Marketing Agreement of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon a proposed marketing agreement and order regulating the handling of pistachios grown in California.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The proposed marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The proposed marketing agreement and order regulate the handling of pistachios in California in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The proposed marketing agreement and order are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivision of the production area would not effectively carry out the declared policy of the Act;

(4) The proposed marketing agreement and order prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of pistachios grown in the production area; and

(5) All handling of pistachios grown in California as defined in the proposed marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative To Handling

It is therefore ordered, That on and after the effective date hereof, all handling of pistachios grown in California shall be in conformity to, and in compliance with, the terms and conditions of the said order, as follows:

The provisions of the proposed marketing agreement and order contained in the Recommended Decision issued by the Administrator on July 23, 2003, and published in the **Federal Register** on August 4, 2003 (68 FR 45990), as revised herein, shall be and are the terms and provisions of this agreement and order and are set forth in full herein. Sections 983.90 through 983.92 apply only to the proposed marketing agreement and not the proposed order.

Title 7, chapter IX is proposed to be amended by adding part 983 to read as follows:

PART 983—PISTACHIOS GROWN IN CALIFORNIA

Subpart—Order Regulating Handling

Definitions

Sec.

983.1 Accredited laboratory.
983.2 Act.
983.3 Affiliation.
983.4 Aflatoxin.
983.5 Aflatoxin inspection certificate.
983.6 Assessed weight.
983.7 Certified pistachios.

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

983.8 Committee.
983.9 Confidential data or information.
983.10 Department or USDA.
983.11 Districts.
983.12 Domestic shipments.
983.14 Handle.
983.15 Handler.
983.16 Inshell pistachios.
983.17 Inspector.
983.18 Lot.
983.19 Minimum quality requirements.
983.20 Minimum quality certificate.
983.21 Part and subpart.
983.22 Person.
983.23 Pistachios.
983.24 Processing.
983.25 Producer.
983.26 Production area.
983.27 Production year.
983.28 Proprietary capacity.
983.29 Secretary.
983.30 Shelled pistachios.
983.31 Substandard pistachios.

Administrative Committee

983.32 Establishment and membership.
983.33 Initial members and nomination of successor members.
983.34 Procedure.
983.35 Powers.
983.36 Duties.

Marketing Policy

983.37 Marketing policy.

Regulations

983.38 Aflatoxin levels.
983.39 Minimum quality levels.
983.40 Failed lots/rework procedure.
983.41 Testing of minimal quantities.
983.42 Commingling.
983.43 Reinspection.
983.44 Inspection, certification and identification.
983.45 Substandard pistachios.
983.46 Modification or suspension of regulations.

Reports, Books and Records

983.47 Reports.
983.48 Confidential information.
983.49 Records.
983.50 Random verification audits.
983.51 Verification of reports.

Expenses and Assessments

983.52 Expenses.
983.53 Assessments.
983.54 Contributions.
983.55 Delinquent assessments.
983.56 Accounting.
983.57 Implementation and amendments.

Miscellaneous Provisions

983.58 Compliance.
983.59 Right of the Secretary.
983.60 Personal liability.
983.61 Separability.
983.62 Derogation.
983.63 Duration of immunities.
983.64 Agents.
983.65 Effective time.
983.66 Suspension or termination.
983.67 Termination.
983.68 Procedure upon termination.
983.69 Effect of termination or amendment.
983.70 Exemption.
983.71 Relationship with the California Pistachio Commission.
*983.90 Counterparts.
*983.91 Additional parties.
*983.92 Order with marketing agreement.

Authority: 7 U.S.C. 601–674.

*Sections identified with an asterisk (*) apply only to the proposed marketing agreement.

Definitions

§ 983.1 Accredited laboratory.

An *accredited laboratory* is a laboratory that has been approved or accredited by the U.S. Department of Agriculture for testing aflatoxin.

§ 983.2 Act.

Act means Public Act No. 10, 73rd Congress (May 12, 1933), as amended and as re-enacted and amended by the Agricultural Marketing Order Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 983.3 Affiliation.

Affiliation. This term normally appears as ''affiliate of'', or ''affiliated with'', and means a person such as a producer or handler who is: A producer or handler that directly, or indirectly through one or more intermediaries, owns or controls, or is controlled by, or is under common control with the producer or handler specified; or a producer or handler that directly, or indirectly through one or more intermediaries, is connected in a proprietary capacity, or shares the ownership or control of the specified producer or handler with one or more other producers or handlers. As used in this part, the term ''control'' (including the terms ''controlling'', ''controlled by'', and ''under the common control with'') means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a handler or a producer, whether through voting securities, membership in a cooperative, by contract or otherwise.

§ 983.4 Aflatoxin.

Aflatoxin is one of a group of mycotoxins produced by the molds *Aspergillus flavus* and *Aspergillus parasiticus.* Aflatoxins are naturally occurring compounds produced by molds, which can be spread in improperly processed and stored nuts, dried fruits and grains.

§ 983.5 Aflatoxin inspection certificate.

Aflatoxin inspection certificate is a certificate issued by an accredited laboratory or by a USDA laboratory.

§ 983.6 Assessed weight.

Assessed weight means pounds of inshell pistachios, free of internal defects as defined in § 983.39(b)(4) and (5), with the weight computed at 5 percent moisture, received for processing by a handler within each production year: *Provided,* That for loose kernels, the actual weight shall be multiplied by two to obtain an inshell weight; or based on such other elements as may be recommended by the committee and approved by the Secretary.

§ 983.7 Certified pistachios.

Certified pistachios are those for which aflatoxin inspection and minimum quality certificates have been issued.

§ 983.8 Committee.

Committee means the administrative committee for pistachios established pursuant to § 983.32.

§ 983.9 Confidential data or information.

Confidential data or information submitted to the committee consists of data or information constituting a trade secret or disclosure of the trade position, financial condition, or business operations of a particular entity or its customers.

§ 983.10 Department or USDA.

Department or USDA means the United States Department of Agriculture.

§ 983.11 Districts.

(a) *Districts* shall consist of the following:

(1) *District 1* consists of Tulare, Kern, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Diego, and Imperial Counties of California.

(2) *District 2* consists of Kings, Fresno, Madera, and Merced Counties of California.

(3) *District 3* consists of all counties in California where pistachios are produced that are not included in Districts 1 and 2.

(b) With the approval of the Secretary, the boundaries of any district may be changed by the committee to ensure proper representation. The boundaries need not coincide with county lines. In addition, the boundaries in the production area may be adjusted to conform to changes to the boundaries of the districts established for those of the California Pistachio Commission upon the recommendation of the committee and approval of the Secretary.

§ 983.12 Domestic shipments.

Domestic shipments means shipments to the fifty states of the United States or to territories of the United States and the District of Columbia.

§ 983.14 Handle.

Handle means to engage in:

(a) Receiving pistachios;

(b) Hulling and drying pistachios;

(c) Further preparing pistachios by sorting, sizing, shelling, roasting, cleaning, salting, and/or packaging for marketing in or transporting to any and all markets in the current of interstate or foreign commerce; and/or

(d) Placing pistachios into the current of commerce from within the production area to points outside thereof: *Provided,* however, that transportation within the production area between handlers and from the orchard to the processing facility is not handling

§ 983.15 Handler.

Handler means any person who handles pistachios.

§ 983.16 Inshell pistachios.

Inshell pistachios means pistachios that have a shell that has not been removed.

§ 983.17 Inspector.

Inspector means any inspector authorized by the USDA to inspect pistachios.

§ 983.18 Lot.

Lot means any quantity of pistachios that is submitted for testing purposes under this part.

§ 983.19 Minimum quality requirements.

Minimum quality requirements are permissible maximum defects and minimum size levels for inshell pistachios and kernels specified in § 983.39.

§ 983.20 Minimum quality certificate.

Minimum quality certificate is a certificate issued by the USDA or Federal/State Inspection Service.

§ 983.21 Part and subpart.

Part means the order regulating the handling of pistachios grown in the State of California, and all rules, regulations and supplementary orders issued there under. The aforesaid order regulating the handling of pistachios grown in California shall be a subpart of such part.

§ 983.22 Person.

Person means an individual, partnership, limited liability corporation, corporation, trust, association, or any other business unit.

§ 983.23 Pistachios.

Pistachios means the nuts of the pistachio tree of the genus *Pistacia vera* grown in the production area whether inshell or shelled.

§ 983.24 Processing.

Processing means hulling and drying pistachios in preparation for market.

§ 983.25 Producer.

Producer means any person engaged within the production area in a proprietary capacity in the production of pistachios for sale.

§ 983.26 Production area.

Production area means the State of California.

§ 983.27 Production year.

Production year is synonymous with ''fiscal period'' and means the period beginning on September 1 and ending on August 31 of each year or such other period as may be recommended by the committee and approved by the Secretary. Pistachios harvested and received in August of any year shall be applied to the subsequent production year for marketing order purposes.

§ 983.28 Proprietary capacity.

Proprietary capacity means the capacity or interest of a producer or handler that, either directly or through one or more intermediaries, is a property owner together with all the appurtenant rights of an owner including the right to vote the interest in that capacity as an individual, a shareholder, member of a cooperative, partner, trustee or in any other capacity with respect to any other business unit.

§ 983.29 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to act in his/her stead.

§ 983.30 Shelled pistachios.

Shelled pistachios means pistachio kernels, or portions of kernels, after the pistachio shells have been removed.

§ 983.31 Substandard pistachios.

Substandard pistachios means pistachios, inshell or shelled, which do not comply with the maximum aflatoxin and/or minimum quality regulations of this part.

Administrative Committee

§ 983.32 Establishment and membership.

There is hereby established an administrative committee for pistachios to administer the terms and provisions of this part. This committee, consisting of eleven (11) member positions, each of whom shall have an alternate, shall be allocated as follows:

(a) *Handlers.* Two of the members shall represent handlers, as follows:

(1) One handler member nominated by one vote for each handler; and

(2) One handler member nominated by voting based on each handler casting one vote for each ton (or portion thereof) of the assessed weight of pistachios processed by such handler during the two production years preceding the production year in which the nominations are made.

(b) *Producers.* Eight members shall represent producers. Producers within the respective districts shall nominate four producers from District 1, three producers from District 2 and one producer from District 3. The Secretary, upon recommendation of the committee, may reapportion producer membership among the districts to ensure proper representation.

(c) *Public member.* One member shall be a public member who is neither a producer nor a handler and shall have all the powers, rights and privileges of any other member of the committee. The public member and alternate public member shall be nominated by the committee and selected by the Secretary.

§ 983.33 Initial members and nomination of successor members.

Nomination of committee members and alternates shall follow the procedure set forth in this section or as may be changed as recommended by the committee and approved by the Secretary.

(a) Initial members. Nominations for initial grower and handler members shall be conducted by the Secretary by either holding meetings of handlers and producers, or by mail.

(b) Successor members. Subsequent to the first nomination of committee members under this part, persons to be nominated to serve on the committee as producer or handler members shall be selected pursuant to nomination procedures that shall be established by the committee with the approval of the Secretary: *Provided,* That:

(1) Any qualified individuals who seek nomination as a producer member shall submit to the committee an intent to seek office in one designated district on such form and with such information as the committee shall designate; ballots, accompanied by the names of all such candidates, with spaces to indicate voters' choices and spaces for write-in candidates, together with voting instructions, shall be mailed to all

producers who are on record with the committee within the respective districts; the person(s) receiving the highest number of votes shall be the member nominee(s) for that district, and the person(s) receiving the second highest number of votes shall be the alternate member nominee(s). In case of a tie vote, the nominee shall be selected by a drawing.

(2) Any qualified individuals who seek nomination as a handler member shall submit to the committee an intent to seek office with such information as the committee shall designate; ballots, accompanied by the names of all such candidates, with spaces to indicate voters' choices and spaces for write-in candidates, together with voting instructions, shall be mailed to all handlers who are on record with the committee. For the first handler member seat, the person receiving the highest number of votes shall be the handler member nominee for that seat, and the person receiving the second highest number of votes shall be the alternate member nominee. For the second handler member seat, the person receiving the highest number of votes representing handler volume shall be the handler member nominee for that seat, and the person receiving the second highest number of votes representing handler volume shall be the alternate member nominee. In case of a tie vote, the nominee shall be selected by a drawing.

(c) Handlers. Only handlers, including duly authorized officers or employees of handlers, may participate in the nomination of the two handler member nominees and their alternates. Nomination of the two handler members and their alternates shall be as follows:

(1) For one handler member nomination, each handler entity shall be entitled to one vote;

(2) For the second handler member nomination, each handler entity shall be entitled to cast one vote respectively for each ton of assessed weight of pistachios processed by that handler during the two production years preceding the production year in which the nominations are made. For the purposes of nominating handler members and alternates by volume, the assessed weight of pistachios shall be credited to the handler responsible under the order for the payment of assessments of those pistachios. The committee with the approval of the Secretary, may revise the handler representation on the committee if the committee ceases to be representative of the industry.

(d) Producers. Only producers, including duly authorized officers or employees of producers, may participate in the nomination of nominees for producer members and their alternates. Each producer shall be entitled to cast only one vote, whether directly or through an authorized officer or employee, for each position to be filled in the district in which the producer produces pistachios. If a producer is engaged in producing pistachios in more than one district, such producer shall select the district in which to participate in the nomination. If a person is both a producer and a handler of pistachios, such person may participate in both producer and handler nominations, provided, however, that a single member may not hold concurrent seats as both a producer and handler.

(e) Member's affiliation. Not more than two members and not more than two alternate members shall be persons employed by or affiliated with producers or handlers that are affiliated with the same handler and/or producer. Additionally, only one member and one alternate in any one district representing producers and only one member and one alternate representing handlers shall be employed by, or affiliated with the same handler and/or producer. No handler, and all of its affiliated handlers, can be represented by more than one handler member.

(f) Cooperative affiliation. In the case of a producer cooperative, a producer shall not be deemed to be connected in a proprietary capacity with the cooperative notwithstanding any outstanding retains, contributions or financial indebtedness owed by the cooperative to a producer if the producer has not marketed pistachios through the cooperative during the current and one preceding production year. A cooperative that has as its members one or more other cooperatives that are handlers shall not be considered as a handler for the purpose of nominating or voting under this part.

(g) Alternate members. Each member of the committee shall have an alternate member to be nominated in the same manner as the member. Any alternate serving in the same district as a member where both are employed by, or connected in a proprietary capacity with the same corporation, firm, partnership, association, or business organization, shall serve as the alternate to that member. An alternate member, in the absence of the member for whom that alternate is selected shall serve in place of that member on the committee, and shall have and be able to exercise all the rights, privileges, and powers of the member when serving on the committee. In the event of death, removal, resignation, or the disqualification of a member, the alternate shall act as a member on the committee until a successor member is selected and has been qualified.

(h) Selection by Secretary. Nominations under paragraph (g) of this section received by the committee for all handler and producer members and alternate member positions shall be certified and sent to the Secretary at least 60 days prior to the beginning of each two-year term of office, together with all necessary data and other information deemed by the committee to be pertinent or requested by the Secretary. From those nominations, the Secretary shall select the ten producer and handler members of the committee and an alternate for each member.

(i) Acceptance. Each person to be selected by the Secretary as a member or as an alternate member of the committee shall, prior to such selection, qualify by advising the Secretary that if selected, such person agrees to serve in the position for which that nomination has been made.

(j) Failure to nominate. If nominations are not made within the time and manner specified in this part, the Secretary may, without regard to nominations, select the committee members and alternates qualified to serve on the basis of the representation provided for in § 983.32.

(k) Term of office. Selected members and alternate members of the committee shall serve for terms of two years: *Provided,* That four of the initially selected producer members and one handler member and their alternates shall, by a drawing, be seated for terms of one year so that approximately half of the memberships' terms expire each year. Each member and alternate member shall continue to serve until a successor is selected and has qualified. The term of office shall begin on July 1st of each year. Committee members and alternates may serve up to four consecutive, two-year terms of office. In no event shall any member or alternate serve more than eight consecutive years on the committee. For purposes of determining when a member or alternate has served four consecutive terms, the accrual of terms shall begin following any period of at least twelve consecutive months out of office.

(l) Qualifications. (1) Each producer member and alternate shall be, at the time of selection and during the term of office, a producer or an officer, or employee, of a producer in the district for which nominated.

(2) Each handler member and alternate shall be, at the time of selection and during the term of office,

a handler or an officer or employee of a handler.

(3) Any member or alternate member who at the time of selection was employed by or affiliated with the person who is nominated, that member shall, upon termination of that relationship, become disqualified to serve further as a member and that position shall be deemed vacant.

(4) No person nominated to serve as a public member or alternate public member shall have a financial interest in any pistachio growing or handling operation.

(m) *Vacancy.* Any vacancy on the committee occurring by the failure of any person selected to the committee to qualify as a member or alternate member due to a change in status making the member ineligible to serve, or due to death, removal, or resignation, shall be filled, by a majority vote of the committee for the unexpired portion of the term. However, that person shall fulfill all the qualifications set forth in this part as required for the member whose office that person is to fill. The qualifications of any person to fill a vacancy on the committee shall be certified in writing to the Secretary. The Secretary shall notify the committee if the Secretary determines that any such person is not qualified.

(n) The committee, with the approval of the Secretary, may issue rules and regulations implementing §§ 983.32, 983.33 and 983.34.

§ 983.34 Procedure.

(a) *Quorum.* A quorum of the committee shall be any seven voting committee members. The vote of a majority of members present at a meeting at which there is a quorum shall constitute the act of the committee: *Provided,* That actions of the committee with respect to the following issues shall require at least seven concurring votes of the voting members regarding any recommendation to the Secretary for adoption or change in:

(1) Minimum quality levels;

(2) Aflatoxin levels;

(3) Inspection programs;

(4) The establishment of the committee.

(b) *Voting.* Members of the committee may participate in a meeting by attendance in person or through the use of a conference telephone or similar communication equipment, as long as all members participating in such a meeting can communicate with one another. An action required or permitted to be taken by the committee may be taken without a meeting, if all members of the committee shall consent in writing to that action.

(c) *Compensation.* The members of the committee and their alternates shall serve without compensation, but members and alternates acting as members shall be allowed their necessary expenses: *Provided,* That the committee may request the attendance of one or more alternates not acting as members at any meeting of the committee, and such alternates may be allowed their necessary expenses; and, *Provided further,* That the public member and the alternate for the public member may be paid reasonable compensation in addition to necessary expenses.

§ 983.35 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make and adopt bylaws, rules and regulations to effectuate the terms and provisions of this part with the approval of the Secretary;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 983.36 Duties.

The committee shall have, among others, the following duties:

(a) To adopt bylaws and rules for the conduct of its meetings and the selection of such officers from among its membership, including a chairperson and vice-chairperson, as may be necessary, and define the duties of such officers; and adopt such other bylaws, regulations and rules as may be necessary to accomplish the purposes of the Act and the efficient administration of this part;

(b) To employ or contract with such persons or agents as the committee deems necessary and to determine the duties and compensation of such persons or agents;

(c) To select such subcommittees as may be necessary;

(d) To submit to the Secretary a budget for each fiscal period, prior to the beginning of such period, including a report explaining the items appearing therein and a recommendation as to the rate of assessments for such period;

(e) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(f) To prepare periodic statements of the financial operations of the committee and to make copies of each statement available to producers and handlers for examination at the office of the committee;

(g) To cause its financial statements to be audited by a certified public accountant at least once each fiscal year and at such times as the Secretary may request. Such audit shall include an examination of the receipt of assessments and the disbursement of all funds. The committee shall provide the Secretary with a copy of all audits and shall make copies of such audits, after the removal of any confidential individual or handler information that may be contained in them, available for examination at the offices of the committee;

(h) To act as intermediary between the Secretary and any producer or handler with respect to the operations of this part;

(i) To investigate and assemble data on the growing, handling, shipping and marketing conditions with respect to pistachios;

(j) To apprise the Secretary of all committee meetings in a timely manner;

(k) To submit to the Secretary such available information as the Secretary may request;

(l) To investigate compliance with the provisions of this part;

(m) To provide, through communication to producers and handlers, information regarding the activities of the committee and to respond to industry inquiries about committee activities;

(n) To oversee the collection of assessments levied under this part;

(o) To borrow such funds, subject to the approval of the Secretary and not to exceed the expected expenses of one fiscal year, as are necessary for administering its responsibilities and obligations under this part.

Marketing Policy

§ 983.37 Marketing policy.

Prior to August 1st each year, the committee shall prepare and submit to the Secretary a report setting forth its recommended marketing policy covering quality regulations for the pending crop. In the event it becomes advisable to modify such policy, because of changed crop conditions, the committee shall formulate a new policy and shall submit a report thereon to the Secretary. In developing the marketing policy, the committee shall give consideration to the production, harvesting, processing and storage conditions of that crop. The committee may also give consideration to current prices being received and the probable general level of prices to be received for pistachios by producers and handlers. Notice of the committee's marketing policy, and of any modifications thereof,

shall be given promptly by reasonable publicity, to producers and handlers.

Regulations

§ 983.38 Aflatoxin levels.

(a) *Maximum level.* No handler shall ship for domestic human consumption, pistachios that exceed an aflatoxin level of more than 15 ppb. All shipments must also be covered by an aflatoxin inspection certificate. Pistachios that fail to meet the aflatoxin requirements shall be disposed in such manner as described in Failed lots/rework procedure of this part.

(b) *Change in level.* The committee may recommend to the Secretary changes in the aflatoxin level specified in this section. If the Secretary finds on the basis of such recommendation or other information that such an adjustment of the aflatoxin level would tend to effectuate the declared policy of the Act, such change shall be made accordingly.

(c) *Transfers between handlers.* Transfers between handlers within the production area are exempt from the aflatoxin regulation of this section.

(d) *Aflatoxin testing procedures.* To obtain an aflatoxin inspection certificate, each lot to be certified shall be uniquely identified, be traceable from testing through shipment by the handler and be subjected to the following:

(1) *Samples for testing.* Prior to testing, a sample shall be drawn from each lot and divided between those pistachios for aflatoxin testing and those for minimum quality testing (''lot samples'') in sufficient weight to comply with Table 1, Table 2 and Table 4 of this part.

(2) *Test samples for aflatoxin.* Prior to submission of samples to an accredited laboratory for aflatoxin analysis, three samples shall be created equally from the pistachios designated for aflatoxin testing in compliance with the requirements of Tables 1 and 2 of this paragraph (d)(2)(''test samples''). The test samples shall be prepared by, or under the supervision of, an inspector, or as approved under an alternative USDA-recognized inspection program. The test samples shall be designated by an inspector as Test Sample #1, Test Sample #2, and Test Sample #3. Each sample shall be placed in a suitable container, with the lot number clearly identified, and then submitted to an accredited laboratory. The gross weight of the inshell lot sample for aflatoxin testing and the number of samplings required are shown in the following Table 1. The gross weight of the kernel lot sample for aflatoxin testing and the number of incremental samples required is shown in the following Table 2 of this paragraph.

TABLE 1.—INSHELL PISTACHIO LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

Lot weight (lbs.)	Number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of test sample (kilograms)
220 or less	10	3.0	1.0
221–440	15	4.5	1.5
441–1100	20	6.0	2.0
1101–2200	30	9.0	3.0
2201–4400	40	12.0	4.0
4401–11,000	60	18.0	6.0
11,001–22,000	80	24.0	8.0
22,001–150,000	100	30.0	10.0

TABLE 2.—SHELLED PISTACHIO KERNEL LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

Lot weight (lbs.)	Number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of test sample (kilograms)
220 or less	10	1.5	.5
221–440	15	2.3	.75
441–1100	20	3.0	1.0
1101–2200	30	4.5	1.5
2201–4400	40	6.0	2.0
4401–11,000	60	9.0	3.0
11,001–22,000	80	12.0	4.0
22,001–150,000	100	15.0	5.0

(3) *Testing of pistachios.* Test samples shall be received and logged by an accredited laboratory and each test sample shall be prepared and analyzed using High Pressure Liquid Chromatograph (HPLC), Vicam Method (Aflatest) or other methods as recommended by not less than seven members of the committee and approved by the Secretary. The aflatoxin level shall be calculated on a kernel weight basis.

(4) *Certification of lots ''negative'' as to aflatoxin.* Lots will be certified as ''negative'' on the aflatoxin inspection certificate if Test Sample #1 has an aflatoxin level at or below 5 ppb. If the aflatoxin level of Test Sample #1 is above 25 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in § 983.40. If the aflatoxin level of Test Sample #1 is above 5 ppb and below 25 ppb, the accredited laboratory may at the handler's discretion analyze Test Sample #2 and the test results of Test Samples #1 and #2 will be averaged. Alternatively, the handler may elect to withdraw the lot from testing, rework the lot, and re-submit it for testing after re-working. If the handler directs the laboratory to proceed with the analysis of Test Sample #2, a lot will be certified as negative to aflatoxin and the laboratory shall issue an aflatoxin inspection certificate if the averaged results of Test Sample #1 and Test Sample #2 is at or below 10 ppb. If the

averaged aflatoxin level of the Test Samples #1 and #2 is at or above 20 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in § 983.40. If the averaged aflatoxin level of Test Sample #1 and #2 is above 10 ppb and below 20 ppb, the accredited laboratory may, at the handler's discretion, analyze Test Sample #3 and the results of Test Samples #1, #2 and #3 will be averaged. Alternatively, the handler may elect to withdraw the lot from testing, re-work the lot, and re-submit it for testing after a re-working. If the handler directs the laboratory to proceed with the analysis of Test Sample #3, a lot will be certified as negative to aflatoxin and the laboratory shall issue an aflatoxin inspection certificate if the averaged results of Test Samples #1, #2 and #3 is at or below 15 ppb. If the averaged aflatoxin results of Test Samples #1, #2 and #3 is above 15 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in § 983.40. The accredited laboratory shall send a copy of the failed lot notification report to the committee and to the failed lot's owner within 10 working days of any failure described in this section. If the lot is certified as negative as described in this section, the aflatoxin inspection certificate shall certify the lot using a certification form identifying each lot by weight, grade and date. The certification expires for the lot or remainder of the lot after 12 months.

(5) *Certification of aflatoxin levels.* Each accredited laboratory shall complete aflatoxin testing and reporting and shall certify that every lot of California pistachios shipped domestically does not exceed the aflatoxin levels as required in § 983.38(d)(4). Each handler shall keep a record of each test, along with a record of final shipping disposition. These records must be maintained for three years beyond the crop year of their applicability, and are subject to audit by the Secretary or the committee at any time.

(6) *Test samples that are not used for analysis.* If a handler does not elect to use Test Samples #2 or #3 for certification purposes the handler may request the laboratory to return them to the handler.

§ 983.39 Minimum quality levels.

(a) *Maximum defect and minimum size.* No handler shall ship for domestic human consumption, pistachios that exceed permissible maximum defect and minimum size levels shown in the following Table 3 of this paragraph.

TABLE 3.—MAXIMUM DEFECT AND MINIMUM SIZE LEVELS

Factor	Maximum permissible defects (percent by weight)	
	Inshell	Kernels
EXTERNAL (SHELL) DEFECTS		
1. Non-splits & not split on suture	10.0	.....
(i) Maximum non-splits allowed	4.0	.....
2. Adhering hull material	2.0	.....
3. Dark stain	3.0	.....
4. Damage by other means, other than 1, 2 and 3 above, which materially detracts from the appearance or the edible or marketing quality of the individual shell or the lot.	10.0	.....
INTERNAL (KERNEL) DEFECTS		
1. Damage: Immature kernel (Fills <75%–>50% of the shell); Kernel spotting (Affects 1/8 aggregate surface)	6.0	3.0
2. Serious damage: Minor insect or vertebrate injury/insect damage, insect evidence, mold, rancidity, decay	4.0	2.5
(i) Maximum insect damage allowed	2.0	0.5
Total external or internal defects allowed	9.0	.....
OTHER DEFECTS		
1. Shell pieces and blanks (Fills <50% of the shell)	2.0	.....
(i) Maximum blanks allowed	1.0	.....
2. Foreign material, No glass, metal or live insects permitted	0.25	0.1
3. Particles and dust	0.25	.....
4. Loose kernels	6.0	.....
	Minimum permissible defects (percent by weight)	
Maximum allowable inshell pistachios that will pass through a 30/64 inch round hole screen	5.0	.....

(b) *Definitions applicable to permissible maximum defect and minimum size levels:* The following definitions shall apply to inshell pistachio and pistachio kernel maximum defect and minimum size:

(1) *Loose kernels* means kernels or kernel portions that are out of the shell and which cannot be considered particles and dust.

(2) *External (shell) defects* means any abnormal condition affecting the hard covering around the kernel. Such defects include, but are not limited to, non-split shells, shells not split on suture, adhering hull material or dark stains.

(3) *Damage by external (shell) defects* shall also include any specific defect described in paragraphs (b)(3)(i) through (iv) of this section or an equally objectionable variation of any one of these defects, any other defect or any combination of defects which materially detracts from the appearance or the

edibility or the marketing quality of the individual shell or the lot.

(i) *Non-split shells* means shells are not opened or are partially opened and will not allow an 18/1000 (.018) inch thick by 1/4 (.25) inch wide gauge to slip into the opening.

(ii) *Not split on suture* means shells are split other than on the suture and will allow an 18/1000 (.018) inch thick by 1/4 (.25) inch wide gauge to slip into the opening.

(iii) *Adhering hull material* means an aggregate amount of hull covers more than one-eighth (1/8) of the total shell surface, or when readily noticeable on dyed shells.

(iv) *Dark stain* on raw or roasted nuts means an aggregate amount of dark brown, dark gray or black discoloration that affects more than one-eighth of the total shell surface. Pistachios that are dyed or color-coated to improve their marketing quality are not subject to the maximum permissible defects for dark stain. Speckled discoloration on the stem end, bottom quarter of the nut is not considered damage.

(4) *Internal (kernel) defects* means any damage affecting the kernel. Such damage includes, but is not limited to evidence of insects, immature kernels, rancid kernels, mold or decay.

(i) *Damage by internal (kernel) defects* shall also include any specific defect described in paragraphs (b)(4)(i)(A) and (B) of this section, or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance or the edibility or the marketing quality of the individual kernel or of the lot.

(A) *Immature kernels* in inshell are excessively thin kernels, or when a kernel fills less than three-fourths, but not less than one-half of the shell cavity. ''Immature kernels'' in shelled pistachios are excessively thin kernels and can have black, brown or gray surface with a dark interior color and the immaturity has adversely affected the flavor of the kernel.

(B) *Kernel spotting* refers to dark brown or dark gray spots aggregating more than one-eighth of the surface of the kernel.

(ii) *Serious damage* by internal (kernel) defects means any specific defect described in paragraphs (b)(4)(ii)(A) through (E) of this section, or an equally objectionable variation of any one of these defects, which seriously detracts from the appearance or the edibility or the marketing quality of the individual kernel or of the lot.

(A) *Minor insect or vertebrate injury* means the kernel shows conspicuous evidence of feeding.

(B) *Insect damage* means an insect, insect fragment, web or frass attached to the kernel. No live insects shall be permitted.

(C) *Mold* that is readily visible on the shell or kernel.

(D) *Rancidity* means the kernel is distinctly rancid to taste. Staleness of flavor shall not be classed as rancidity.

(E) *Decay* means 1/16th or more of the kernel surface is decomposed.

(5) *Other defects* means defects that cannot be considered internal defects or external defects. Such defects include, but are not limited to shell pieces, blanks, foreign materials or particles and dust. The following shall be considered other defects:

(i) *Shell pieces* means open inshell without a kernel, half shells or pieces of shell which are loose in the sample.

(ii) *Blanks* means a non-split shell not containing a kernel or containing a kernel that fills less than one-half of the shell cavity.

(iii) *Foreign material* means leaves, sticks, loose hulls or hull pieces, dirt, rocks, insects or insect fragments not attached to nuts, or any substance other than pistachio shells or kernels. Glass, metal or live insects shall not be permitted.

(iv) *Particles and dust* means pieces of nut kernels that will pass through 5/64 inch round opening.

(v) *Undersized* means inshell pistachios that fall through a 30/64-inch round hole screen.

(c) *Minimum quality certificate.* Each shipment for domestic human consumption must be covered by a USDA certificate certifying a minimum quality or higher. Pistachios that fail to meet the minimum quality specifications shall be disposed of in such manner as described in § 983.40.

(d) *Transfers between handlers.* Transfers between handlers within the production area are exempt from the minimum quality regulation of this section.

(e) *Minimum quality testing procedures.* To obtain a minimum quality certificate, each lot to be certified shall be uniquely identified, shall be traceable from testing through shipment by the handler and shall be subjected to the following procedure:

(1) *Sampling of pistachios for maximum defects and minimum size.* The gross weight of the inshell and kernel sample, and number of samplings required to meet the minimum quality regulation, is shown in Table 4 of this paragraph (e)(1). These samples shall be drawn from the lot that is to be certified pursuant to § 983.38(d)(1) under the supervision of an inspector or as approved under an alternative USDA recognized inspection program.

TABLE 4.—INSHELL AND KERNEL PISTACHIO LOT SAMPLING INCREMENTS FOR MINIMUM QUALITY CERTIFICATION

Lot weight (lbs.)	Number of incremental samples for the lot sample	Total weight of lot sample (grams)	Weight of inshell and kernel test sample (grams)
220 or less	10	500	500
221–440	15	500	500
441–1100	20	600	500
1101–2200	30	900	500
2201–4400	40	1200	500
4401–11,000	60	1800	500
11,001–22,000	80	2400	1000
22,001–150,000	100	3000	1000

(2) *Testing of pistachios for maximum defect and minimum size.* The sample shall be analyzed according to USDA protocol, current or as subsequently revised, to insure that the lot does not exceed maximum defects and meets at least the minimum size levels as specified in Table 3 of paragraph (a) of this section. For inshell pistachios, those nuts with dark stain, adhering hull, and those exhibiting apparent serious defects shall be shelled for

internal kernel analysis. The USDA protocol currently appears in USDA inspection instruction manual ''Pistachios in the Shell, Shipping Point and Market Inspection Instructions,'' June 1994: Revised September 1994, HU–125–9(b). Copies may be obtained from the Fresh Products Branch, Agricultural Marketing Service, USDA. Contact information may be found at *http://www.ams.usda.gov/fv/fvstand.htm.*

(f) *Certification of minimum quality.* Each inspector shall complete minimum quality testing and reporting and shall certify that every lot of California pistachios or portion thereof shipped domestically meets minimum quality levels. A record of each test, along with a record of final shipping disposition, shall be kept by each handler. These records must be maintained for three years following the production year in which the pistachios were shipped, and are subject to audit by the committee at any time.

§ 983.40 Failed lots/rework procedure.

(a) *Substandard pistachios.* Each lot of substandard pistachios may be reworked to meet minimum quality requirements.

(b) *Failed lot reporting.* If a lot fails to meet the aflatoxin and/or the minimum quality requirements of this part, a failed lot notification report shall be completed and sent to the committee within 10 working days of the test failure. This form must be completed and submitted to the committee each time a lot fails either aflatoxin or the minimum quality testing. The accredited laboratories shall send the failed lot notification reports for aflatoxin tests to the committee, and the handler, under the supervision of an inspector, shall send the failed lot notification reports for the lots that do not meet the minimum quality requirements to the committee.

(c) *Inshell rework procedure for aflatoxin.* If inshell rework is selected as a remedy to meet the aflatoxin requirements of this part, then 100% of the product within that lot shall be removed from the bulk and/or retail packaging containers and reworked to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic or manual procedures normally used in the handling of pistachios. After the rework procedure has been completed the total weight of the accepted product and the total weight of the rejected product shall be reported to the committee. The reworked lot shall be sampled and tested for aflatoxin as specified in § 983.38 except that the lot sample size and the test sample size shall be doubled. The reworked lot shall also be sampled and tested for the minimum quality requirements. If, after the lot has been reworked and tested, it fails the aflatoxin test for a second time, the lot may be shelled and the kernels reworked, sampled and tested in the manner specified for an original lot of kernels, or the failed lot may be used for non-human consumption or otherwise disposed of.

(d) *Kernel rework procedure for aflatoxin.* If pistachio kernel rework is selected as a remedy to meet the aflatoxin requirements of § 983.38, then 100% of the product within that lot shall be removed from the bulk and/or retail packaging containers and reworked to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic or manual procedures normally used in the handling of pistachios. After the rework procedure has been completed the total weight of the accepted product and the total weight of the rejected product shall be reported to the committee. The reworked lot shall be sampled and tested for aflatoxin as specified in § 983.38.

(e) *Minimum quality rework procedure for inshell pistachios and kernels.* If rework is selected as a remedy to meet the minimum quality requirements of § 983.39, then 100% of the product within that lot shall be removed from the bulk and/or retail packaging containers and processed to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic or manual procedures normally used in the handling of pistachios. The reworked lot shall be sampled and tested for the minimum quality requirements as specified in the minimum quality regulations of § 983.39.

§ 983.41 Testing of minimal quantities.

(a) *Aflatoxin.* Handlers who handle less than 1 million pounds of assessed weight per year, have the option of utilizing both of the following methods for testing for aflatoxin:

(1) The handler may have an inspector sample and test his or her entire inventory of hulled and dried pistachios for the aflatoxin certification before further processing.

(2) The handler may segregate receipts into various lots at the handler's discretion and have an inspector sample and test each specific lot. Any lots that have less than 15 ppb aflatoxin can be certified by an inspector to be negative as to aflatoxin. Any lots that are found to be above 15 ppb may be tested after reworking in the same manner as specified in § 983.38.

(b) *Minimum quality.* Handlers who handle less than 1 million pounds of assessed weight can apply to the committee for an exemption from minimum quality testing. If the committee grants an exemption, then the handler must pull and retain samples of the lots and make samples available for review by the committee. The handler shall maintain the samples for 90 days.

§ 983.42 Commingling.

After a lot is issued an aflatoxin inspection certificate and minimum quality certificate, it may be commingled with other certified lots.

§ 983.43 Reinspection.

The Secretary, upon recommendation of the committee, may establish rules and regulations to establish conditions under which pistachios would be subject to reinspection.

§ 983.44 Inspection, certification and identification.

Upon recommendation of the committee and approval of the Secretary, all pistachios that are required to be inspected and certified in accordance with this part, shall be identified by appropriate seals, stamps, tags, or other identification to be affixed to the containers by the handler. All inspections shall be at the expense of the handler.

§ 983.45 Substandard pistachios.

The committee shall, with the approval of the Secretary, establish such reporting and disposition procedures as it deems necessary to ensure that pistachios which do not meet the outgoing maximum aflatoxin tolerance and minimum quality requirements prescribed by §§ 983.38 and 983.39 shall not be shipped for domestic human consumption.

§ 983.46 Modification or suspension of regulations.

(a) In the event that the committee, at any time, finds that the order provisions contained in § 983.38 through § 983.45 should be modified or suspended, it shall by vote of at least seven concurring members, so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the committee or from other available information, that the aflatoxin or minimum quality provisions in § 983.38 and § 983.39 should be modified, suspended, or terminated with respect to any or all shipments of pistachios in order to

effectuate the declared policy of the Act, the Secretary shall modify or suspend such provisions. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall suspend or terminate such regulation.

(c) The committee, with the approval of the Secretary, may issue rules and regulations implementing §§ 983.38 through 983.45.

Reports, Books and Records

§ 983.47 Reports.

Upon the request of the committee, with the approval of the Secretary, each handler shall furnish such reports and information on such forms as are needed to enable the Secretary and the committee to perform their functions and enforce the regulations under this part. The committee shall provide a uniform report format for the handlers.

§ 983.48 Confidential information.

All reports and records furnished or submitted by handlers to the committee which include confidential data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler or their customers shall be received by, and at all times kept in the custody and under the control of, one or more employees of the committee, who shall disclose such data and information to no person except the Secretary. However, such data or information may be disclosed only with the approval of the Secretary, to the committee when reasonably necessary to enable the committee to carry out its functions under this part.

§ 983.49 Records.

Records of pistachios received, held and shipped by him, as will substantiate any required reports and will show performance under this part will be maintained by each handler for at least three years beyond the crop year of their applicability.

§ 983.50 Random verification audits.

(a) All handlers' pistachio inventory shall be subject to random verification audits by the committee to ensure compliance with the terms of the order, and regulations adopted pursuant thereto.

(b) Committee staff or agents of the committee, based on information from the industry or knowledge of possible violations, may make buys of handler product in retail locations. If it is determined that violations of the order have occurred as a result of the buys, the matter will be referred to the Secretary for appropriate action.

§ 983.51 Verification of reports.

For the purpose of checking and verifying reports filed by handlers or the operation of handlers under the provisions of this part, the Secretary and the committee, through their duly authorized agents, shall have access to any premises where pistachios and records relating thereto may be held by any handler and at any time during reasonable business hours, shall be permitted to inspect any pistachios so held by such handler and any and all records of such handler with respect to the acquisition, holding, or disposition of all pistachios which may be held or which may have been shipped by him/her.

Expenses and Assessments

§ 983.52 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each production year for the maintenance and functioning of the committee and for such other purposes as the Secretary may, pursuant to the provisions of this part, determine to be appropriate.

§ 983.53 Assessments.

(a) Each handler who receives pistachios for processing in each production year shall pay the committee on demand, an assessment based on the pro rata share of the expenses authorized by the Secretary for that year attributable to the assessed weight of pistachios received by that handler in that year.

(b) The committee, prior to the beginning of each production year, shall recommend and the Secretary shall set the assessment for the following production year, which shall not exceed one-half of one percent of the average price received by producers in the preceding production year. The committee, with the approval of the Secretary, may revise the assessment if it determines, based on information including crop size and value, that the action is necessary, and if the revision does not exceed the assessment limitation specified in this section and is made prior to the final billing of the assessment.

§ 983.54 Contributions.

The committee may accept voluntary contributions but these shall only be used to pay for committee expenses.

§ 983.55 Delinquent assessments.

Any handler who fails to pay any assessment within the time required by the committee, shall pay to the committee a late payment charge of 10 percent of the amount of the assessment determined to be past due and, in addition, interest on the unpaid balance at the rate of one and one-half percent per month. The late payment and interest charges may be modified by the Secretary upon recommendation of the committee.

§ 983.56 Accounting.

(a) If, at the end of a production year, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, it shall be refunded proportionately to the persons from whom it was collected in accordance with § 983.53: *Provided,* That any sum paid by a person in excess of his/her pro rata share of the expenses during any production year may be applied by the committee at the end of such production year as credit for such person, toward the committee's fiscal operations of the following production year;

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent production years as a reserve: *Provided,* That funds already in the reserve do not exceed approximately two production years' budgeted expenses. In the event that funds exceed two production years' budgeted expenses, future assessments will be reduced to bring the reserves to an amount that is less than or equal to two production years' budgeted expenses. Such reserve funds may be used:

(i) To defray expenses, during any production year, prior to the time assessment income is sufficient to cover such expenses;

(ii) To cover deficits incurred during any production year when assessment income is less than expenses;

(iii) To defray expenses incurred during any period when any or all provisions of this part are suspended; and

(iv) To cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements for which that member was personally responsible, deliver all committee property and funds in the possession of such member to the committee, and execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the committee property, funds, and claims vested in such member pursuant to this part.

§ 983.57 Implementation and amendments.

The Secretary, upon the recommendation of a majority of the committee, may issue rules and regulations implementing or modifying § 983.47 through § 983.56, inclusive.

Miscellaneous Provisions

§ 983.58 Compliance.

Except as provided in this part, no handler shall handle pistachios, the handling of which has been prohibited or otherwise limited by the Secretary in accordance with provisions of this part; and no handler shall handle pistachios except in conformity to the provision of this part.

§ 983.59 Right of the Secretary.

The members of the committee (including successors or alternates) and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension at the discretion of the Secretary, at any time. Each and every decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void.

§ 983.60 Personal liability.

No member or alternate member of the committee, nor any employee, representative, or agent of the committee shall be held personally responsible to any handler, either individually, or jointly with others, in any way whatsoever, to any person, for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, representative, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 983.61 Separability.

If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 983.62 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 983.63 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence thereof.

§ 983.64 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any service, division or branch in the United States Department of Agriculture, to act as agent or representative of the Secretary in connection with any of the provisions of this part.

§ 983.65 Effective time.

The provisions of this part, as well as any amendments, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways specified in § 983.66 or § 983.67.

§ 983.66 Suspension or termination.

The Secretary shall terminate or suspend the operation of any or all of the provisions of this part, whenever he/she finds that such provisions do not tend to effectuate the declared policy of the Act.

§ 983.67 Termination.

(a) The Secretary may at any time terminate the provisions of this part.

(b) The Secretary shall terminate or suspend the operations of any or all of the provisions of this part whenever it is found that such provisions do not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this part at the end of any fiscal period whenever it is found that such termination is favored by a majority of producers who, during a representative period, have been engaged in the production of pistachios: *Provided*, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such pistachios produced for market, but such termination shall be announced at least 90 days before the end of the current fiscal period.

(d) Within six years of the effective date of this part the Secretary shall conduct a referendum to ascertain whether continuance of this part is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six years thereafter. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by a two thirds (⅔) majority of voting producers, or a two thirds (⅔) majority of volume represented thereby, who, during a representative period determined by the Secretary, have been engaged in the production for market of pistachios in the production area. Such termination shall be announced on or before the end of the production year.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease.

§ 983.68 Procedure upon termination.

Upon the termination of this part, the members of the committee then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the committee. Action by such trustees shall require the concurrence of a majority of said trustees. Such trustees shall continue in such capacity until discharged by the Secretary, and shall account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and the joint trustees, to such persons as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all the funds, properties, and claims vested in the committee or the joint trustees, pursuant to this part. Any person to whom funds, property, or claims have been transferred or delivered by the committee or the joint trustees, pursuant to this section, shall be subject to the same obligations imposed upon the members of said committee and upon said joint trustees.

§ 983.69 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise, in connection with any provisions of this part or any regulation issued there under,

(b) Release or extinguish any violation of this part or any regulation issued there under, or

(c) Affect or impair any rights or remedies of the Secretary, or of any other persons, with respect to such violation.

§ 983.70 Exemption.

Any handler may handle pistachios within the production area free of the requirements in §§ 983.38 through 983.45 and 983.53 if such pistachios are handled in quantities not exceeding 1,000 dried pounds during any marketing year. This subpart may be changed as recommended by the committee and approved by the Secretary.

§ 983.71 Relationship with the California Pistachio Commission.

In conducting committee activities and other objectives under this part, the committee may deliberate, consult, cooperate and exchange information with the California Pistachio Commission. Any sharing of information gathered under this subpart shall be kept confidential in accordance with provisions under section 10(i) of the Act.

§ 983.90 Counterparts.

Handlers may sign an agreement with the Secretary indicating their support for this marketing order. This agreement may be executed in multiple counterparts by each handler. If more than fifty percent of the handlers, weighted by the volume of pistachios handled during a representative period, enter into such an agreement, then a marketing agreement shall exist for the pistachio marketing order. This marketing agreement shall not alter the terms of this part. Upon the termination of this part, the marketing agreement has no further force or effect.

§ 983.91 Additional parties.

After this part becomes effective, any handler may become a party to the marketing agreement if a counterpart is executed by the handler and delivered to the Secretary.

§ 983.92 Order with marketing agreement.

Each signatory handler hereby requests the Secretary to issue, pursuant to the Act, an order for regulating the handling of pistachios in the same manner as is provided for in this agreement.

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Part III

United States Sentencing Commission

Sentencing Guidelines for United States Courts; Notice

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment, including public comment regarding retroactive application of any of the proposed amendments.

SUMMARY: Pursuant to section 994(a), (o), and (p) of title 28, United States Code, the United States Sentencing Commission is considering promulgating certain amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed amendments and, for each proposed amendment, a synopsis of the issues addressed by that amendment. This notice also provides multiple issues for comment, some of which are contained within proposed amendments.

The specific proposed amendments and issues for comment in this notice are as follows: (1) Proposed amendments that implement directives to the Commission contained in the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (''PROTECT Act''), Public Law 108–21, regarding child pornography and sexual abuse offenses, and related issues for comment; (2) proposed amendments to Chapter Eight (Sentencing of Organizations) to provide a new guideline regarding compliance programs, and related issues for comment; (3) proposed new guideline at § 2K2.6 (Possessing, Purchasing, or Owning Body Armor by Violent Felons) that addresses the new offense at 18 U.S.C. 931 pertaining to the possession of body armor by certain prohibited persons; (4) proposed amendments to Chapter Two, Part C (Offenses Involving Public Officials) that increase the penalties for offenses involving public corruption, and related issues for comment; (5) proposed amendments that (A) address the directive in section 608 of the PROTECT Act pertaining to increased penalties for offenses involving gamma hydroxybutyric acid (''GHB''); (B) provide a penalty structure for controlled substance analogues in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt and Conspiracy); (C) add white phosphorous and hypophosphorous acid to the Drug Quantity Table in § 2D1.1(c); and (D) make various technical changes to §§ 2D1.1, 2D1.11 (Unlawfully Distributing, Importing, Exporting, or Possessing a Listed Chemical; Attempt and Conspiracy), and Appendix A (Statutory Index), and related issues for comment; (6) proposed amendment to repeal the ''mitigating role cap'' in § 2D1.1(b)(3) and replace it with an alternative approach, and a related issue for comment; (7) proposed amendments to the homicide and assault guidelines that implement the directive in section 11008(e) of the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273, and that address proportionality concerns, and related issues for comment; (8) proposed amendments that makes various technical and conforming amendments to the guidelines, and related issues for comment; (9) proposed amendment to § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) that increases the penalties for offenses involving man-portable air defense systems (''MANPADS'') and other similar destructive devices, and related issues for comment; (10) an issue for comment regarding aberrant behavior; and (11) issues for comment regarding the treatment under the guidelines of offenses involving the illegal transportation of hazardous materials.

DATES: Written public comment regarding the proposed amendments and issues for comment set forth in this notice, including public comment regarding retroactive application of any of the proposed amendments, should be received by the Commission not later than March 1, 2004.

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, Washington, DC 20002–8002, Attention: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May of each year pursuant to 28 U.S.C. 994(p).

The Commission seeks comment on the proposed amendments, issues for comment, and any other aspect of the sentencing guidelines, policy statements, and commentary.

The proposed amendments in this notice are presented in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part on comment and suggestions regarding alternative policy choices; for example, a proposed enhancement of [2] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text within a specific offense characteristic or application note means that the Commission specifically invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites suggestions on how the Commission should respond to those issues.

The Commission also requests public comment regarding whether the Commission should specify for retroactive application to previously sentenced defendants any of the proposed amendments published in this notice. The Commission requests comment regarding which, if any, of the proposed amendments that may result in a lower guideline range should be made retroactive to previously sentenced defendants pursuant to § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range).

Additional information pertaining to the proposed amendments described in this notice may be accessed through the Commission's Web site at *www.ussc.gov.*

Authority: 28 U.S.C. § 994(a), (o), (p), (x); USSC Rules of Practice and Procedure, Rule 4.4.

Diana E. Murphy,

Chair.

Proposed Amendment 1: Child Pornography and Sexual Abuse of Minors

Synopsis of Proposed Amendment: This proposed amendment contains a number of proposals designed to implement the directives to the Commission regarding child pornography and sexual abuse offenses in the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, (the ''PROTECT Act''), Public Law 108–21.

Furthermore, this amendment addresses a number of issues in response to comments from the Department of Justice's Child Exploitation and Obscenity Section (''CEOS''), calls to the Commission's Helpline, and issues identified through case law regarding the sexual abuse and pornography guidelines. This proposed amendment makes changes to Chapter Two, Part A (Criminal Sexual Abuse), Chapter Two, Part G (Offenses Involving Commercial Sex Acts, Sexual Exploitation of Minors, and Obscenity), §§ 3D1.2 (Groups of Closely Related Counts), 5B1.3 (Conditions of Probation), 5D1.2 (Term of Supervised Release), 5D1.3 (Conditions of Supervised Release), and Appendix A (Statutory Index). Several issues for comment regarding these guidelines and § 4B1.5 (Repeat and Dangerous Sex Offender Against Minors) follow the proposed amendments.

I. Child Pornography Offenses

This part of the proposed amendment covers offenses sentenced under §§ 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic), 2G2.4 (Possession of Materials Depicting a Minor Engaged in Sexually Explicit Conduct), and 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production). Issues for comment regarding the scope of specific enhancements in these guidelines and the application of the ''image tables'' and ''sado-masochistic'' enhancements at §§ 2G2.2 and 2G2.4 follow the proposed amendments.

A. Trafficking Offenses Under § 2G2.2

Section 103 of the PROTECT Act creates five year mandatory minimum terms of imprisonment for offenses related to trafficking of child pornography under 18 U.S.C. 2252(a)(1)–(3) and 2252A(a)(1), (2), (3), (4) and (6). This section also increases the statutory maximum terms of imprisonment for these offenses from 15 years to 20 years. As a result, this proposed amendment provides two options for increasing the base offense level in § 2G2.2 to reflect the new five year mandatory minimum term of imprisonment. Option 1 increases the base offense level for all offenses covered by this guideline from level 17 to level [22][24][25][26]. Option 2 provides alternative base offense levels of level [20][22][24] if the conduct was limited to the receipt or solicitation of material involving the sexual exploitation of a minor and level [22][24][25][26] for all other offenses.

Section 503 of the PROTECT Act creates two new offenses in 18 U.S.C. 2252A. The new offense at 18 U.S.C. 2252A(a)(3)(B) prohibits advertising, promoting, presenting, distributing, or soliciting any material or purported material that the defendant believes, or intends to cause another to believe, contains actual or obscene child pornography. No actual materials need to exist in order to be convicted under this provision, thus even fraudulent offers to buy or sell such materials are covered under this provision. The new offense at 18 U.S.C. 2252A(a)(6) prohibits using any type of real or apparent child pornography to induce a child to commit a crime. Section 513(c) of the PROTECT Act directs the Commission to review and, as appropriate, amend the guidelines to ensure that penalties are adequate to deter and punish conduct that involves a violation of these new offenses. In addition, the Commission is directed to ''consider the relative culpability of promoting, presenting, describing, or distributing material'' in violation of 18 U.S.C. § 2252A(a)(3)(B) as compared to soliciting such material.

In response to this directive, several options are proposed. First, the amendment refers both of these new offenses to the trafficking guideline, § 2G2.2. Currently, § 2G2.2(b)(2) provides, for offenses involving distribution of child pornography, a two-to seven-level enhancement, depending on the type of distribution. Section 2G2.2(b)(2)(C) provides a five-level enhancement for offenses involving distribution to a minor, and § 2G2.2(b)(2)(D) provides a seven-level enhancement for ''distribution to a minor that was intended to persuade, induce, entice, coerce, or facilitate the travel of, the minor to engage in prohibited sexual conduct.'' In response to the new offense at 18 U.S.C. 2252(A)(a)(b), the proposed amendment adds a six-level enhancement at § 2G2.2(b)(2) if the offense involved distribution to a minor that was intended to persuade, induce, entice, or coerce a minor to engage in any illegal activity.

This proposal addresses in two ways the directive to compare the relative culpability of a defendant who promotes, presents, describes, or distributes child pornographic material to the culpability of a defendant who merely solicits such material. First, the amendment provides an alternative base offense level ''if (A) the defendant's conduct was limited to the receipt or solicitation of material involving the sexual exploitation of a minor; and (B) the defendant did not intend to traffic in, or distribute, such material.'' Second, the proposal amends § 2G2.2(b)(2) and the commentary of that guideline to make clear that the enhancement only applies to defendants whose conduct involves some form of distribution. In addition, this proposal adds commentary to the definition of ''distribution'' that makes clear that distribution does not include merely soliciting child pornography. Therefore, defendants who merely solicit child pornography will not be subject to the distribution enhancement at § 2G2.2(b)(2) unless their conduct involves some other act related to the transfer of material involving the sexual exploitation of a minor. Third, the amendment contains an option in the distribution enhancement at § 2G2.2(b)(2) to change the enhancement from ''if the offense involved'' to ''if the defendant's conduct involved'', which would limit the defendant's exposure under the enhancement to that of the defendant's own conduct.

Section 504 of the PROTECT Act creates a new offense at 18 U.S.C. 1466A that prohibits producing, distributing, receiving, possessing, or possessing with intent to distribute visual depictions (including drawings, cartoons, sculptures or paintings) that depict (1) a minor engaging in sexually explicit conduct and is obscene; or (2) an image that is, or appears to be, a minor engaging in sexually explicit conduct and lacks serious literary, artistic, political, or scientific value. Trafficking in such materials is covered under subsection (a) and carries a mandatory minimum term of imprisonment of five years and a maximum term of imprisonment of 20 years. Simple possession of such materials is covered under 18 U.S.C. 1466A(b) and punishable by a term of imprisonment of not more than ten years. Although 18 U.S.C. 1466A covers offenses of trafficking in, possession with intent to traffic in, and simple possession of, obscene material, section 504 of the PROTECT Act directs the Commission to punish these offenses consistent with child pornography trafficking offenses sentenced under § 2G2.2. By strictly complying with the language of this directive, however, the Commission would create an anomaly with regard to simple possession cases. For example, a defendant convicted of

possessing an obscene cartoon drawing depicting minors engaged in sexually explicit conduct under 18 U.S.C. § 1466A(b) would receive a sentence equivalent to a five year mandatory minimum term of imprisonment under § 2G2.2, while a defendant convicted under 18 U.S.C. 2252(a)(4) of possessing a picture of actual minors engaged in sexually explicit conduct would receive a sentence of only two years' imprisonment under § 2G2.4.

According to the legislative history, the intent of the directive in section 504 was to ensure that offenses under 18 U.S.C. 1466A are ''subject to the penalties applicable to child pornography, not the lower penalties that apply to obscenity.'' See H.R. Conf. Rep. No. 66, 108th Cong. 1st Sess. (2003). Obscenity offenses are sentenced under § 2G3.1, which has a base offense level of level 10. Simple possession offenses under 18 U.S.C. 1466A(b) more appropriately may be covered under the simple possession guideline, § 2G2.4. Therefore, the proposed amendment refers offenses under 18 U.S.C. 1466A(a) involving trafficking and possession with intent to traffic to § 2G2.2, as directed by Congress, but refers offenses under 18 U.S.C. 1466A(b) involving simple possession to § 2G2.4.

This proposed amendment also makes a number of changes to Appendix A (Statutory Index) and the statutory provisions in § 2G2.2. Offenses under 18 U.S.C. 2252 and 2252A currently are referenced to both §§ 2G2.2 and 2G2.4 because these statutes contain prohibitions on both trafficking in and simple possession of child pornography. This proposal amends Appendix A and the statutory provisions in § 2G2.2 to refer trafficking offenses in 18 U.S.C. 2252(a)(1)–(3) and 2252A(a)(1), (2), (3), (4), and (6) to § 2G2.2 only, thereby ensuring that the trafficking offenses receive the appropriate base offense level which corresponds to the five year mandatory minimum term of imprisonment. This amendment makes a similar change with respect to offenses under 18 U.S.C. 2251(d)(1)(A) (formerly (c)(1)(A), redesignated by the PROTECT Act). This section prohibits making, printing, or publishing any notice or advertisement seeking to receive, exchange, buy, produce, display, distribute, or reproduce, any visual depiction if the production of the visual depiction involves the use of a minor engaging in sexually explicit conduct and the visual depiction is of such conduct. Currently, these offenses are referenced to § 2G2.2 instead of § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production) because they are more like trafficking offenses than production offenses. However, the PROTECT Act increases the mandatory minimum term of imprisonment for these offenses from 10 to 15 years. Therefore, these offenses are proposed to be referenced to the production guideline, § 2G2.1. Subpart D of the proposed amendment increases the base offense level in § 2G2.1 to level [30][32][34][35][36] to reflect the increased mandatory minimum term of imprisonment.

In response to comments from CEOS, calls to the Helpline, and issues identified through case law regarding inconsistencies in the application of the use of a computer enhancement at § 2G2.2(b)(5), the amendment proposes to broaden the enhancement in two ways. First, the amendment proposes to expand the enhancement to include ''interactive computer devices'' (*e.g.*, Internet access devices), as defined in 47 U.S.C. 230(f)(2). Currently, § 2G2.2(b)(5) provides an enhancement if only a computer was used for ''the transmission, receipt or distribution'' of the pornographic material, in contrast to similar enhancements in other pornography or sexual abuse guidelines that provide an enhancement for the use of a ''computer or Internet-access device''. (See *United States* v. *Albright,* 67 Fed. Appx. 751 (3d Cir. 2003)(unpub.) (use of a WebTV device used to access the Internet is not a computer for purposes of the enhancement)). Use of the term ''interactive computer device'' may be preferable to ''Internet access device'' in the applicable guidelines because it is statutorily defined. Conforming changes are proposed for §§ 2G1.1 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct), proposed 2G1.3 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Use of Interstate Facilities to Transport Information about a Minor), 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production), 2G2.4 (Possession of Materials Depicting a Minor Engaged in Sexually Explicit Conduct), 2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts), 2A3.3 (Criminal Sexual Abuse of a Ward or Attempt to Commit Such Acts), and 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact). Second, the amendment proposes to broaden the enhancement to apply to offenses in which the computer (or an interactive computer service) was used for the possession of pornographic material. Currently, the enhancement provides a two-level increase if only a computer was used for ''the transmission, receipt, or distribution'' of the pornographic material.

Finally, in response to CEOS comments, calls to the Helpline, and issues identified through training, this proposal makes the following minor changes to the commentary to § 2G2.2:

(1) Provides a definition of ''computer''.

(2) Makes clear that the definition of ''minor'' includes (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represents to a participant (i) had not attained the age of 18 years, and (ii) could be provided to a participant for the purposes of engaging in sexually explicit conduct; and (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

(3) Provides a definition of ''image'' for purposes of applying the enhancement at § 2G2.2(b)(6).

(4) Makes clear that ''distribution'' includes posting material involving the sexual exploitation of a minor on a website for public viewing but does not include soliciting such material.

B. Simple Possession Offenses Under § 2G2.4

The PROTECT Act raised the statutory maximum term of imprisonment for simple possession offenses from five to ten years. As a result, this proposed amendment includes an option for increasing the base offense level from level 15 to level [18][20]. An increase in the base offense level also may be justified to maintain proportionality with the child pornography trafficking guideline because of a proposed increase in the base offense level at § 2G2.2 for trafficking and receipt cases (see subpart A of this amendment).

In response to comments from CEOS, the proposed amendment addresses a recent Seventh Circuit decision in *United States* v. *Sromalski,* 318 F.3d 748 (7th Cir. 2003), regarding the cross reference at § 2G2.4(c)(2). Currently, the

cross reference requires application of § 2G2.2 if the offense ''involved trafficking in material involving the sexual exploitation of a minor (including receiving, transporting, shipping, advertising, or possessing material involving the sexual exploitation of a minor with intent to traffic)''. In *Sromalski,* the appellate court found that in cases involving possession of child pornography where receipt can be shown, the cross reference at § 2G2.4(c)(2) applies only if the receipt involved the intent to traffic. Thus, under the Seventh Circuit's interpretation of the guidelines, convictions for receipt of child pornography (which do not require proof of an intent to traffic) are sentenced under § 2G2.2, but convictions for possession of child pornography, even where receipt can be shown, are sentenced under § 2G2.4 unless there is proof of receipt with an intent to traffic. The proposed amendment provides an option that clarifies that the cross reference should be applied without regard to whether or not there was offense conduct that involved receipt with an intent to traffic.

In addition, the proposed amendment makes the following clarifying and conforming changes to § 2G2.4 in response to changes made to § 2G2.2:

(1) Expands use of a computer enhancement at § 2G2.4(b)(3) to include ''interactive computer services''.

(2) Provides a definition of ''computer''.

(3) Provides a definition of ''image'' for purposes of applying the enhancement at § 2G2.4(b)(5).

(4) Makes clear that, for purposes of the cross reference at § 2G2.4(c)(1), the definition of ''minor'' includes (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; and (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

C. Consolidation of §§ 2G2.2 and 2G2.4

This part of the proposed amendment consolidates §§ 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic), and 2G2.4 (Possession of Materials Depicting a Minor Engaged in Sexually Explicit Conduct, into one guideline, § 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic; Possession of Materials Depicting a Minor Engaged in Sexually Explicit Conduct). Consolidation addresses concerns raised over several years by probation officers, judges, and practitioners regarding difficulties in determining the appropriate guideline (§ 2G2.2 or § 2G2.4) for cases involving convictions of 18 U.S.C. 2252 or § 2252A. Furthermore, as a result of amendments directed by the PROTECT Act, these guidelines have a number of similar specific offense characteristics.

This proposed consolidation provides two options for the base offense level. Option One provides alternative base offense levels of (1) level [15][18][20] if (A) the conduct was limited to the possession, receipt, or solicitation of material involving the sexual exploitation of a minor; and (B) the defendant did not intend to traffic in, or distribute, such material; (2) level [22][24][26] for all other offenses. Option Two provides three alternative base offense levels of (1) level [15][18][20] if the defendant's conduct was limited to the possession of material involving the sexual exploitation of a minor without an intent to traffic in, or distribute, such material; (2) level [20][22][24] if (A) the defendant's conduct was limited to the receipt or solicitation of material involving the sexual exploitation of a minor; and (3) level [22][24][25][26] for all other offenses sentenced at this guideline. The proposed consolidation would subject § 2G2.4 cases to enhancements if the offense involved distribution or if the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor. Currently, these enhancements do not exist in § 2G2.4

D. Production Offenses Under § 2G2.1

Section 103 of the PROTECT Act increases the mandatory minimum term of imprisonment from 10 to 15 years for offenses related to production of child pornography under 18 U.S.C. 2251. This section also increases the statutory maximum term of imprisonment for these offenses from 20 to 30 years. As a result, this proposed amendment increases the base offense level in § 2G2.1 from level 27 to level [30][32][34][35][36] to reflect the new 15 year mandatory minimum term of imprisonment. Furthermore, the proposed amendment adds a number of enhancements that may be associated with the production of child pornography. The addition of these enhancements also helps to maintain the proportionality between these offenses and offenses covered under § 2G2.2. The proposed enhancements increase the offense level if the offense involved any of the following: (1) Material that portrays sadistic or masochistic conduct; (2) the commission of a sexual act or sexual contact; (3) conduct described in 18 U.S.C. 2241(a) or (b); and (4) distribution.

The proposed amendment also adds to the commentary of § 2G2.1 definitions of ''sexual act'', ''sexual contact'', ''sexually explicit conduct'', ''computer'', ''interactive computer service'', ''minor'', and ''distribution''.

II. Travel and Transportation Cases

This proposed amendment creates a new guideline, § 2G1.3 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Use of Interstate Facilities to Transport Information about a Minor), to specifically address offenses under Chapter 117 of title 18, United States Code (Transportation for Illegal Sexual Activity and Related Crimes). Currently, Chapter 117 offenses, primarily 18 U.S.C. 2422 (coercion and enticement) and 2423 (transportation of minors), are referenced by Appendix A to either § 2G1.1 or § 2A3.2. Offenses under 18 U.S.C. 2422 and 2423(a) (transportation with intent to engage in criminal sexual activity) are referenced to § 2G1.1 (Promoting A Commercial Sex Act or Prohibited Sexual Conduct) but are cross referenced from § 2G1.1 to § 2A3.2 (Statutory Rape) to account for underlying behavior. Application of this cross reference has led to confusion among courts and practitioners. Offenses under 18 U.S.C. 2423(b) (travel with intent to engage in sexual act with a juvenile) are referenced to § 2A3.1, § 2A3.2, or § 2A3.3, but most are sentenced at § 2A3.2. Until recently, the majority of cases sentenced under § 2A3.2 were statutory rape cases that occurred on Federal property (*e.g.* military bases) or Native American lands. In fiscal years 2001 and 2002, the majority of cases sentenced under the statutory rape guideline were coercion, travel, and transportation offenses.

Creating a new guideline for these cases is intended to address more appropriately the issues specific to these offenses. In addition, the removal of these cases from § 2A3.2 will permit the Commission more appropriately to tailor the guideline to statutory rape cases.

Currently, § 2A3.2 provides alternative base offense levels of (1) level 24 for a Chapter 117 violation with a sexual act, (2) level 21 for a Chapter 117 violation with no sexual act (*e.g.*, a sting case), or (3) level 18 for statutory rape with no travel. The PROTECT Act created a five year mandatory minimum term of imprisonment for 18 U.S.C. 2422 and 2423(a) and increased the statutory maximum term of imprisonment for these offenses from 15 to 30 years. However, the PROTECT Act did not increase the penalties for offenses under 18 U.S.C. 2243 (sexual abuse of a minor), which prohibits statutory rape.

The proposed guideline provides a base offense level of level [22][24][25][26] to account for the new mandatory minimum terms of imprisonment as required by the PROTECT Act. The guideline proposes a number of enhancements, including enhancements for offenses involving victims under the age of 12 years, commission of a sexual act, use of force, use of a computer, misrepresentation of identity, and custody issues. The proposed amendment also provides two options for a specific offense characteristic to address the conduct from 18 U.S.C. 2423(d), a new offense created by the PROTECT Act. Offenses under 18 U.S.C. 2423(d) prohibit a person, for the purpose of commercial advantage or private financial gain, from arranging, inducing, procuring, or facilitating the travel of a person knowing that such a person is traveling in interstate commerce or foreign commerce for the purpose of engaging in an illicit sexual act. The maximum term of imprisonment for an offense under 18 U.S.C. 2423(d) is 30 years.

The proposed amendment also makes conforming changes to § 2G1.1 (Promoting A Commercial Sex Act or Prohibited Sexual Conduct).

In addition, an issue for comment regarding which guideline is the most appropriate for violations of 18 U.S.C. 2425, use of interstate facilities to transport information about a minor, follows the proposed amendments.

III. Misleading Domain Names

Section 521 of the PROTECT Act creates a new offense at 18 U.S.C. 2252B (misleading domain names on the Internet). Section 2252B of title 18, United States Code, prohibits the knowing use of a misleading domain name on the Internet with the intent to deceive a person into viewing material constituting obscenity, and offenses under this statute are punishable by a maximum term of imprisonment of two years, or if the misleading domain name was intended to deceive a minor into viewing material that is harmful to minors, a maximum term of imprisonment of four years. The proposed amendment refers the new offense to § 2G3.1 (Importing, Mailing, or Transporting Obscene Matter; Transferring Obscene Matter to a Minor), modifies the title of the guideline to include ''Misleading Domain Names'', and provides a two-level enhancement if ''the offense involved the use of a misleading domain name on the Internet with the intent to deceive a [minor][person] into viewing material on the Internet that is harmful to minors.'' In addition, the proposed amendment also provides enhancements for the following: (1) Distribution to a minor that was intended to persuade, induce, entice, or coerce a minor to engage in any illegal activity; (2) use of a computer or interactive computer service; and (3) material that was advertised or described to include minors engaged in sexually explicit conduct. Finally, the proposed amendment adds § 2G3.1 to the list of guidelines at subsection (d) of § 3D1.2 (Groups of Closely Related Counts). Grouping multiple counts of these offenses pursuant to § 3D1.2(d) is appropriate because typically these offenses, as well as other pornography distribution offenses, are continuous and ongoing in nature. The proposal makes other minor technical changes to the Commentary to make this guideline consistent with other Chapter Two, Part G guidelines.

IV. Conditions of Supervised Release

In response to a circuit conflict, this amendment proposes amending §§ 5B1.3 (Conditions of Probation) and 5D1.3 (Conditions of Supervised Release) to add a condition ''limiting [or prohibiting] the use of a computer or an interactive computer service'' in cases in which the [defendant used][the offense involved the use of] such items. The circuit courts have disagreed over imposition of restrictive computer use and Internet-access conditions. Some circuit courts have refused to allow complete restrictions on computer use and Internet access (see *United States* v. *Sofsky,* 287 F.3d 122 (2nd Cir. 2002) (invalidating restrictions on computer use and Internet use); *United States* v. *Freeman,* 316 F.3d 386 (3d Cir. 2003) (same)), but some circuit courts have upheld restrictions on computer use and Internet access with probation officer permission (see *United States* v. *Fields,* 324 F.3d 1025 (8th Cir. 2003) (upholding condition prohibiting defendant from having Internet service in his home and allowing possessing of a computer only if granted permission by his probation officer); *United States* v. *Walser,* 275 F.3d 981 (10th Cir. 2001) (prohibiting Internet use but allowing Internet use with probation officer's permission); *United States* v. *Zinn,* 321 F.3d 1084 (11th Cir. 2003) (same)). Other courts have permitted a complete ban on a convicted sex offender's Internet use while on supervised release. (See *United States* v. *Paul,* 274 F.3d 155 (5th Cir. 2001) (upholding complete ban of Internet use)).

In addition, this proposed amendment amends § 5D1.2 (Term of Supervised Release) to make the guideline consistent with changes provided in the PROTECT Act to the applicable terms of supervised release under 18 U.S.C. 3583 for sex offenders.

V. Chapter Two, Part A, Subpart 3 (Criminal Sexual Abuse) Amendments

Section 401(i)(2) of the PROTECT Act directs the Commission to ''amend the Sentencing Guidelines to ensure that the Guidelines adequately reflect the seriousness of the offenses'' under sections 2243(b) (sexual abuse of a ward), 2244(a)(4) (sexual contact), and 2244(b) (sexual contact with a person without that person's permission) of title 18, United States Code. This amendment proposes several amendments to the guidelines in Chapter Two, Part A (Criminal Sexual Abuse) to address the directive and to account for proportionality issues created by the increases in the Chapter Two, Part G guidelines. In addition, the amendment makes changes to the Commentary to make the definitions in these guidelines consistent with the definitions in the pornography guidelines.

An issue for comment regarding proportionality issues and implementation of the directive follows the proposed amendments.

Proposed Amendment:

I. Child Pornography Offenses

A. Trafficking Offenses Under § 2G2.2

Proposed Amendment: Section 2G2.2 is amended in the heading by inserting ''Soliciting,'' after ''Shipping,''.

[Option 1:

Section 2G2.2(a) is amended by striking ''17'' and inserting ''[22][24][25][26]''.]

[Option 2:

Section 2G2.2 is amended by striking subsection (a) in its entirety and inserting the following:

''(a) Base Offense Level:

(1) [20][22][24], if (A) the defendant's conduct was limited to the receipt or solicitation of material involving the sexual exploitation of a minor; and (B) the defendant did not intend to traffic in, or distribute, such material; or

(2) [22][24][25][26], otherwise.''.]

[Section 2G2.2(b)(2) is amended by striking ''If the offense involved'' and inserting ''If the defendant's conduct involved''];

by redesignating subdivisions (D) and (E) as subdivisions (E) and (F), respectively; and by inserting after subdivision (C) the following new subdivision (D):

''(D) Distribution to a minor that was intended to persuade, induce, entice, or coerce the minor to engage in any illegal activity, increase by 6 levels.'';

in subdivision (F), as redesignated by this amendment, by striking ''(D)'' and inserting ''(E)''.

Section 2G2.2(b)(5) is amended by inserting ''or an interactive computer service'' before ''was used''; and by inserting [''possession,''] before ''transmission,''.

The Commentary to § 2G2.2 captioned ''Statutory Provisions'' is amended by striking ''2251(c)(1)(A), 2252(a)(1)–(3), 2260'' and inserting ''[1466A(a),] 2252(a)(1)–(3), 2252A(a)(1)(4), (6), 2260(b)''.

The Commentary to § 2G2.2 captioned ''Application Notes'' is amended in Note 1 by striking:

''For purposes of this guideline—

'Distribution' means any act, including production, transportation, and possession with intent to distribute, related to the transfer of material involving the sexual exploitation of a minor.''

and inserting:

''Definitions.—For purposes of this guideline:

'Computer'—has the meaning given that term in 18 U.S.C. 1030(e)(1).

'Image' means any visual depiction described in 18 U.S.C. 2256(5) and (8).

'Interactive computer service' has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)).

'Distribution' means any act, including production, transportation, and possession with intent to distribute, related to the transfer of material involving the sexual exploitation of a minor. Accordingly, distribution includes posting material involving the sexual exploitation of a minor on a website for public viewing, but does not include the mere solicitation of such material by a defendant.'';

by striking '''Minor' means an individual who had not attained the age of 18 years.'' and inserting the following:

'''Minor' means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; and (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.'';

and in the paragraph that begins '' 'Pattern of activity'' by striking ''victims'' and inserting ''minors''.

The Commentary to § 2G2.2 captioned ''Application Notes'' is amended by redesignating Notes 2 and 3 as Notes 3 and 4, respectively; and by inserting after Note 1 the following new Note 2:

''2. Application of Subsection (b)(4).—Prior convictions taken into account under subsection (b)(4) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).''.

The Commentary to § 2G2.2 captioned ''Application Notes'' is amended in the first paragraph of Note 3, as redesignated by this amendment, by inserting ''Upward Departure Provision.—'' before ''If the defendant''; and by striking ''Prior convictions'' and all that follows through ''(Criminal History).''.

The Commentary to § 2G2.2 captioned ''Application Notes'' is amended in Note 4, as redesignated by this amendment, by inserting ''Cross Reference at Subsection (c)(1).—'' before ''The cross reference''.

B. Simple Possession Offenses Under § 2G2.4

Section 2G2.4(a) is amended by striking ''15'' and inserting ''[18][20]''.

Section 2G2.4(b) is amended [by striking subdivision (2) in its entirety;] by striking subdivision (3) in its entirety; by redesignating subdivisions (4) and (5) as subdivisions (3) and (4), respectively; and by inserting after subdivision (1) the following new subdivision (2):

''(2) If the [defendant's possession of the material resulted from the defendant's][offense involved the] use of a computer or an interactive computer service, increase by 2 levels.''.

Section 2G2.4(c)(2) is amended by striking ''(including receiving, transporting, shipping, advertising, or possessing material involving the sexual exploitation of a minor with intent to traffic)'' and inserting ''including (A) receiving material involving the sexual exploitation of a minor [with intent to traffic]; (B) transporting, shipping, or advertising material involving the sexual exploitation of a minor; or (C) possessing with intent to traffic material involving the sexual exploitation of a minor''.

The Commentary to § 2G2.4 captioned ''Statutory Provision'' is amended by striking ''Provision: 18 U.S.C. 2252(a)(4)'' and inserting ''Provisions: 18 U.S.C. 1466A(b), 2252(a)(4), 2252A(a)(5)''.

The Commentary to § 2G2.4 captioned ''Application Notes'' is amended in Note 1 by striking:

''For purposes of this guideline—''

and inserting:

''Definitions.—For purposes of this guideline:

'Computer' has the meaning given that term in 18 U.S.C. 1030(e)(1).

'Image' means any visual depiction described in 18 U.S.C. 2256(5) and (8).

'Interactive computer service' has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)).''.

[The Commentary to § 2G2.4 captioned ''Application Notes'' is amended by striking Note 2 in its entirety.]

The Commentary to § 2G2.4 captioned ''Application Notes'' is amended by adding at the end the following:

''2. Cross Reference at Subsection (c)(1).—For purposes of subsection (c)(1), ''minor'' includes (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; and (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

3. Upward Departure Provision.—If the offense involved substantially more than 600 images, an upward departure may be warranted, regardless of whether subsection (b)(5) applies.''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 1466 the following new lines:

''18 U.S.C. 1466A(a) 2G2.2
18 U.S.C. 1466A(b) 2G2.4'';

by striking the following:

18 U.S.C. 2252 2G2.2, 2G2.4
18 U.S.C. 2252A 2G2.2, 2G2.4'',

and inserting the following:

''18 U.S.C. 2252 (a)(1)–(3) 2G2.2
18 U.S.C. 2252(a)(4) 2G2.4
18 U.S.C. 2252A(a)(1)–(4), (6) 2G2.2
18 U.S.C. 2252A(a)(5) 2G2.4'';

and by striking the following:

''18 U.S.C. 2260 2G2.1, 2G2.2'',

and inserting the following:

''18 U.S.C. 2260(a) 2G2.1

18 U.S.C. 2260(b) 2G2.2''.

C. Consolidation of §§ 2G2.2 and 2G2.4

Chapter Two, Part G, Subpart 2, is amended by striking §§ 2G2.2 and 2G2.4 in their entirety and inserting the following new guideline and replacement commentary:

''§ 2G2.2. Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, Soliciting, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor With Intent To Traffic; Possessing Material Depicting a Minor Engaged in Sexually Explicit Conduct

(a) Base Offense Level

[Option 1: (1) [15][18][20], if (A) the defendant's conduct was limited to the possession, receipt, or solicitation of material involving the sexual exploitation of a minor; and (B) the defendant did not intend to traffic in, or distribute, such material; or

(2) [22][24][25][26], otherwise.]

[Option 2:(a) (1) [15][18][20], if the defendant's conduct was limited to the possession of material involving the sexual exploitation of a minor without an intent to traffic in, or distribute, such material;

(2) [20][22][24], if (A) the defendant's conduct was limited to the receipt or solicitation of material involving the sexual exploitation of a minor; and (B) the defendant did not intend to traffic in, or distribute, such material; or

(3) [22][24][25][26], otherwise.]

(b) Specific Offense Characteristics

(1) If the material involved a prepubescent minor or a minor under the age of 12 years, increase by 2 levels.

(2) (Apply the Greatest) If the [defendant's conduct] [offense] involved:

(A) Distribution for pecuniary gain, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to the retail value of the material, but by not less than 5 levels.

(B) Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain, increase by 5 levels.

(C) Distribution to a minor, increase by 5 levels.

(D) Distribution to a minor that was intended to persuade, induce, entice, or coerce the minor to engage in any illegal activity, increase by 6 levels.

(E) Distribution to a minor that was intended to persuade, induce, entice, coerce, or facilitate the travel of, the minor to engage in prohibited sexual conduct, increase by 7 levels.

(F) Distribution other than distribution described in subdivisions (A) through (E), increase by 2 levels.

(3) If the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, increase by 4 levels.

(4) If the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor, increase by 5 levels.

(5) If a computer or an interactive computer service was used for the possession, transmission, receipt, or distribution of the material or a notice or advertisement of the material, increase by 2 levels.

(6) If the offense involved—

(A) at least 10 images, but fewer than 150, increase by 2 levels;

(B) at least 150 images, but fewer than 300, increase by 3 levels;

(C) at least 300 images, but fewer than 600, increase by 4 levels; and

(D) 600 or more images, increase by 5 levels.

(c) Cross Reference

(1) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. 1466A, 2252, 2252A, 2260(b).

Application Notes:

1. Definitions.—For purposes of this guideline:

'Computer' has the meaning given that term in 18 U.S.C. 1030(e)(1).

'Image' means any visual depiction described in 18 U.S.C. 2256(5) and (8).

'Interactive computer service' has the meaning given that term in 230(e)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)).

'Distribution' means any act, including production, transportation, and possession with intent to distribute, related to the transfer of material involving the sexual exploitation of a minor. Accordingly, distribution includes posting material involving the sexual exploitation of a minor on a website for public viewing but does not include the mere solicitation of such material by a defendant.

'Distribution for pecuniary gain'' means distribution for profit.

'Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain' means any transaction, including bartering or other in-kind transaction, that is conducted for a thing of value, but not for profit. 'Thing of value' means anything of valuable consideration. For example, in a case involving the bartering of child pornographic material, the 'thing of value' is the child pornographic material received in exchange for other child pornographic material bartered in consideration for the material received.

'Distribution to a minor' means the knowing distribution to an individual who is a minor at the time of the offense, knowing or believing the individual is a minor at that time.

'Minor' means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; and (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

'Pattern of activity involving the sexual abuse or exploitation of a minor' means any combination of two or more separate instances of the sexual abuse or sexual exploitation of a minor by the defendant, whether or not the abuse or exploitation (A) occurred during the course of the offense; (B) involved the same minor; or (C) resulted in a conviction for such conduct.

'Prohibited sexual conduct' has the meaning given that term in Application Note 1 of the Commentary to § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

'Sexual abuse or exploitation' means conduct constituting criminal sexual abuse of a minor, sexual exploitation of a minor, abusive sexual contact of a minor, any similar offense under state law, or an attempt or conspiracy to commit any of the above offenses. ''Sexual abuse or exploitation' does not include trafficking in material relating to the sexual abuse or exploitation of a minor.

'Sexually explicit conduct' has the meaning given that term in 18 U.S.C. 2256.

2. Application of Subsection (b)(4).—Prior convictions taken into account under subsection (b)(4) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

3. Upward Departure Provision.—If the defendant engaged in the sexual abuse or exploitation of a minor at any time (whether or not such abuse or exploitation occurred during the course of the offense or resulted in a conviction for such conduct) and subsection (b)(4) does not apply, an upward departure may be warranted. In addition, an upward departure may be warranted if the defendant received an enhancement under subsection (b)(4) but that enhancement does not adequately reflect the seriousness of the sexual abuse or exploitation involved.

4. Cross Reference at Subsection (c)(1).—The cross reference in subsection (c)(1) is to be construed broadly to include all instances where the offense involved employing, using, persuading, inducing, enticing, coercing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

Background: Section 401(i)(1)(C) of Public Law 108–21 directly amended subsection (b) to add subdivision (6), effective April 30, 2003.'.

D. Production Offenses Under § 2G2.1

Section 2G2.1(a) is amended by striking ''27'' and inserting ''[30][32][34][35][36]''.

Section 2G2.1(b) is amended in subdivision (1) by striking ''victim'' and inserting ''minor''; by redesignating subdivisions (2) and (3) as subdivisions (6) and (7), respectively; and by inserting after subdivision (1) the following:

'(2) If the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, increase by [2][4] levels.

(3) If the offense involved the commission of a sexual act or sexual contact, increase by 2 levels.

(4) If the offense involved conduct described in 18 U.S.C. § 2241(a) or (b), increase by [2][4] levels.

(5) If the offense involved distribution, increase by [2][5][7] levels.''.

Section 2G2.1(b) is amended in subdivision (7), as redesignated by this amendment, by striking ''Internet-access device'' and inserting ''interactive computer service''.

Section 2G2.1 is amended by redesignating subsection (c) as subsection (d); and by inserting after subsection (b) the following:

''(c) Cross reference

(1) If the victim was killed in circumstances that would constitute murder under 18 U.S.C. 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply § 2A1.1 (First Degree Murder), if the resulting offense level is greater than that determined above.''.

The Commentary to § 2G2.1 captioned ''Statutory Provisions'' is amended by striking ''(a), (b), (c)(1)(B)''.

The Commentary to § 2G2.1 captioned ''Application Notes'' is amended by striking Notes 1, 2, 3, and 4 in their entirety and inserting the following:

''1. Definitions.—For purposes of this guideline:

'Conduct described in 18 U.S.C. 2241(a) or (b)' is: Using force against the minor; threatening or placing the minor in fear that any person will be subject to death, serious bodily injury, or kidnapping; rendering the minor unconscious; or administering by force or threat of force, or without the knowledge or permission of the minor, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the minor to appraise or control conduct. This provision would apply, for example, if any dangerous weapon was used or brandished, or in a case in which the ability of the minor to appraise or control conduct was substantially impaired by drugs or alcohol.

'Computer' has the meaning given that term in 18 U.S.C. 1030(e)(1).

'Distribution' means any act, including production, transportation, and possession with intent to distribute, related to the transfer of material involving the sexual exploitation of a minor. Accordingly, distribution includes posting material involving the sexual exploitation of a minor on a website for public viewing but does not include the mere solicitation of such material by a defendant.

'Interactive computer service' has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)).

'Minor' means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; and (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

'Sexual act' has the meaning given that term in 18 U.S.C. 2246(2).

'Sexual contact' has the meaning given that term in 18 U.S.C. 2246(3).

'Sexually explicit conduct' has the meaning given that term in 18 U.S.C. 2256.

2. Custody, Care, or Supervisory Control Enhancement.—

(A) In General.—Subsection (b)(6) is intended to have broad application and includes offenses involving a minor entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this adjustment, the court should look to the actual relationship that existed between the defendant and the child and not simply to the legal status of the defendant-child relationship.

(B) Inapplicability of Enhancement.—If the adjustment in subsection (b)(6) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).'';

by redesignating Note 5 as Note 3; by inserting after Note 3, as redesignated by this amendment, the following:

''4. Special Instruction at Subsection (d)(1).—For the purposes of Chapter Three, Part D (Multiple Counts), each minor exploited is to be treated as a separate minor. Consequently, multiple counts involving the exploitation of different minors are not to be grouped together under § 3D1.2 (Groups of Closely Related Counts). Subsection (d)(1) directs that if the relevant conduct of an offense of conviction includes more than one minor being exploited, whether specifically cited in the count of conviction or not, each such minor shall be treated as if contained in a separate count of conviction.'';

and by redesignating Note 6 as Note 5.

The Commentary to § 2G2.1 captioned ''Application Notes'' is amended in Note 3, as redesignated by this amendment, by inserting before ''The enhancement in subsection'' the following:

''Application of Subsection (b)(7)(A).—

(A) Misrepresentation of Participant's Identity.—

by striking ''(3)(A)'' each place it appears and inserting ''(7)(A)''; by striking ''Subsection (b)(3)(B)(i) provides'' and inserting:

''(B) Use of a Computer or an Interactive Computer Service.—Subsection (b)(7)(b)(i) provides'';

by striking ''(b)(3)(B)(i) is intended'' and inserting ''(b)(7)(B)(i) is intended''; and

by striking ''Internet-access device'' each place it appears and inserting ''interactive computer service''.

The Commentary to § 2G2.1 captioned ''Application Notes'' is amended in Note 5, as redesignated by this amendment, by striking ''victims'' and inserting ''minors''.

II. Travel and Transportation Cases

Chapter Two, Part G, Subpart 1 is amended by adding at the end the following new guideline and accompanying commentary:

''§ 2G1.3 Promoting a Commercial Sex Act or Prohibited Sexual Conduct With a Minor; Transportation of Minors To Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel To Engage in Commercial Sex Act or Prohibited Sexual Conduct With a Minor; Use of Interstate Facilities To Transport Information About a Minor

(a) Base Offense Level: [22][24][25][26]

(b) Specific Offense Characteristics

(1) If the offense involved a sexual act or sexual contact, increase by 2 levels.

(2) If the offense involved conduct described in 18 U.S.C. § 2241(a) or (b), increase by 4 levels.

[Option 1A: (3) If the offense involved a minor who had not attained the age of 12 years, increase by [4][6][8] levels.]

(4) If (A) the minor sustained permanent or life-threatening bodily injury, increase by 4 levels; (B) the minor sustained serious bodily injury, increase by 2 levels; or (C) the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels.

(5) If the defendant was a parent, relative, or legal guardian of the minor; or the minor was otherwise in the custody, care, or supervisory control of the defendant, increase by 2 levels.

(6) If the offense involved the knowing misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of the minor to engage in a commercial sex act or prohibited sexual conduct, increase by 2 levels.

(7) If [the defendant used][the offense involved the use of] a computer or an interactive computer service to (A) persuade, induce, entice, coerce, or facilitate the travel of, the minor to engage in a commercial sex act or prohibited sexual conduct; or (B) entice, encourage, offer, or solicit a person to engage in a commercial sex act or prohibited sexual conduct with the minor, increase by 2 levels.

[Option 2A: (8) If, for the purposes of commercial advantage or private financial gain, the defendant knowingly arranged, induced, procured, or facilitated the travel of a participant knowing that the participant was traveling for the purpose of engaging in illicit sexual conduct, increase by [2] levels.]

[Option 2B: (8) If the offense involved conduct described in 18 U.S.C. 2423(d), increase by [2] levels.]

(c) Cross Reference

(1) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production), if the resulting offense level is greater than that determined above.

(2) If a minor was killed under circumstances that would constitute murder under 18 U.S.C. 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply § 2A1.1 (First Degree Murder), if the resulting offense level is greater than that determined above.

[Option 1B: (3) If the offense involved criminal sexual abuse, attempted criminal sexual abuse, or assault with intent to commit criminal sexual abuse, apply § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse), if the resulting offense level is greater than that determined above. If the offense involved criminal sexual abuse of a minor who had not attained the age of 12 years, § 2A3.1 shall apply, regardless of the 'consent' of the minor.]

(d) Special Instruction

(1) If the offense involved more than one victim, Chapter Three, Part D (Multiple Counts) shall be applied as if the travel or transportation to engage in a commercial sex act or prohibited sexual conduct in respect to each victim had been contained in a separate count of conviction.

Commentary

Statutory Provisions: 8 U.S.C. 1328 (only if the offense involved a victim who had not attained the age of 18 years at the time of the commission of the offense); 18 U.S.C. 1591 (only if the offense involved a victim who had not attained the age of 18 years at the time of the commission of the offense), 2421 (only if the offense involved a victim who had not attained the age of 18 years at the time of the commission of the offense), 2422 (only if the offense involved a victim who had not attained the age of 18 years at the time of the commission of the offense), 2422(b), 2423, [2425].

Application Notes:

1. Definitions.—For purposes of this guideline:

'Commercial sex act' has the meaning given that term in 18 U.S.C. 1591(c)(1).

'Computer' has the meaning given that term in 18 U.S.C. 1030(e)(1).

'Interactive computer service' has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)).

'Illicit sexual conduct' has the meaning given that term in 18 U.S.C. 2423(f).

'Minor' means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; and (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

'Participant' has the meaning given that term in Application Note 1 of § 3B1.1 (Aggravating Role).

'Permanent or life-threatening bodily injury,' 'serious bodily injury,' and 'abducted' have the meaning given those terms in the Commentary to § 1B1.1 (Application Instructions). However, for purposes of this guideline, 'serious bodily injury' means conduct other than criminal sexual abuse, which already is taken into account in the base offense level under subsection (a).

'Prohibited sexual conduct' has the meaning given that term in Application Note 1 of § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

'Sexual act' has the meaning given that term in 18 U.S.C. 2246(2).

'Sexual contact' has the meaning given that term in 18 U.S.C. 2246(3).

2. Application of Subsection (b)(2).—'Conduct described in 18 U.S.C. 2241(a) or (b)' is: using force against the minor; threatening or placing the minor in fear that any person will be subject to death, serious bodily injury, or kidnapping; rendering the minor unconscious; or administering by force or threat of force, or without the knowledge or permission of the minor, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the minor to appraise or control conduct. This provision would apply, for example, if any dangerous weapon was used or brandished, or in a case in which the ability of the minor to

appraise or control conduct was substantially impaired by drugs or alcohol.

3. Custody, Care, or Supervisory Control Enhancement.—

(A) In General.—Subsection (b)(5) is intended to have broad application and includes offenses involving a victim less than 18 years of age entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this enhancement, the court should look to the actual relationship that existed between the defendant and the victim and not simply to the legal status of the defendant-victim relationship.

(B) Inapplicability of Enhancement.—If the enhancement in subsection (b)(5) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

4. Misrepresentation of Participant's Identity.—The enhancement in subsection (b)(6) applies in cases involving the misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in a commercial sex act or prohibited sexual conduct. Subsection (b)(6) is intended to apply only to misrepresentations made directly to a minor or to a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(6) would not apply to a misrepresentation made by a participant to an airline representative in the course of making travel arrangements for the minor.

The misrepresentation to which the enhancement in subsection (b)(6) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the intent to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in a commercial sex act or prohibited sexual conduct. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

5. Use of a Computer or an Interactive Computer Service.—Subsection (b)(7) is intended to apply only to the use of a computer or an interactive computer service to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(7) would not apply to the use of a computer or an interactive computer service to obtain airline tickets for the minor from an airline's Internet site.

6. Cross Reference.—The cross reference in subsection (c)(1) is to be construed broadly to include all instances in which the offense involved employing, using, persuading, inducing, enticing, coercing, transporting, permitting, or offering or seeking by notice or advertisement, a person less than 18 years of age to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct. For purposes of subsection (c)(1), 'sexually explicit conduct' has the meaning given that term in 18 U.S.C. § 2256.

7. Special Instruction for Cases Involving Multiple Victims at Subsection (d)(1).—

(A) In General.—For the purposes of Chapter Three, Part D (Multiple Counts), each person transported, persuaded, induced, enticed, or coerced to engage in, or travel to engage in, a commercial sex act or prohibited sexual conduct is to be treated as a separate victim. Consequently, multiple counts involving more than one victim are not to be grouped together under § 3D1.2 (Groups of Closely-Related Counts). In addition, subsection (d)(1) directs that if the relevant conduct of an offense of conviction includes travel or transportation to engage in a commercial sex act or prohibited sexual conduct in respect to more than one victim, whether specifically cited in the count of conviction, each such victim shall be treated as if contained in a separate count of conviction.

(B) Definition of Victim.—For purposes of subsection (d)(1), a victim includes (A) an individual who had not attained the age of 18 years; or (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; and (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

8. Aggravating Role.—For the purposes of § 3B1.1 (Aggravating Role), a minor, as defined in this guideline, is considered a participant only if that minor assisted in the promoting of a commercial sex act or prohibited sexual conduct in respect to another minor.

9. Upward Departure Provision.—An upward departure may be warranted if the offense involved more than ten victims.

Background: This guideline covers offenses under Chapter 117 of title 18, United States Code, involving transportation of a minor for illegal sexual activity through a variety of means.''.

Chapter Two, Part G, Subpart 1 is amended by striking § 2G1.1 and accompanying commentary in its entirety and inserting the following new guideline:

§ 2G1.1. Promoting a Commercial Sex Act or Prohibited Sexual Conduct With an Individual Other Than a Minor

(a) Base Offense Level: 14

(b) Specific Offense Characteristic

(1) If the offense involved the use of physical force, fraud, or coercion, increase by 4 levels.

(c) Cross Reference

(1) If the offense involved criminal sexual abuse, attempted criminal sexual abuse, or assault with intent to commit criminal sexual abuse, apply § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

(d) Special Instruction

(1) If the offense involved more than one victim, Chapter Three, Part D (Multiple Counts) shall be applied as if the promoting of a commercial sex act or prohibited sexual conduct in respect to each victim had been contained in a separate count of conviction.

Commentary

Statutory Provisions: 8 U.S.C. 1328 (only if the offense involved a victim who had attained the age of 18 years at the time of the commission of the offense); 18 U.S.C. 1591 (only if the offense involved a victim who had attained the age of 18 years at the time of the commission of the offense), 2421 (only if the offense involved a victim who had attained the age of 18 years at the time of the commission of the offense), 2422(a) (only if the offense involved a victim who had attained the age of 18 years at the time of the commission of the offense).

Application Notes:

1. Definitions.—For purposes of this guideline:

'Commercial sex act' has the meaning given that term in 18 U.S.C. 1591(c)(1).

'Prohibited sexual conduct' has the meaning given that term in Application Note 1 of § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

'Promoting a commercial sex act' means persuading, inducing, enticing, or coercing a person to engage in a commercial sex act, or to travel to engage in, a commercial sex act.

'Victim' means a person transported, persuaded, induced, enticed, or coerced

to engage in, or travel for the purpose of engaging in, a commercial sex act or prohibited sexual conduct, whether or not the person consented to the commercial sex act or prohibited sexual conduct. Accordingly, 'victim' may include an undercover law enforcement officer.

2. Application of Subsection (b)(1).—Subsection (b)(1) provides an enhancement for physical force, fraud, or coercion, that occurs as part of a commercial sex act offense and anticipates no bodily injury. If bodily injury results, an upward departure may be warranted. See Chapter Five, Part K (Departures). For purposes of subsection (b)(1)(B), 'coercion' includes any form of conduct that negates the voluntariness of the behavior of the victim. This enhancement would apply, for example, in a case in which the ability of the victim to appraise or control conduct was substantially impaired by drugs or alcohol. This characteristic generally will not apply if the drug or alcohol was voluntarily taken.

3. Application of Aggravating Role Enhancement.—For the purposes of § 3B1.1 (Aggravating Role), a victim, as defined in this guideline, is considered a participant only if that victim assisted in the promoting of a commercial sex act or prohibited sexual conduct in respect to another victim.

4. Special Instruction at Subsection (d)(1).—For the purposes of Chapter Three, Part D (Multiple Counts), each person transported, persuaded, induced, enticed, or coerced to engage in, or travel to engage in, a commercial sex act or prohibited sexual conduct is to be treated as a separate victim. Consequently, multiple counts involving more than one victim are not to be grouped together under § 3D1.2 (Groups of Closely Related Counts). In addition, subsection (d)(1) directs that if the relevant conduct of an offense of conviction includes the promoting of a commercial sex act or prohibited sexual conduct in respect to more than one victim, whether specifically cited in the count of conviction, each such victim shall be treated as if contained in a separate count of conviction.

5. Cross Reference at Subsection (c)(1).—Subsection (c)(1) provides a cross reference to § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse) if the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse, as defined in 18 U.S.C. 2241 or 2242. For example, the cross reference to § 2A3.1 shall apply if the offense involved criminal sexual abuse and the victim was threatened or placed in fear other than fear of death, serious bodily injury, or kidnapping (see 18 U.S.C. 2242(1)).

6. Upward Departure Provision.—An upward departure may be warranted if the offense involved more than ten victims.

Background: This guideline covers offenses that involve promoting prostitution or prohibited sexual conduct with an adult through a variety of means. Offenses that involve promoting prostitution or prohibited sexual conduct are sentenced under this guideline, unless criminal sexual abuse occurs as part of the offense, in which case the cross reference would apply.

This guideline also covers offenses under section 1591 of title 18, United States Code, that involve recruiting or transporting a person, other than a minor, in interstate commerce knowing that force, fraud, or coercion will be used to cause the person to engage in a commercial sex act.

Offenses of promoting prostitution or prohibited sexual conduct in which a minor victim is involved are to be sentenced under § 2G1.3 (Promoting Prostitution or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Use of Interstate Facilities to Transport Information about a Minor).''.

II. Misleading Domain Names

Section 2G3.1 is amended in the heading by adding at the end ''; Misleading Domain Names'' after ''Minor''.

Section 2G3.1(b)(1) is amended by redesignating subdivisions (D) and (E) as subdivisions (E) and (F), respectively; and by inserting after subdivision (C) the following new subdivision:

''(D) Distribution to a minor that was intended to persuade, induce, entice, or coerce the minor to engage in any illegal activity, increase by 6 levels.'';

and in subdivision (F), as redesignated by this amendment, by striking ''(D)'' and inserting ''(E)''.

Section 2G3.1(b) is amended by redesignating subdivision (2) as subdivision (4); by inserting after subdivision (1) the following new subdivisions (2) and (3):

''(2) If the offense involved the use of a misleading domain name on the Internet with the intent to deceive a [minor][person] into viewing material on the Internet that is harmful to minors, increase by 2 levels.

(3) If [the defendant used][the offense involved the use of] a computer or an interactive computer service, increase by 2 levels.''[;

and by adding at the end the following new subdivision:

''(5) If the offense involved material that was advertised or described to include a minor engaged in sexually explicit conduct, increase by [2][4] levels.''].

The Commentary to § 2G3.1 captioned ''Statutory Provisions'' is amended by inserting ''; 2252B'' after ''1470''.

The Commentary to § 2G3.1 captioned ''Application Note'' is amended by striking ''Note'' and inserting ''Notes''; in Note 1 by striking ''For purposes of this guideline.—'' and inserting ''Definitions.—For purposes of this guideline:''; in the paragraph that begins '' 'Distribution' means'' by inserting ''Accordingly, distribution includes posting material on a website for public viewing.'' after ''obscene matter.''; by striking the paragraph that begins '' 'Minor' means'' and inserting the following:

'' 'Material that is harmful to minors' has the meaning given that term in 18 U.S.C. 2252B(d)(3).

'Minor' means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; and (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.'';

by adding at the end the following new paragraph:

'' 'Sexually explicit conduct' has the meaning given that term in 18 U.S.C. 2256(2)(A).'';

and by adding after Note 1 the following new note:

''2. Use of a Computer or an Interactive Computer Service.—Subsection (b)(5) is intended to apply only to the use of a computer or an interactive computer service to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(5) would not apply to the use of a computer or an interactive computer service to obtain airline tickets for the minor from an airline's Internet site.''.

Appendix A (Statutory Index) is amended by inserting before the line reference to ''18 U.S.C. 2257'' the following new line:

''18 U.S.C. 2252B 2G3.1''.

Section 3D1.2(d) is amended by inserting '', 2G3.1'' after ''2G2.4''.

III. Conditions of Supervised Release

Section 5B1.3(d)(7) is amended by striking ''If the instant'' and all that follows through ''sex offenders.'' and inserting the following:

''If the instant offense of conviction is a sex offense, as defined in § 5D1.2 (Term of Supervised Release)—

(A) A condition requiring the defendant to participate in a program approved by the United States Probation Office for the treatment and monitoring of sex offenders.

[(B) A condition limiting [or prohibiting] the use of a computer or an interactive computer service in cases in which the [defendant used][offense involved] the use of such items.]''.

Section 5D1.2 is amended in subsection (a) by striking ''Subject to'' and inserting ''Except as provided in''; in subsection (b) by inserting ''(1)'' before ''shall''; and by inserting before the period the following:

''; or (2) in the case of a sex offense conviction, shall be not less than the minimum term of years specified for that class of offense under subdivisions (a)(1) through (a)(3), and may be up to life''.

Section 5D1.3(d)(7) is amended by striking ''If the instant'' and all that follows through ''sex offenders.'' and inserting the following:

''If the instant offense of conviction is a sex offense, as defined in § 5D1.2 (Terms of Supervised Release)—

(A) A condition requiring the defendant to participate in a program approved by the United States Probation Office for the treatment and monitoring of sex offenders.

[(B) A condition limiting [or prohibiting] the use of a computer or an interactive computer service in cases in which the [defendant used][the offense involved] the use of such items.]''.

IV. Chapter Two, Part A, Subpart 3 (Criminal Sexual Abuse) Amendments

[Option 1:

Section 2A3.1 is amended by striking subsection (a) in its entirety and inserting the following:

''(a) Base Offense Level:

(1) [30][32][34][36], if the offense involved a minor; or

(2) [27–30], otherwise.]''.

[Option 2:

Section 2A3.1 is amended by striking subsection (a) in its entirety and inserting the following:

''(a) Base Offense Level: [27–30]'';

Section 2A3.1(b) is amended by striking subdivision (1) in its entirety and inserting the following:

''(1) If the offense involved conduct described in 18 U.S.C. 2241(a) or (b), increase by 4 levels.''.]

Section 2A3.1(b) is amended in subdivision (6) by striking ''Internet-access device'' and inserting ''interactive computer service''.

[Option 2:

Section 2A3.1(b) is amended by adding at the end the following:

''(7) If (A) a minor was involved; and (B) the offense was committed in connection with the possession, distribution, or production of child pornography, increase by [3][5][7] levels.''.]

[Option 3:

Section 2A3.1(c) is amended by striking ''Cross Reference'' and inserting ''Cross References''; and by adding at the end the following:

''(2) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production), if the resulting offense level is greater than that determined above.''].

Section 2A3.1(c)(1) is amended by inserting '', if the resulting offense level is greater than that determined above'' after ''Murder)''.

The Commentary to § 2A3.1 captioned ''Application Notes'' is amended by striking Note 1 in its entirety and inserting the following:

''1. Definitions.—For purposes of this guideline:

'Child pornography' has the meaning given that term in 18 U.S.C. 2256(8).

'Computer' has the meaning given that term in 18 U.S.C. 1030(e)(1).

'Distribution' means any act, including production, transportation, and possession with intent to distribute, related to the transfer of material involving the sexual exploitation of a minor. Accordingly, distribution includes posting material involving the sexual exploitation of a minor on a website for public viewing, but does not include the mere solicitation of such material by a defendant.

'Interactive computer service' has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)).

'Minor' means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; and (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

'Participant' has the meaning given that term in Application Note 1 of the Commentary to § 3B1.1 (Aggravating Role).

'Permanent or life-threatening bodily injury,' 'serious bodily injury,' and 'abducted' are defined in the Commentary to § 1B1.1 (Application Instructions). However, for purposes of this guideline, 'serious bodily injury' means conduct other than criminal sexual abuse, which already is taken into account in the base offense level under subsection (a).

'Prohibited sexual conduct' (A) means any sexual activity for which a person can be charged with a criminal offense; (B) includes the production of child pornography; and (C) does not include trafficking in, or possession of, child pornography. 'Child pornography' has the meaning given that term in 18 U.S.C. 2256(8).

'Conduct described in 18 U.S.C. 2241(a) or (b)' is: using force against the victim; threatening or placing the victim in fear that any person will be subject to death, serious bodily injury, or kidnapping; rendering the victim unconscious; or administering by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the victim to appraise or control conduct. This provision would apply, for example, if any dangerous weapon was used or brandished.

'Victim' includes an undercover law enforcement officer.''.

The Commentary to § 2A3.1 captioned ''Application Notes'' is amended by striking Notes 2 and 3 in their entirety and inserting the following:

''2. Custody, Care, or Supervisory Control Enhancement.—Subsection (b)(5) is intended to have broad application and includes offenses involving a victim less than 18 years of age entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this enhancement, the court should look to the actual relationship that existed between the defendant and the victim and not simply to the legal status of the defendant-victim relationship.

3. Inapplicability of Enhancement.—If the enhancement in subsection (b)(5) applies, do not apply § 3B1.3 (Abuse of

Position of Trust or Use of Special Skill).''.

The Commentary to § 2A3.1 captioned ''Application Notes'' is amended in Note 4 by inserting before ''The enhancement'' the following:

''Application of Subsection (b)(6).—

(A) Misrepresentation of Participant's Identity.—'';

and by striking the last paragraph in its entirety and inserting the following new paragraph:

''(B) Use of a Computer or Interactive Computer Service.—Subsection (b)(6)(B) provides an enhancement if a computer or an interactive computer service was used to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Subsection (b)(6)(B) is intended to apply only to the use of a computer or an interactive computer service to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement would not apply to the use of a computer or an interactive computer service to obtain airline tickets for the minor from an airline's Internet site.''.

The Commentary to § 2A3.1 captioned ''Application Notes'' is amended in Note 5 by inserting ''Upward Departure Provision.—'' before ''If a victim''.

[Option 2: The Commentary to § 2A3.1 captioned ''Application Notes'' is amended by adding at the end the following:

''6. Application of Subsection (b)(7).—Subsection (b)(7) is intended to apply in cases in which the offense involved the production of child pornography. For purposes of this subsection, 'child pornography' has the meaning given that term in 18 U.S.C. 2256.''.]

Section 2A3.2 is amended by striking subsection (a) in its entirety and inserting the following:

''(a) Base Offense Level: 18''.

Section 2A3.2(b) is amended by striking subsections (2) through (4) in their entirety and inserting the following:

''(2) If (A) subsection (b)(1) does not apply; and (B)(i) the offense involved the knowing misrepresentation of a participant's identity to persuade, induce, entice, or coerce the victim to engage in prohibited sexual conduct or a participant otherwise unduly influenced the victim to engage in prohibited sexual conduct; or (ii) a participant otherwise unduly influenced the victim to engage in prohibited sexual conduct, increase by 2 levels.

(3) If a computer or an interactive computer service was used to persuade, induce, entice, or coerce the victim to engage in prohibited sexual conduct, increase by 2 levels.''.

The Commentary to § 2A3.2 captioned ''Application Notes'' is amended in Note 1 by inserting after ''Definitions.—For purposes of this guideline:'' the following:

'' 'Computer' has the meaning given that term in 18 U.S.C. 1030(e)(1).

'Interactive computer service' has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)).'';

by striking '' 'Sexual act' '' and all that follows through ''16 years.'' and inserting the following:

'' 'Victim' means (A) an individual who had not attained the age of 16 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 16 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; and (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 16 years.''.

The Commentary to § 2A3.2 captioned ''Application Notes'' is amended in Note 2 by striking ''and'' after ''Care,'' in the heading and inserting ''or''; by inserting ''(A) In General.—'' before ''Subsection (b)(1)''; and by adding at the end the following new paragraph:

''(B) Inapplicability of Enhancement.—If the enhancement in subsection (b)(1) applies, do not apply subsection (b)(2) or § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).''.

The Commentary to § 2A3.2 captioned ''Application Notes'' is amended by striking Note 3 in its entirety; and by redesignating Notes 4 through 7 as Notes 3 through 6, respectively.

The Commentary to § 2A3.2 captioned ''Application Notes'' is amended in Note 3, as redesignated by this amendment, by striking ''(b)(2)(A)'' each place its appears and inserting ''(b)(2)(B); by striking ''(A) persuade'' and inserting ''persuade''; by striking ''; or (B) facilitate transportation or travel, by the victim or a participant, to engage in prohibited sexual conduct'' each place it appears; by striking ''(b)(2)(B)'' and inserting ''(b)(2)(B)(ii)''; and by striking ''If the victim'' and all that follows through ''(c)(1) will apply.''.

The Commentary to § 2A3.2 captioned ''Application Notes'' is amended by striking Note 4, as redesignated by this amendment, in its entirety and inserting the following:

''4. Use of Computer or an Interactive Computer Service.—Subsection (b)(3) provides an enhancement if a computer or an interactive computer service was used to persuade, induce, entice, or coerce the victim to engage in prohibited sexual conduct. Subsection (b)(3) is intended to apply only to the use of a computer or an interactive computer service to communicate directly with the victim or with a person who exercises custody, care, or supervisory control of the victim. Accordingly, the enhancement would not apply to the use of a computer or an interactive computer service to obtain airline tickets for the victim from an airline's Internet site.''.

The Commentary to § 2A3.2 captioned ''Background'' is amended by striking ''or chapter 117 of title 18, United States Code''.

Section 2A3.3(a) is amended by striking ''9'' and inserting ''[10][12]''.

Section 2A3.3(b) is amended by striking ''(A)'' each place it appears; and by striking ''; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct'' each place it appears; and in subdivision (2) by striking ''Internet-access device'' and inserting ''interactive computer service''.

The Commentary to § 2A3.3 captioned ''Application Notes'' is amended in Note 1 by striking ''For purposes of this guideline—'' and inserting the following: ''Definitions.—For purposes of this guideline:

'Computer' has the meaning given that term in 18 U.S.C. 1030(e)(1).

'Interactive computer service' has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)).''.

The Commentary to § 2A3.3 captioned ''Application Notes'' is amended by striking Notes 2 and 3 in their entirety and inserting the following:

''2. Misrepresentation of a Participant's Identity.—The enhancement in subsection (b)(1) applies in cases involving the misrepresentation of a participant's identity to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct. Subsection (b)(1) is intended to apply only to misrepresentations made directly to a minor or to a person who exercises custody, care, or supervisory control of the minor.

The misrepresentation to which the enhancement in subsection (b)(1) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the

intent to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

3. Use of a Computer or an Interactive Computer Service.—Subsection (b)(2) provides an enhancement if a computer or an interactive computer service was used to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct. Subsection (b)(2) is intended to apply only to the use of a computer or an interactive computer service to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor.''.

Section 2A3.4(a) is amended by striking subdivisions (1) and (2) in their entirety and inserting the following:

''(1) 16, if the offense involved conduct described in 18 U.S.C. 2241(a) or (b);

(2) 12, if the offense involved conduct described in 18 U.S.C. 2242;''.

Section 2A3.4(b) is amended by striking subdivisions (4) through (6) in their entirety and inserting the following:

''(4) If the offense involved the knowing misrepresentation of a participant's identity to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct, increase by 2 levels.

(5) If a computer or an interactive computer service was used to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct, increase by 2 levels.''.

The Commentary to § 2A3.4 captioned ''Application Notes'' is amended in Note 1 by striking ''For purposes of this guideline''—and all the follows through ''18 years.'' and inserting the following:

''Definitions.—For purposes of this guideline:

'Minor' means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; and (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.''.

The Commentary to § 2A3.4 captioned ''Application Notes'' is amended in Note 2 by striking '' 'The means set forth'' and inserting ''Application of Subsection (a)(1).—'Conduct described''; by striking ''are'' and inserting ''is''; and by striking ''by'' each place it appears.

The Commentary to § 2A3.4 captioned ''Application Notes'' is amended in Note 3 by striking '' 'The means set forth'' and inserting ''Application of Subsection (a)(2).—'Conduct described''; by striking ''are'' and inserting ''is''; and by striking ''by'' each place it appears.

The Commentary to § 2A3.4 captioned ''Application Notes'' is amended in Note 4 by inserting before ''Subsection (b)(3)'' the following:

''Custody, Care, or Supervisory Control.—

(A) In General.—'';

and by adding at the end the following new paragraph:

''(B) Inapplicability of Enhancement.—If the adjustment in subsection (b)(3) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).''.

The Commentary to § 2A3.4 captioned ''Application Notes'' is amended by striking Note 5 in its entirety; and by redesignating Notes 6 and 7 as Notes 5 and 6, respectively.

The Commentary to § 2A3.4 captioned ''Application Notes'' is amended in Note 5, as redesignated by this amendment, by inserting ''Misrepresentation of a Participant's Identity.—'' before ''The enhancement in subsection (b)(4) applies''; by striking ''(A)'' each place it appears; and by striking ''; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct'' each place it appears.

The Commentary to § 2A3.4 captioned ''Application Notes'' is amended in Note 6, as redesignated by this amendment, by striking the text and inserting the following:

''Use of a Computer or an Interactive Computer Service.—Subsection (b)(5) provides an enhancement if a computer or an interactive computer service was used to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct. Subsection (b)(5) is intended to apply only to the use of a computer or an interactive computer service to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor.''.

The Commentary to § 2A3.4 captioned ''Background'' is amended by striking ''For cases involving'' and all that follows through ''level 6.''.

Issues for Comment:

1. The PROTECT Act contains substantial increases in penalties for defendants sentenced under a number of the sexual abuse and pornography guidelines, including new mandatory minimum penalties. Do the increased penalties provided in the PROTECT Act necessitate amending the base offense levels and specific offense characteristics in these guidelines to target more accurately the specific conduct of the defendant, thereby reserving the most severe penalties for the most serious offenders? Guidelines 2G2.1, 2G2.2, and 2G2.4 contain numerous specific offense characteristics addressing a wide variety of conduct involved in the production of, trafficking in, or possession of, child pornography. Currently, the application of these specific offense characteristics is based on either (A) the actions of only the defendant (*e.g.,* § 2G2.4(b)(3) provides a two-level increase ''if the defendant's possession of the material resulted from the defendant's use of a computer''), or (B) all the conduct within the scope of relevant conduct (*e.g.*, § 2G2.1(b)(3) provides, in part, a two-level increase if the ''offense involved'' the use of a computer or Internet-access device). Specifically, the Commission requests comment on whether the specific offense characteristics in these guidelines should be based on all conduct within the scope of relevant conduct, or based on only the actions of the defendant; *i.e.*, should the enhancement apply if the defendant used or directed the use of a computer, rather than if others within the defendant's jointly undertaken criminal activity used a computer?

2. Sections 401(i)(1)(B) and (C) of the PROTECT Act added new subsections in §§ 2G2.2 and 2G2.4 which provide a two- to five-level enhancement based on the number of child pornography ''images'' involved in the offense. See §§ 2G2.2(b)(6) and 2G2.4(b)(5). The PROTECT Act did not, however, define what constitutes an ''image'' for purposes of applying these new ''image tables.'' The Commission seeks comment regarding whether a definition of ''image,'' or instructions for counting images, for purposes of applying these subsections, is necessary. If the Commission provides instructions, how should the Commission decide how to count images? For example, is a photograph of two minors engaged in sexually explicit conduct to be considered one image, or two images? How should videos, films, or AVI files be considered? For example, if a video includes numerous scenes, each of which portrays the same minor engaging in sexually explicit conduct with a different adult, is each scene with a different adult to be considered a separate image?

3. The Commission seeks comment regarding whether it should address a circuit conflict involving the application

of the specific offense characteristics in §§ 2G2.2 and 2G2.4 (effective April 30, 2003) for material portraying sadistic or masochistic conduct or other depictions of violence. Currently, the circuit courts are split on this issue, with three circuits finding that application of the enhancement requires proof that the defendant intended to possess or traffic material portraying sadistic or masochistic conduct, or other depictions of violence (see *United States* v. *Kimbrough,* 69 F.3d 723 (5th Cir. 1995); *United States* v. *Burnette,* 234 F.3d 1270 (6th Cir. 2000)(unpub.); *United States* v. *Tucker,* 136 F.3d 763 (11th Cir. 1998)), while the Seventh Circuit requires a strict liability standard (see *United States* v. *Richardson,* 238 F.3d 837 (7th Cir. 2001)). The Commission requests comment on whether it should resolve this circuit conflict. If so, how should the Commission handle this issue?

Further, the Commission seeks comment regarding whether it should provide a definition of sadistic or masochistic conduct or other depictions of violence for purposes of application of the specific offense characteristic. Circuit courts have struggled with whether material portraying sexual penetration of prepubescent minors is per se sadistic or violent; whether the enhancement requires that depictions contain material portraying bondage or restraints; whether sadistic or masochistic conduct requires purposefully degrading or humiliating conduct that causes mental, psychological, or emotional injury; or whether the conduct depicted must be painful, coercive, degrading, and abusive. See *United States* v. *Delmarle,* 99 F.3d 80 (2d Cir. 1996); *United States* v. *Kimbrough,* 69 F.3d 723 (5th Cir. 1995); *United States* v. *Turchen,* 187 F.3d 735 (7th Cir. 1999); *United States* v. *Parker,* 267 F.3d 839 (8th Cir. 2001); *United States* v. *Hall,* 312 F.3d 1250 (11th Cir. 2002). If the Commission provides a definition of these terms, what should that definition be?

Finally, some argue that material that depicts bestiality or excretory functions is just as harmful as material that depicts sadistic or masochistic conduct or other depictions of violence and should be treated accordingly. The Commission seeks comment regarding whether the enhancement for material portraying sadistic or masochistic conduct or other depictions of violence in §§ 2G2.2, 2G2.4, and 2G3.1 (as well as the proposed enhancement in § 2G2.1) should be expanded to include material portraying bestiality or excretory functions.

4. The Commission seeks comment regarding which guideline is the most appropriate for violations of 18 U.S.C. 2425, relating to use of interstate facilities to transport information about a minor. Section 2425 prohibits the use of interstate facilities to transmit the name, address, telephone number, social security number, or e-mail address of a minor, with the intent to encourage, entice, offer, or solicit any person to engage in prohibited sexual conduct with that minor. Violations of this section carry a statutory maximum term of imprisonment of five years and are currently covered by § 2G1.1 (proposed § 2G1.3). Other offenses covered by § 2G1.1 carry a five year mandatory minimum term of imprisonment and substantially higher statutory maximums. Some practitioners claim that section 2425 offenses might be more like harassment or threatening communications offenses covered by § 2A6.1 (Threatening or Harassing Communications). Is § 2G1.1 (proposed § 2G1.3) or § 2A6.1 the more appropriate guideline for section 2425 offenses? If § 2G1.1 (proposed § 2G1.3) is not the most appropriate guideline, what guideline should be used to sentence violators of section 2425? Is there conduct specific to section 2425 offenses that necessitates the addition of any specific offense characteristic (*e.g.,* age, intent to encourage, entice, offer, or solicit any person to engage in prohibited sexual conduct with a minor)?

5. The Commission seeks comment regarding whether the offense levels in Chapter Two, Part A, Subpart 3 (Criminal Sexual Abuse), specifically, §§ 2A3.1, 2A3.2, and 2A3.3, 2A3.4, should be increased to maintain proportionality with increases proposed for the Chapter Two, Part G guidelines, in response to statutory penalty changes provided by the PROTECT Act. If so increased, what should be the appropriate offense levels? Are there additional specific offense characteristics, cross references, or departure considerations that should be added to these guidelines? Additionally, how should the Commission address the interaction between the pattern of activity enhancement at § 4B1.5 (Repeat and Dangerous Sex Offender Against Minor) and offenses sentenced under § 2A3.2. The PROTECT Act changed the definition of pattern of activity so that, instead of requiring the abuse of two minors on two separate occasions, a pattern of activity now requires two separate occasions of prohibited sexual conduct with only one minor. Therefore, under the new definition, repeat acts against one minor will lead to a five-level increase under § 4B1.5. Preliminary data suggest this enhancement will apply to the majority of defendants sentenced at § 2A3.2. Thus, should the Commission consider this enhancement when deciding whether to increase the base offense level at § 2A3.2?

6. The Commission requests comment regarding whether the guidelines in Chapter Two, Part A, Subpart 3 (Criminal Sexual Abuse) and Chapter Two, Part G (Offenses Involving Commercial Sexual Acts, Sexual Exploitation of Minors, and Obscenity) should provide an enhancement if the offense involved incest. Some commentators have argued that offenses involving incest result in a violation of trust, making these offenses more egregious than offenses in which a defendant has care, custody, or control of the victim but is not a family member. If the Commission added this enhancement to the Chapter Two, Part A, Subpart 3 offenses, should the enhancement apply as an alternative or as an additional enhancement to the current two-level enhancement that applies ''if the victim was in the custody, care, or supervisory control of the defendant''? Furthermore, if the Commission added this enhancement, what relationships should be covered under the definition of incest?

Proposed Amendment 2: Effective Compliance Programs in Chapter Eight

Synopsis of Proposed Amendment: The proposed amendment is intended to provide greater guidance to organizations and courts regarding the criteria for an effective program to prevent and detect violations of the law (''compliance programs''). The proposed amendment adds to Chapter Eight, Part B, a new guideline, § 8B2.1 (Effective Program to Prevent and Detect Violations of Law), that identifies the purposes of an effective compliance program, sets forth seven minimum steps for such a program, and provides guidance for their implementation. This proposed amendment was developed by the Ad Hoc Advisory Group on the Organizational Sentencing Guidelines empaneled by the Commission for the purpose of reviewing the general effectiveness of the guidelines for organizations, with particular emphasis on examining the criteria for an effective compliance program. The Advisory Group's review and analysis can be found in its report of October 7, 2003, to the Commission at *www.ussc.gov*.

Under subsection (g) of § 8C2.5 (Culpability Score), the existence of an effective compliance program is a

mitigating factor that reduces an organization's culpability score and ultimately its fine range. Also, the implementation of a compliance program may be a condition of probation for organizations under § 8D1.4(c) (Recommended Conditions of Probation—Organizations).

The proposed amendment incorporates the seven minimum steps for a compliance program, currently located in the commentary to § 8A1.2 (Application Instructions—Organizations) at Application Note 3(k), into a new guideline at § 8B2.1 in order to emphasize the importance of compliance programs and provide more prominent guidance on the attributes of such programs. The proposed amendment defines the obligations and purposes of such programs, adds more detail to the seven minimum requirements, and provides definitions throughout the associated commentary.

The proposed amendment expands the scope of the objective of a compliance program by defining the term ''violation of law'' more broadly than in the current guidelines, which refer only to violations of criminal law and prevention of criminal conduct. The proposed amendment expands the objective of a compliance program more broadly to include prevention and detection of ''violations of any law, whether criminal or noncriminal (including a regulation), for which the organization is, or would be, liable.'' This language also replaces the prior reference to ''employees and agents'', relying instead on the legal standard of vicarious liability.

The proposed amendment retains the requirement that an organization exercise due diligence to prevent and detect violations of law, and adds at subsection (a) the requirement that an organization shall also ''otherwise promote an organizational culture that encourages a commitment to compliance with the law.'' This proposed addition is intended to reflect the emphasis on ethics and values incorporated into recent legislative and regulatory reforms, as well as the proposition that compliance with all laws is the expected behavior within organizations.

The proposed amendment retains the existing seven minimum steps of an effective compliance program but provides greater guidance regarding some of the requirements by adding definitions and clarifying terms at subsection (b). First, for the requirement of the ''establishment of compliance standards and procedures that are reasonably capable of reducing the prospect of criminal conduct'', Application Note 1 defines ''compliance standards and procedures'' as ''standards of conduct and internal control systems that are reasonably capable of reducing the likelihood of violations of law.''

Second, for the requirement that ''specific individuals within high-level personnel of the organization must have been assigned overall responsibility to oversee compliance'', subsection (b)(2) defines the specific roles and reporting relationships of particular categories of high-level personnel with respect to compliance programs. In particular, the proposed amendment provides that the ''organizational leadership shall be knowledgeable about the content and operation of the program to prevent and detect violations of law.'' The accompanying commentary at Application Note 1 defines ''organizational leadership'' as ''(A) high-level personnel of the organization; (B) high-level personnel of a unit of the organization; and (C) substantial authority personnel'' and retains existing definitions for the terms ''high-level personnel of the organization'' and ''substantial authority personnel''.

The proposed amendment also provides at subsection (b)(2) that the ''organization's governing authority shall be knowledgeable about the content and operation of the program to prevent and detect violations of the law and shall exercise reasonable oversight with respect to the implementation and effectiveness of the program to prevent and detect violations of law.'' Application Note 1 defines ''governing authority'' as ''(A) Board of Directors, or (B) if the organization does not have a Board of Directors, the highest-level governing body of the organization.'' Subsection (b)(2) retains the existing requirement that ''specific individual(s) within high-level personnel of the organization shall be assigned direct, overall responsibility for the program,'' and specifies that their responsibility is to ''ensure the implementation and effectiveness of the program.'' The proposed amendment also requires that the individual responsible for compliance be given adequate resources and authority to carry out such responsibility, and provides that such individual shall report directly to the governing authority.

Third, the proposed amendment at subsection (b)(3) replaces the current requirement that substantial authority personnel be screened for their ''propensity to engage in violations of law'' with a requirement that the organization ''use reasonable efforts and due diligence not to include within the substantial authority personnel any individual whom the organization knew, or should have known, has a history of engaging in violations of law or other conduct inconsistent with an effective program''. For purposes of this subsection only, the proposed amendment defines the term ''violations of law'' as ''any official determination of a violation or violations of any law, whether criminal or noncriminal (including a regulation).'' This is meant to ensure that an individual is screened on the basis of his or her culpability and not on the basis of an organization's vicarious liability. The corresponding commentary enumerates factors to be considered in this determination, among them, the recency of the individual's violations of law and other misconduct, the relatedness of the individual's violations of law and other misconduct to his or her responsibilities, and whether the individual has engaged in a pattern of such violations of law and other misconduct.

Fourth, the proposed amendment at subsection (b)(4) makes compliance training a requirement, and specifically extends the training requirement to the upper levels of an organization as well as to the organization's employees and agents, as appropriate.

Fifth, the proposed amendment at subsection (b)(5) expands the existing criterion for using auditing and monitoring systems by expressly providing that such systems are to be designed to detect violations of law. The proposed amendment adds the specific requirement that there be periodic evaluation of the effectiveness of its compliance program. The proposed amendment replaces the existing reference to ''reporting systems without fear of retribution'' with the more specific requirement for the implementation of ''mechanisms to allow for anonymous reporting.'' The proposed amendment expands the stated focus of internal reporting from ''the criminal conduct * * * of others'' to using internal systems for both ''seeking guidance and reporting potential or actual violations of law.''

Sixth, the proposed amendment at subsection (b)(6) broadens the existing criterion that the compliance standards be enforced through disciplinary measures by adding that such standards also be encouraged through ''appropriate incentives to perform in accordance with a [compliance] program.'' Finally, at subsection (b)(7) the amendment retains the existing requirement that an organization take reasonable steps to respond to and prevent further similar violations of law.

In addition to the seven criteria for a compliance program, the proposed

amendment expressly provides at subsection (c) that ongoing risk assessment is an essential component of the design, implementation, and modification of an effective program. The proposed amendment includes at Application Note 5(A) certain requirements in conjunction with the performance of risk assessments, namely, that organizations assess the nature and seriousness of potential violations of law, the likelihood that certain violations of law may occur because of the nature of the organization's business, and the prior history of the organization. Corresponding commentary specifies that organizations must prioritize the actions taken to implement an effective compliance program and modify such actions in light of the risks identified in the risk assessment.

The proposed amendment also provides additional guidance with respect to the implementation of compliance programs by small organizations by making more frequent references to small organizations throughout the commentary and providing illustrations (*e.g.*, § 8B2.1, Application Note 2(B)(ii)).

This proposed amendment also makes two changes to the factors that affect the culpability score of an organization under § 8C2.5 (Culpability Score). First, rather than precluding an organization from obtaining the compliance program credit if certain categories of high-level personnel are involved in the offense of conviction, the proposed subsection (f) establishes that ''an offense by an individual within high-level personnel of the organization results in a rebuttable presumption'' that effective prevention and detections program did not exist.

Under the existing guidelines, an organization cannot receive the three-point reduction in its culpability score under § 8C2.5(f) if any one of three categories of individuals participated in, condoned, or was willfully ignorant of the offense: (1) An individual within high-level personnel of the organization; (2) a person within high-level personnel of a unit having more than 200 employees and within which the offense was committed; or (3) an individual responsible for the administration or enforcement of a compliance program. The existing guidelines also provide for a rebuttable presumption that an organization did not have an effective compliance program if an individual within substantial authority personnel participated in an offense. The proposed amendment provides for a rebuttable presumption that the organization did not have an effective compliance program where high-level personnel of the organization participated in, condoned, or were wilfully ignorant of the offense. This modification is intended to assist smaller organizations that currently may be automatically precluded, because of their size, from arguing for a culpability score reduction for their compliance efforts under § 8C2.5(f).

Second, the proposed amendment addresses concerns about the relationship between obtaining credit under subsection (g) of § 8C2.5 and waiving the attorney-client privilege and the work product protection doctrine. Pursuant to § 8C2.5(g)(1) and (2), an organization's culpability score will be reduced if it ''fully cooperated in the investigation'' of its wrongdoing, among other factors. The Commission's Ad Hoc Advisory Group on the Organizational Sentencing Guidelines studied the relationship between waivers and § 8C2.5(g) by obtaining testimony and conducting its own research, including a survey of United States Attorney's Offices (all of which are described at Part V of the Advisory Group Report of October 17, 2003, located at *www.ussc.gov*). The commentary in the proposed amendment addresses some of these concerns by providing that waiver of the attorney-client privilege and of work product protections ''is not a prerequisite to a reduction in culpability score under subsection (g)'' but in some circumstances ''may be required in order to satisfy the requirements of cooperation.''

Proposed Amendment:

Chapter Eight is amended in the Introductory Commentary by striking ''criminal conduct'' each place it appears and inserting ''violations of law''.

Section 8A1.2(a) is amended by inserting '', Subpart 1'' after ''Part B''.

Section 8A1.2(b)(2)(D) is amended by adding at the end the following: ''To determine whether the organization had an effective program to prevent and detect violations of law for purposes of § 8C2.5(f), apply § 8B2.1 (Effective Program to Prevent and Detect Violations of Law).''.

The Commentary to § 8A1.2 captioned ''Application Notes'' is amended in Note 3(c) in the second sentence by inserting ''of the organization'' after ''high-level personnel''.

The Commentary to § 8A1.2 captioned ''Application Notes'' is amended by striking Note 3(k) in its entirety.

Chapter Eight, Part B is amended by striking the heading and inserting the following:

''PART B—REMEDYING HARM FROM CRIMINAL CONDUCT, AND PREVENTING AND DETECTING VIOLATIONS OF LAW

1. REMEDYING HARM FROM CRIMINAL CONDUCT'';

and by adding at the end the following new subpart:

''2. PREVENTING AND DETECTING VIOLATIONS OF LAW

§ 8B2.1. Effective Program to Prevent and Detect Violations of Law

(a) To have an effective program to prevent and detect violations of law, for purposes of subsection (f) of § 8C2.5 (Culpability Score) and subsection (c)(1) of § 8D1.4 (Recommended Conditions of Probation—Organizations), an organization shall—

(1) exercise due diligence to prevent and detect violations of law; and

(2) otherwise promote an organizational culture that encourages a commitment to compliance with the law.

Such program shall be reasonably designed, implemented, and enforced so that the program is generally effective in preventing and detecting violations of law. The failure to prevent or detect the instant offense does not necessarily mean that the program is not generally effective in preventing and detecting violations of law.

(b) Due diligence and the promotion of an organizational culture that encourages a commitment to compliance with the law within the meaning of subsection (a) minimally require the following steps:

(1) The organization shall establish compliance standards and procedures to prevent and detect violations of law.

(2) The organizational leadership shall be knowledgeable about the content and operation of the program to prevent and detect violations of law.

The organization's governing authority shall be knowledgeable about the content and operation of the program to prevent and detect violations of law and shall exercise reasonable oversight with respect to the implementation and effectiveness of the program to prevent and detect violations of law.

Specific individual(s) within high-level personnel of the organization shall be assigned direct, overall responsibility to ensure the implementation and effectiveness of the program to prevent and detect violations of law. Such individual(s) shall be given adequate resources and authority to carry out such responsibility and shall report directly to the governing authority or an appropriate subgroup of the governing

authority regarding the implementation and effectiveness of the program to prevent and detect violations of law.

(3) The organization shall use reasonable efforts not to include within the substantial authority personnel of the organization any individual whom the organization knew, or should have known through the exercise of due diligence, has a history of engaging in violations of law or other conduct inconsistent with an effective program to prevent and detect violations of law.

(4)(A) The organization shall take reasonable steps to communicate in a practical manner its compliance standards and procedures, and other aspects of the program to prevent and detect violations of law, to the individuals referred to in subdivision (B) by conducting effective training programs and otherwise disseminating information appropriate to such individual's respective roles and responsibilities.

(B) The individuals referred to in subdivision (A) are the members of the governing authority, the organizational leadership, the organization's employees, and, as appropriate, the organization's agents.

(5) The organization shall take reasonable steps—

(A) to ensure that the organization's program to prevent and detect violations of law is followed, including using monitoring and auditing systems that are designed to detect violations of law;

(B) to evaluate periodically the effectiveness of the organization's program to prevent and detect violations of law; and

(C) to have a system whereby the organization's employees and agents may report or seek guidance regarding potential or actual violations of law without fear of retaliation, including mechanisms that allow for anonymous reporting.

(6) The organization's program to prevent and detect violations of law shall be promoted and enforced consistently through appropriate incentives to perform in accordance with such program and disciplinary measures for engaging in violations of law and for failing to take reasonable steps to prevent or detect violations of law.

(7) After a violation of law has been detected, the organization shall take reasonable steps to respond appropriately to the violation of law and to prevent further similar violations of law, including making any necessary modifications to the organization's program to prevent and detect violations of law.

(c) In implementing subsection (b), the organization shall conduct ongoing risk assessment and take appropriate steps to design, implement, or modify each step set forth in subsection (b) to reduce the risk of violations of law identified by the risk assessment.

Commentary

Application Notes:

1. Definitions.—For purposes of this guideline:

'Compliance standards and procedures' means standards of conduct and internal control systems that are reasonably capable of reducing the likelihood of violations of law.

'Governing authority' means the (A) the Board of Directors, or (B) if the organization does not have a Board of Directors, the highest-level governing body of the organization.

'Organizational leadership' means (A) high-level personnel of the organization; (B) high-level personnel of a unit of the organization; and (C) substantial authority personnel. The terms 'high-level personnel of the organization' and 'substantial authority personnel' have the meaning given those terms in the Commentary to § 8A1.2 (Application Instructions—Organizations). The term 'high-level personnel of a unit of the organization' has the meaning given that term in the Commentary to § 8C2.5 (Culpability Score).

'Violations of law' means violations of any law, whether criminal or noncriminal (including a regulation), for which the organization is, or would be, liable, or in the case of Application Note 4(A), for which the individual would be liable.

2. Factors to Consider in Meeting Requirements of Subsections (a) and (b).—

(A) In General.—Each of the requirements set forth in subsections (a) and (b) shall be met by an organization; however, in determining what specific actions are necessary to meet those requirements, factors that shall be considered include (i) the size of the organization, (ii) applicable government regulations, and (iii) any compliance practices and procedures that are generally accepted as standard or model practices for businesses similar to the organization.

(B) The Size of the Organization.—

(i) In General.—The formality and scope of actions that an organization shall take to meet the requirements of subsections (a) and (b), including the necessary features of the organization's compliance standards and procedures, depend on the size of the organization. A larger organization generally shall devote more formal operations and greater resources in meeting such requirements than shall a smaller organization.

(ii) Small Organizations.—In meeting the requirements set forth in subsections (a) and (b), small organizations shall demonstrate the same degree of commitment to compliance with the law as larger organizations, although generally with less formality and fewer resources than would be expected of larger organizations. While each of the requirements set forth in subsections (a) and (b) shall be substantially satisfied by all organizations, small organizations may be able to establish an effective program to prevent and detect violations of law through relatively informal means. For example, in a small business, the manager or proprietor, as opposed to independent compliance personnel, might perform routine audits with a simple checklist, train employees through informal staff meetings, and perform compliance monitoring through daily ''walk-arounds'' or continuous observation while managing the business. In appropriate circumstances, such reliance on existing resources and simple systems can demonstrate a degree of commitment that, for a much larger organization, would only be demonstrated through more formally planned and implemented systems.

(C) Applicable Government Regulations.—The failure of an organization to incorporate within its program to prevent and detect violations of law any standard required by an applicable government regulation weighs against a finding that the program was an ''effective program to prevent and detect violations of law'' within the meaning of this guideline.

3. Application of Subsection (b)(2).—

(A) Governing Authority.—The responsibility of the governing authority under subsection (b)(2) is to exercise reasonable oversight of the organization's efforts to ensure compliance with the law. In large organizations, the governing authority likely will discharge this responsibility through oversight, whereas in some organizations, particularly small ones, it may be more appropriate for the governing authority to discharge this responsibility by directly managing the organization's compliance efforts.

(B) High-Level Personnel.—The organization has discretion to delineate the activities and roles of the specific individual(s) within high-level personnel of the organization who are assigned overall and direct responsibility to ensure the effectiveness and operation of the program to detect and prevent violations of law; however, the individual(s) must

be able to carry out their overall and direct responsibility consistent with subsection (b)(2), including the ability to report to the governing authority, or to an appropriate subgroup of the governing authority, the effectiveness and operation of the program to detect and prevent violations of law.

In addition to receiving reports from the foregoing individual(s), individual(s) with day-to-day operational responsibility for the program should periodically provide to the governing authority or an appropriate subgroup thereof information on the implementation and effectiveness of the program to detect and prevent violations of law.

(C) Organizational Leadership.—Although the overall and direct responsibility to ensure the effectiveness and operation of the program to detect and prevent violations of law is assigned to specific individuals within high-level personnel of the organization, it is incumbent upon all individuals within the organizational leadership to be knowledgeable about the content and operation of the program to detect and prevent violations of law pursuant to subsection (b)(2); to perform their assigned duties consistent with the exercise of due diligence; and to promote an organizational culture that encourages a commitment to compliance with the law, under subsection (a).

4. Application of Subsection (b)(3).—

(A) Violations of Law.—Notwithstanding Application Note 1, ''violations of law,'' for purposes of subsection (b)(3), means any official determination of a violation or violations of any law, whether criminal or noncriminal (including a regulation).

(B) Consistency with Other Law.—Nothing in subsection (b)(3) is intended to require conduct inconsistent with any Federal, State, or local law, including any law governing employment or hiring practices.

(C) Implementation.—In implementing subsection (b)(3), the organization shall hire and promote individuals consistent with Application Note 3, subdivision (C) so as to ensure that all individuals within the organizational leadership will perform their assigned duties with the exercise of due diligence, and the promotion of an organizational culture that encourages a commitment to compliance with the law, under subsection (a). With respect to the hiring or promotion of any specific individual within the substantial authority personnel of the organization, an organization shall consider factors such as: (i) the recency of the individual's violations of law and other misconduct (*i.e.*, other conduct inconsistent with an effective program to prevent and detect violations of law); (ii) the relatedness of the individual's violations of law and other misconduct to the specific responsibilities the individual is anticipated to be assigned as part of the substantial authority personnel of the organization; and (iii) whether the individual has engaged in a pattern of such violations of law and other misconduct.

5. Risk Assessments under Subsection (c).—Risk assessment(s) required under subsection (c) shall include the following:

(A) Assessing periodically the risk that violations of law will occur, including an assessment of the following:

(i) The nature and seriousness of such violations of law.

(ii) The likelihood that certain violations of law may occur because of the nature of the organization's business. If, because of the nature of an organization's business, there is a substantial risk that certain types of violations of law may occur, the organization shall take reasonable steps to prevent and detect those types of violations of law. For example, an organization that, due to the nature of its business, handles toxic substances shall establish compliance standards and procedures designed to ensure that those substances are always handled properly. An organization that, due to the nature of its business, employs sales personnel who have flexibility to set prices shall establish compliance standards and procedures designed to prevent and detect price-fixing. An organization that, due to the nature of its business, employs sales personnel who have flexibility to represent the material characteristics of a product shall establish compliance standards and procedures designed to prevent fraud.

(iii) The prior history of the organization. The prior history of an organization may indicate types of violations of law that it shall take actions to prevent and detect. Recurrence of similar violations of law creates doubt regarding whether the organization took reasonable steps to prevent and detect those violations of law.

(B) Periodically, prioritizing as most likely to occur and most serious, the actions taken under each step set forth in subsection (b), in order to focus on preventing and detecting the violations of law identified under subdivision (A).

(C) Modifying, as appropriate, the actions taken under any step set forth in subsection (b) to reduce the risk of violations of law identified in the risk assessment.

Background: This section sets forth the requirements for an effective program to prevent and detect violations of law. This section responds to section 805(a)(2)(5) of the Sarbanes-Oxley Act of 2002, Public Law 107–204, which directed the Commission to review and amend, as appropriate, the guidelines and related policy statements to ensure that the guidelines that apply to organizations in this Chapter 'are sufficient to deter and punish organizational criminal misconduct.'

The requirements set forth in this guideline are intended to achieve reasonable prevention and detection of violations of law, both criminal and noncriminal, for which the organization would be vicariously liable. The prior diligence of an organization in seeking to detect and prevent violations of law has a direct bearing on the appropriate penalties and probation terms for the organization if it is convicted and sentenced for a criminal offense.''.

The Commentary to § 8C2.4 captioned ''Application Notes'' is amended in Note 2 by striking ''(Larceny, Embezzlement, and Other Forms of Theft)'' and inserting (Theft, Property Destruction, and Fraud)''.

The Commentary to § 8C2.4 captioned ''Background'' is amended in the fourth sentence by striking ''criminal conduct'' each place it appears and inserting ''violations of law''.

Section 8C2.5 is amended by striking subsection (f) in its entirety and inserting the following:

''(f) Effective Program to Prevent and Detect Violations of Law

(1) If the offense occurred even though the organization had in place, at the time of the offense, an effective program to prevent and detect violations of law, as provided in § 8B2.1 (Effective Program to Prevent and Detect Violations of Law), subtract 3 points.

(2) This section does not apply if, after becoming aware of an offense, the organization unreasonably delayed reporting the offense to appropriate governmental authorities.

(3) Participation in, condoning of, or willful ignorance of, an offense by an individual within high-level personnel of the organization results in a rebuttable presumption that the organization did not have an effective program to prevent and detect violations of law.''.

The Commentary to § 8C2.5 captioned ''Application Notes'' is amended by striking Note 1 in its entirety and inserting the following:

''1. Definitions.—For purposes of this guideline, 'condoned,' 'prior criminal adjudication,' 'similar misconduct,' 'substantial authority personnel,' and 'willfully ignorant of the offense' have the meaning given those terms in the Commentary to § 8A1.2 (Application Instructions—Organizations).''.

The Commentary to § 8C2.5 captioned ''Application Notes'' is amended in Note 3 in the last sentence by striking ''entire organization'' and inserting ''organization in its entirety''.

The Commentary to § 8C2.5 captioned ''Application Notes'' is amended in Note 10 by striking ''The second proviso in subsection (f)'' and inserting ''Subsection (f)(2)''; and by striking ''this proviso'' and inserting ''subsection (f)(2)''.

The Commentary to § 8C2.5 captioned ''Application Notes'' is amended in Note 12 by adding at the end the following:

''If the defendant has satisfied the requirements for cooperation set forth in this note, waiver of the attorney-client privilege and of work product protections is not a prerequisite to a reduction in culpability score under subsection (g). However, in some circumstances, waiver of the attorney-client privilege and of work product protections may be required in order to satisfy the requirements of cooperation.''.

Section 8C2.8(a) is amended in subdivision (9) by striking ''and''; in subdivision (10) by striking the period and inserting ''; and''; and by adding at the end the following:

''(11) whether the organization failed to have, at the time of the instant offense, an effective program to prevent and detect violations of law within the meaning of § 8B2.1 (Effective Program to Prevent and Detect Violations of Law).''.

The Commentary to § 8C2.8 captioned ''Application Notes'' is amended in Note 4 in the first sentence by inserting ''within high-level personnel of'' after ''organization or''.

The Commentary to § 8C4.1 captioned ''Application Note'' is amended by striking ''Note'' and inserting ''Notes''; in Note 1 by inserting ''Intent of Provision.—'' before ''Departure'' [; and by adding at the end the following:

''2. Waiver of Certain Privileges and Protections.—If the defendant has satisfied the requirements for substantial assistance set forth in subsection (b)(2), waiver of the attorney-client privilege and of work product protections is not a prerequisite to a motion for a downward departure by the government under this section. However, the government may determine that waiver of the attorney-client privilege and of work product protections is necessary to ensure substantial assistance sufficient to warrant a motion for departure.'']

Section 8C4.10 is amended by adding at the end the following paragraph:

''Similarly, if, at the time of the instant offense, the organization was required by law to have an effective program to prevent and detect violations of law, but the organization did not have such a program, an upward departure may be warranted.''.

Section 8D1.1(a) is amended by striking subdivision (3) in its entirety and inserting the following:

''(3) if, at the time of sentencing, (A) the organization (i) has 50 or more employees, or (ii) was otherwise required by law to have an effective program to prevent and detect violations of law; and (B) the organization does not have such a program;''.

Section 8D1.4(b)(4) is amended by striking ''(1)'' and inserting ''(A)''; by striking ''(2)'' and inserting ''(B)''; and by striking ''(3)'' and inserting ''(C)''.

Section 8D1.4(c) is amended by striking subdivision (1) in its entirety and inserting the following:

''(1) The organization shall develop and submit to the court an effective program to prevent and detect violations of law, consistent with § 8B2.1 (Effective Program to Prevent and Detect Violations of Law). The organization shall include in its submission a schedule for implementation of the program.'';

and in subdivisions (2), (3), and (4) by striking ''to prevent and detect violations of law'' each place it appears and inserting ''referred to in subdivision (1)''.

The Commentary to § 8D1.4 captioned ''Application Notes'' by striking ''Notes'' and inserting ''Note''; and in the third sentence by striking '', provided'' and inserting ''as long as''; by inserting ''§ 8B2.1 (Effective Program to Prevent and Detect Violations of Law), and'' after ''with''; and by striking ''or regulatory requirement'' and inserting ''and regulatory requirements''.

Chapter Eight, Part D, Subpart One is amended by striking § 8D1.5 and accompanying commentary.

Chapter Eight is amended by adding at the end the following:

''PART F—VIOLATIONS OF PROBATION—ORGANIZATIONS

§ 8F1.1. Violations of Conditions of Probation—Organizations (Policy Statement)

Upon a finding of a violation of a condition of probation, the court may extend the term of probation, impose more restrictive conditions of probation, or revoke probation and resentence the organization.

Commentary

Application Notes:

1. Appointment of Master or Trustee.—In the event of repeated, serious violations of conditions of probation, the appointment of a master or trustee may be appropriate to ensure compliance with court orders.

2. Conditions of Probation.—Mandatory and recommended conditions of probation are specified in §§ 8D1.3 (Conditions of Probation—Organizations) and 8D1.4 (Recommended Conditions of Probation—Organizations).''.

Issues for Comment:

1. Subsection (f) of § 8C2.5 (Culpability Score) currently prohibits receipt of the three-point reduction in the culpability score for an effective program to prevent and detect violations of law if the organization unreasonably delayed reporting an offense to appropriate governmental authorities after becoming aware of the offense. The proposed amendment retains that prohibition. The Commission requests comment regarding whether the prohibition should be eliminated so that an organization could be considered for the reduction under § 8C2.5(f) regardless of whether the organization unreasonably delayed reporting the offense after its detection. Elimination of this prohibition may be appropriate in light of the fact that § 8C2.5(g) provides for a five-point decrease for cooperation with authorities, including reporting the offense to authorities within a reasonable time.

2. Subsection (f) of § 8C2.5 also currently precludes receipt of the three-point reduction for an effective program to prevent and detect violations of law if certain high-level individuals within the organization participated in, condoned, or were willfully ignorant of the offense. The proposed amendment changes this automatic preclusion to a rebuttable presumption that the organization did not have an effective program to prevent and detect violations of law under such circumstances. The Commission requests comment regarding whether the automatic preclusion should continue to apply in the context of large organizations. Moreover, should the rebuttable presumption apply in the context of small organizations, in which high-level individuals within the organization almost necessarily will have been involved in the offense?

3. The reduction in the culpability score under § 8C2.5(f) for an effective

program to prevent and detect violations of law currently is a three-point reduction. Should the extent of that reduction be increased to four points given the heightened requirements for an effective program to prevent and detect violations of law under the proposed amendment?

4. Generally, are there factors or considerations that could be incorporated into Chapter Eight (Sentencing of Organizations), particularly § 8C1.2, to encourage small and mid-size organizations to develop and maintain compliance programs?

Proposed Amendment 3: Body Armor

Synopsis of Proposed Amendment: This proposed amendment implements the new offense at 18 U.S.C. 931, which was created by section 11009 of the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273. Section 931 of title 18, United States Code, prohibits individuals with a prior state or federal felony conviction for a crime of violence from purchasing, owning, or possessing body armor. The statutory maximum term of imprisonment for 18 U.S.C. 931 is three years.

The proposed amendment provides a new guideline at § 2K2.6 (Possessing, Purchasing, or Owning Body Armor by Violent Felons) because there is no other guideline that covers conduct sufficiently analogous to a violation of 18 U.S.C. 931. Although § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) covers felons in possession of a firearm, the alternative base offense levels and specific offense characteristics of that guideline address offenses involving the more serious conduct of weapon possession or trafficking. The proposed new guideline provides a base offense level of [8][10][12].

The proposed amendment also (A) provides a specific offense characteristic for cases in which the body armor was possessed in connection with [a ''crime of violence'' or ''drug trafficking crime''][another offense]; and (B) adds an application note to § 3B1.5 (Use of Body Armor in Drug Trafficking Crimes and Crimes of Violence) that addresses the interaction between the two guidelines.

Proposed Amendment: Chapter Two, Part K, Subpart 2, is amended by adding at the end the following new guideline and accompanying commentary:

''§ 2K2.6 Possessing, Purchasing, or Owning Body Armor by Violent Felons

(a) Base Offense Level: [8][10][2].

(b) Specific Offense Characteristic

(1) If the defendant used the body armor in connection with [a crime of violence or drug trafficking crime] [another offense], increase by [4] levels.

Commentary

Statutory Provision: 18 U.S.C. 931.

Application Notes:

1. Definitions.—For purposes of this guideline:

['Crime of violence' has the meaning given that term in 18 U.S.C. 16.

'Drug trafficking crime' has the meaning given that term in 18 U.S.C. 924(c)(2).]

'Offense' has the meaning given that term in Application Note 1 of the Commentary to § 1B1.1 (Application Instructions).

2. Application of Subsection (b)(1).—Consistent with § 1B1.3 (Relevant Conduct), the term ''defendant'', for purposes of subdivision (b)(1), limits the accountability of the defendant to the defendant's own conduct and conduct that the defendant aided or abetted, counseled, commanded, induced, procured, or willfully caused.''.

The Commentary to § 3B1.5 captioned ''Application Notes'' is amended by adding at the end the following new note:

''3. If the defendant is convicted of 18 U.S.C. 931, do not apply this enhancement with respect to that offense of conviction. However, if, in addition to the count of conviction under 18 U.S.C. 931, the defendant is convicted of a crime of violence or a drug trafficking crime and the body armor was used in connection with that offense, this enhancement may be applied with respect to that crime of violence or drug trafficking crime.''.

Proposed Amendment 4: Public Corruption

Synopsis of Proposed Amendment: This proposed amendment addresses offenses involving public corruption. The proposed amendment consolidates §§ 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right) and 2C1.7 (Fraud Involving Deprivation of the Intangible Right to the Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions). Also, the proposed amendment consolidates §§ 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity) and 2C1.6 (Loan or Gratuity to Bank Examiner, or Gratuity for Adjustment of Farm Indebtedness, or Procuring Bank Loan, or Discount of Commercial Paper). This proposed amendment aims at moving away from a guideline structure that relies heavily on monetary harm to determine the severity of the offense. While the proposed amendment generally provides increased punishment for all bribery and gratuity offenses, it also provides enhancements in both consolidated guidelines to address some of the aggravating factors that are involved in public corruption cases.

Base Offense Level Increases

The proposed amendment increases the base offense level for all bribery and gratuity cases. Currently, bribery offenses sentenced under § 2C1.1 or § 2C1.7 begin with a base offense level of level 10. The proposed consolidated guideline at § 2C1.1 would increase the base offense level for bribery cases to level [12]. With respect to gratuity offenses, § 2C1.2 and § 2C1.6 currently have a base offense level of level 7. The proposed consolidated guideline at § 2C1.2 increases the base offense level to level [9]. The proposed increases in the base offense levels for bribery and gratuity cases will ensure continued proportionality between these cases and those sentenced under §§ 2B1.1 (Theft, Fraud, and Property Destruction) and 2J1.2 (Obstruction of Justice).

18 U.S.C. §§ 1341–1343 Offenses

Under a consolidated § 2C1.1, 18 U.S.C. 1341–1343 offenses, which are currently sentenced under § 2C1.7, would be referenced in Appendix A (Statutory Index) to § 2C1.1 provided that the offense was a fraud involving the deprivation of the intangible right to honest services, as set forth in the proposed parenthetical in the Commentary captioned ''Statutory Provisions''. The proposed amendment also builds on Application Note 12 in § 2B1.1 (Theft, Property Destruction, and Fraud) which deals with application of the cross references in § 2B1.1(c). The note currently explains that in cases in which broad fraud statutes are used primarily for jurisdictional purposes, the offense may be covered more appropriately by another guideline. The proposed amendment adds fraud involving the deprivation of the intangible right to honest services as an example of an offense more aptly covered by § 2C1.1. The parenthetical and the expansion of Application Note 14 address concerns expressed by the Public Integrity Section of Department of Justice that 18 U.S.C. 1341–1343 offenses be sentenced under § 2C1.1 and not under the fraud guideline.

''Loss'' and ''Public Official'' Enhancements

Under the current structure of § 2C1.1, an enhancement exists that provides for the application of the greater of either (A) the number of offense levels from the fraud/theft loss table corresponding to the value of the payment, the benefit received or to be received in return for the payment, and the loss to the government from the offense, whichever is greatest; and (B) 8 levels if the offense involved a payment to influence an elected official or an official holding a high-level decision-making or sensitive position. Similar enhancements exist in §§ 2C1.2 and 2C1.7. The proposed amendment makes two major changes to this enhancement in both proposed consolidated guidelines. First, it makes the enhancement cumulative so that the court would apply the appropriate number of levels from the loss table and also the revised public official enhancements, if applicable. Second, the proposed amendment proposes two new enhancements that focus on public officials. The first new enhancement modifies the current ''high-level or sensitive position'' enhancement. This enhancement provides [two] [four] levels, and in §§ 2C1.1 and 2C1.2, a minimum offense level of 18 and 15, respectively, if the offense involved an unlawful payment for the purpose of influencing an official act of a public official in a high position of public trust. Although the concept is the same as the current enhancement, the proposed amendment draws on case law interpreting the current enhancement and on the notion of ''public trust'' from § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) to give more guidance with respect to the type of case to which the enhancement applies. The proposed minimum offense level of level 18 in § 2C1.1 and of level 15 in § 2C1.2 ensures that an offense involving bribery of a higher level public official receives at least as high a sentence as it currently receives (*i.e.*, that the new construct does not result in lower sentences). This enhancement will apply regardless of whether the defendant was the giver or the recipient of the bribe.

The corresponding application note also explains that public officials in high positions of public trust are distinguished from other public officials by their direct authority to make decisions for, or on behalf of, a government department or government agency, and also by their substantial influence over the decision-making process. The note also includes jurors in the scope of the enhancement's application in order to be consistent with case law regarding the current enhancement and with the scope of 18 U.S.C. 201, the primary bribery and gratuity statute.

The second new enhancement pertaining to public officials provides a [two] [four]-level increase if the defendant was a public official at the time of the offense. Commission data indicate that the defendant was a public official in approximately half of all public corruption cases. This enhancement recognizes that although all bribery involving public officials corrupts the public trust in government, it is the public official who violates that public trust. Currently, application notes in §§ 2C1.1, 2C1.2, 2C1.6, and 2C1.7 instruct the court not to apply the abuse of position of trust enhancement in § 3B1.3 (Abuse of Position of Trust or Use of Special Skill), suggesting that in all cases sentenced under these guidelines, there is some element of abuse of public trust. The proposed enhancement would distinguish among cases in which there is an abuse of a position of public trust on the part of the public official.

Enhancement for Obtaining Entry into United States and for Obtaining Certain Documents

The proposed amendment also provides a new [two] [four]-level enhancement if the offense involved an unlawful payment (A) to a United States Customs Border Protection Inspector to permit a person, a vehicle, or cargo to enter the United States; (B) to obtain a passport or a document relating to naturalization, citizenship, legal entry, or legal resident status; or (C) to obtain a government issued identification document. The definition of ''government issued identification document'' is derived from the definition of ''identification document'' in 18 U.S.C. 1028(d)(3). This enhancement addresses cases in which a small payment may be given to obtain such a document, but the harm that results from an individual obtaining an identification or immigration document cannot be quantified by use of the loss table. It also addresses cases, as identified by the Commission, in which a third party steers an individual to the public official in order for that individual to obtain, through bribery or a gratuity, such a document. The enhancement also recognizes the increased risk of domestic terrorism from foreign nationals who illegally enter or remain in the United States through the use of illegally obtained identification documents. Similarly, the enhancement addresses concerns identified by the Department of Homeland Security regarding bribery of customs inspectors who have the discretion to permit individuals, vehicles, and cargo into the United States without inspection.

Miscellaneous Amendments

The proposed amendment provides a definition of ''public official'' that builds on the current definition provided in § 2C1.7. It modifies this definition by explicitly incorporating the notion that public officials hold positions of public trust. This definition is derived from relevant case law and statutory provisions, as well as § 3B1.3 (Abuse of Position of Trust or Use of Special Skill). One difference to note regarding the definition of ''public official'' in §§ 2C1.1 and 2C1.2 is that the definition in § 2C1.2 includes former public officials in order to be consistent with the scope of the primary gratuity statute, 18 U.S.C. 201(c)(1).

The proposed amendment also (A) clarifies that an unlawful payment may be anything of value, not necessarily a monetary payment; (B) adds to § 2C1.1 an application note currently found in § 2C1.2 regarding consideration of whether the public official was the instigator of the offense as an appropriate factor to determine the placement of the sentence within the applicable sentencing guideline range; and (C) updates Appendix A (Statutory Index) by deleting references to § 2C1.4, which was consolidated with § 2C1.3 (Conflict of Interest; Payment or Receipt of Unauthorized Compensation), effective November 1, 2001.

Several issues for comment follow the proposed amendment.

Proposed Amendment:

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 14 by adding at the end the following:

''For example, a state employee who improperly influenced the award of a contract and used the mails to commit the offense may be prosecuted under 18 U.S.C. 1341 for fraud involving the deprivation of the intangible right of honest services. Such a case would be more aptly sentenced pursuant to § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right; Fraud involving the Deprivation of the Intangible Right to Honest Services of Public Officials).''.

Section 2C1.1 is amended in the heading by adding at the end ''; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials''.

Section 2C1.1(a) is amended by striking ''10'' and inserting ''[12]''.

Section 2C1.1(b)(1) is amended by striking ''bribe or extortion'' and inserting ''incident''.

Section 2C1.1(b) is amended by striking subdivision (2) in its entirety and inserting the following:

''(2) If the value of the unlawful payment, the benefit received or to be received in return for the payment, or the loss to the government from the offense, whichever is greatest (A) exceeded $2,000 but did not exceed $5,000, increase by 1 level; or (B) exceeded $5,000, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.''.

Section 2C1.1(b) is amended by adding at the end the following:

''(3) If the offense involved an unlawful payment for the purpose of influencing an official act of a public official in a high position of public trust, increase by [2][4] levels. If the resulting offense level is less than level 18, increase to level 18.

(4) If the defendant was a public official at the time of the offense, increase by [2][4] levels.

(5) If the offense involved an unlawful payment (A) to a United States Customs Border Protection Inspector to permit a person, a vehicle, or cargo to enter the United States; (B) to obtain a passport or a document relating to naturalization, citizenship, legal entry, or legal resident status; or (C) to obtain a government issued identification document, increase by [2][4] levels.''.

The Commentary to § 2C1.1 captioned ''Statutory Provisions'' is amended by inserting after ''872,'' the following:

''1341 (if the scheme or artifice to defraud was to deprive another of the intangible right of honest services), 1342 (if the scheme or artifice to defraud was to deprive another of the intangible right of honest services), 1343 (if the scheme or artifice to defraud was to deprive another of the intangible right of honest services),''.

The Commentary to § 2C1.1 captioned ''Application Notes'' is amended by striking Note 1 in its entirety and inserting the following:

''1. Definitions.—For purposes of this guideline:

['Bribe' means anything of value given or accepted with the corrupt intent to influence, or to be influenced in, an official act. A bribe involves an agreed upon quid pro quo.]

'Government issued identification document' means a document made or issued by or under the authority of the United States Government, a State, or a political subdivision of a State, which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

'Official act' has the meaning given that term in 18 U.S.C. 201(a)(3).

'Public official,' means (A) an officer or employee in, or selected to be in, a position of public trust in a federal, state, or local government department or government agency; or (B) a juror. ''Public official'' also includes a government contractor if such contractor is in a position of public trust with respect to a government department or government agency.

'Unlawful payment' means anything of value. An 'unlawful payment' need not be monetary.''.

The Commentary to § 2C1.1 captioned ''Application Notes'' is amended in Note 2 by inserting ''Application of Subsection (b)(2).—'' before '''Loss'''.

The Commentary to § 2C1.1 captioned ''Application Notes'' is amended by striking ''5. Where the court finds'' and all that follows through ''(Departures).''.

The Commentary to § 2C1.1 captioned ''Application Notes'' is amended by redesignating Notes 3 and 4 as Notes 4 and 5, respectively; by inserting after Note 2 the following:

''3. Application of Subsection (b)(3).—Subsection (b)(3) applies in cases involving federal, state, or local public officials who hold high positions of public trust. Such officials are distinguished from other public officials by their direct authority to make decisions for, or on behalf of, a government department or government agency, and by their substantial influence over the decision-making process. Examples of public officials in high positions of public trust include (A) a legislator; (B) a judge or magistrate; (C) a prosecuting attorney; (D) an agency administrator; and (E) a [supervisory] law enforcement officer. Certain individuals may be considered, for purposes of subsection (b)(3), to be a public official who holds a high position of public trust because of the importance of the process over which the individual has substantial influence, as for example, a juror.

The degree of public trust involved in a high position of public trust is greater than that required for application of § 3B1.3 (Abuse of Position of Trust or Use of Special Skill). Accordingly, the fact that a particular public official has managerial discretion does not, in and of itself, determine whether the public official holds a high position of public trust.'';

and in Note 4, as redesignated by this amendment, by inserting ''Inapplicability of § 3B1.3.—'' before ''Do not apply''.

The Commentary to § 2C1.1 captioned ''Application Notes'' is amended in Note 5, as redesignated by this amendment, by inserting ''Upward Departure Provisions.—'' before ''In some cases''; and by adding at the end the following new paragraph:

''In a case in which the court finds that the defendant's conduct was part of a systematic or pervasive corruption of a governmental function, process, or office that may cause loss of public confidence in government, an upward departure may be warranted. See § 5K2.7 (Disruption of Governmental Function).''.

The Commentary to § 2C1.1 captioned ''Application Notes'' is amended in Note 6 by inserting ''Related Payments.—'' before ''Subsection (b)(1)''; by striking ''either bribery or extortion'' in the first sentence and inserting ''bribery, extortion under color of official right, or fraud involving the deprivation of the intangible right to honest services''; by striking ''of bribery or extortion'' in the second sentence; by striking ''single bribe or extortion'' in the second sentence and inserting ''single incident''; and by adding at the end the following new paragraph:

''In a case involving more than one incident of bribery, extortion, or fraud involving the deprivation of the intangible right to honest services, the applicable amounts under subsection (b)(2) (*i.e.*, the greatest of the value of the unlawful payment, the benefit received or to be received, or the loss to the government) are determined separately for each incident and then added together.''.

The Commentary to § 2C1.1 captioned ''Application Notes'' is amended in Note 7 by inserting ''Application of Subsection (c).—'' before ''For the purposes''.

The Commentary to § 2C1.1 captioned ''Application Notes'' is amended by adding at the end the following:

''8. Determining Sentence Within Guideline Range.—In some cases, the public official is the instigator of the offense. In others, a private citizen may be the instigator. This factor may appropriately be considered in determining the placement of the sentence within the applicable guideline range.''.

The Commentary to § 2C1.1 captioned ''Background'' is amended by inserting before the paragraph that begins ''Offenses involving attempted'' the following new paragraph:

''Section 2C1.1 also applies to fraud involving the deprivation of the intangible right to honest services of

government officials under 18 U.S.C. 1341–1343. Such fraud offenses typically involve an improper use of government influence that harms the operation of government in a manner similar to bribery offenses.''.

Section 2C1.2(a) is amended by striking ''7'' and inserting ''[9]''.

Section 2C1.2 is amended by striking subsections (b)(1) and (b)(2) in their entirety and inserting the following:

''(b) (1) If the offense involved more than one incident, increase by 2 levels.

(2) If the value of the unlawful payment (A) exceeded $2,000 but did not exceed $5,000, increase by 1 level; or (B) exceeded $5,000, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(3) If the offense involved an unlawful payment for the purpose of influencing an official act of a public official in a high position of public trust, increase by [2][4] levels. If the resulting offense level is less than level 15, increase to level 15.

(4) If the defendant was a public official at the time of the offense, increase by [2][4] levels.

(5) If the offense involved an unlawful payment (A) to a United States Customs Border Protection Inspector to permit a person, a vehicle, or cargo to enter the United States; (B) to obtain a passport or a document relating to naturalization, citizenship, legal entry, or legal resident status; or (C) to obtain a government issued identification document, increase by [2][4] levels.''.

The Commentary to § 2C1.2 captioned ''Statutory Provision'' is amended by striking ''Provision'' and inserting ''Provisions''; by inserting ''§ '' after ''18 U.S.C. § ''; and by inserting '', 212–214, 217'' after ''201(c)(1)''.

The Commentary to § 2C1.2 captioned ''Application Notes'' is amended by striking Note 1 in its entirety and inserting the following:

''1. Definitions.—For purposes of this guideline:

'Government issued identification document' means a document made or issued by or under the authority of the United States Government, a State, or a political subdivision of a State, which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

['Gratuity' means anything of value given, or accepted for or because of an official act performed or to be performed.]

'Official act' has the meaning given that term in 18 U.S.C. 201(a)(3).

'Public official,' means (A) an officer or employee in, formerly in, or selected to be in, a position of public trust in a federal, state, or local government department or government agency; or (B) a juror. 'Public official' also includes a government contractor if such contractor is in a position of public trust with respect to a government department or government agency.

'Unlawful payment' means anything of value. An 'unlawful payment' need not be monetary.''.

The Commentary to § 2C1.2 captioned ''Application Notes'' is amended by redesignating Notes 2, 3, and 4 as Notes 3, 4, and 5, respectively; and by inserting after Note 1 the following new Note 2:

''2. Application of Subsection (b)(3).—Subsection (b)(3) applies in cases involving federal, state, or local public officials who hold high positions of public trust. Such officials are distinguished from other public officials by their direct authority to make decisions for, or on behalf of, a government department or government agency, and by their substantial influence over the decision-making process. Examples of public officials in high positions of public trust include (A) a legislator; (B) a judge or magistrate; (C) a prosecuting attorney; (D) an agency administrator; and (E) a [supervisory] law enforcement officer. Certain individuals may be considered, for purposes of subsection (b)(3), to be a public official who holds a high position of public trust because of the importance of the process over which the individual has substantial influence, as for example, a juror.

The degree of public trust involved in a high position of public trust is greater than that required for application of § 3B1.3 (Abuse of Position of Trust or Use of Special Skill). Accordingly, the fact that a particular public official has managerial discretion does not, in and of itself, determine whether the public official holds a high position of public trust.''.

The Commentary to § 2C1.2 captioned ''Application Notes'' is amended in Note 3, as redesignated by this amendment, by inserting ''Inapplicability of § 3B1.3.—'' before ''Do not''; in Note 4, as redesignated by this amendment, by inserting ''Determining Sentence Within Guideline Range.—'' before ''In some''; by striking ''may be the initiator'' and inserting ''may be the instigator''; and in Note 5, as redesignated by this amendment, by inserting ''Related Payments.—Subsection (b)(1) provides an adjustment for offenses involving more than one incident.'' before ''Related payments that,''.

The Commentary to § 2C1.2 captioned ''Background'' is amended by striking the second and third sentences and inserting the following:

''It also applies in cases involving (1) the offer to, or acceptance by, a bank examiner of a loan or gratuity; (2) the offer or receipt of anything of value for procuring a loan or discount of commercial bank paper from a Federal Reserve Bank; and (3) the acceptance of a fee or other consideration by a federal employee for adjusting or cancelling a farm debt.''.

Chapter Two, Part C, is amended by striking §§ 2C1.6, 2C1.7, and all accompanying commentary.

Appendix A (Statutory Index) is amended in the line referenced to 18 U.S.C. § 209 by striking ''2C1.4'' and inserting ''2C1.3'';

in the line referenced to 18 U.S.C. 212 by striking ''2C1.6'' and inserting ''2C1.2'';

in the line referenced to 18 U.S.C. 213 by striking ''2C1.6'' and inserting ''2C1.2'';

in the line referenced to 18 U.S.C. 214 by striking ''2C1.6'' and inserting ''2C1.2'';

in the line referenced to 18 U.S.C. 217 by striking ''2C1.6'' and inserting ''2C1.2'';

in the line referenced to 18 U.S.C. 371 by striking ''2C1.7,'';

in the line referenced to 18 U.S.C. 1341 by striking ''2C1.7'' and inserting ''2C1.1'';

in the line referenced to 18 U.S.C. 1342 by striking ''2C1.7'' and inserting ''2C1.1'';

in the line referenced to 18 U.S.C. 1343 by striking ''2C1.7'' and inserting ''2C1.1'';

in the line referenced to 18 U.S.C. 1909 by striking '', 2C1.4''; and

in the line referenced to 41 U.S.C. 423(e) by striking '', 2C1.7''.

Issues for Comment:

1. The Commission requests public comment regarding the proposed consolidation of §§ 2C1.1 and 2C1.7, and §§ 2C1.2 and 2C1.6. Should the Commission instead consolidate all four guidelines into one comprehensive guideline that would apply to bribery, gratuity, extortion under color of official right, and fraud involving the deprivation of the intangible right to honest services? For example, such a guideline could distinguish between bribery and gratuity offenses by alternative base offense levels in a structure that would be consistent with § 2E5.1 (Offering, Accepting or Soliciting a Bribe or Gratuity Affecting the Operation of an Employee Welfare

or Pension Plan). Should a consolidated § 2C1.1 or § 2C1.2 specifically include conspiracy and attempts? Alternatively, should the Commission maintain the current structure of Chapter Two, Part C (Offenses Involving Public Officials) and not consolidate any of the guidelines in that part?

2. The Commission requests comment regarding whether it should eliminate any or all of the cross references in § 2C1.1. For example, the Commission has received input that the cross reference in subsection (c)(2) is confusing and may result in circular application of multiple cross references. This cross reference instructs the court to apply § 2X3.1 (Accessory After the Fact) or § 2J1.2 (Obstruction of Justice) if the offense was committed to conceal, or obstruct justice in respect to, another offense. If § 2J1.2 is applied, for example, and the offense involved obstructing the investigation or prosecution of an offense, then the cross reference in § 2J1.2(c)(1) instructs the court to apply § 2X3.1. For these reasons, should the Commission eliminate the cross reference in § 2C1.1(c)(2)?

3. The proposed amendment adds to § 2C1.1 an application note indicating that whether the initiator of the offense is the public official or a private citizen is relevant in determining the placement of the sentence within the applicable guideline range. This note currently exists in § 2C1.2. The Commission requests comment regarding whether solicitation of a bribe or gratuity is a more serious offense than receipt of a bribe or gratuity. If so, should the Commission provide an enhancement in § 2C1.1 for the solicitation of a bribe and in § 2C1.2 for the solicitation of a gratuity? If so, what would be an appropriate offense level increase for such an enhancement?

4. The proposed amendment provides three new enhancements in both consolidated guidelines: (A) A two-level increase for offenses that involve an unlawful payment (i) to a United States Customs Border Protection Inspector to permit a person, a vehicle, or cargo to enter the United States; (ii) to obtain a government issued identification document; or (iii) to obtain a United States passport, or a document relating to naturalization, citizenship, legal entry, or legal resident status; (B) a [two][four]-level increase for offenses involving public officials in high positions of public trust; and (C) a [two][four]-level increase if the defendant was a public official at the time of the offense. Are there other enhancements that the Commission should consider adding to the proposed consolidated guidelines, and if so, what are those enhancements? For example, should the Commission provide a specific offense characteristic for bribery, extortion, and honest services offenses that affect the integrity of the election process? With respect to the proposed enhancement for a public official in a high position of public trust, are there additional categories of public officials that the Commission should include within the scope of this enhancement? As an alternative to the proposed enhancement, should the Commission provide a two part enhancement that provides for different offense level increases based on the degree of public trust held by the public official involved in the offense? For example, should the Commission provide a two-level increase if the offense involved an unlawful payment for the purpose of influencing a public official holding a supervisory or managerial position, and a four-level enhancement if the offense involved an unlawful payment for the purposes of influencing a public official holding a high-level decision making or sensitive position? If so, what distinguishes one category from the other? Should any such enhancement, or any other proposed enhancement, provide for a minimum offense level and if so, what would be an appropriate minimum offense level?

5. According to Commission data, the enhancement for multiple incidents applies in approximately 64% of all § 2C1.1 cases and in approximately 69% of all § 2C1.2 cases. The Commission requests comment regarding whether the two levels from this enhancement should be incorporated into the base offense levels in §§ 2C1.1 and 2C1.2 to increase the proposed base offense level in those two guidelines an additional two levels.

6. The Commission requests comment regarding whether, in light of the proposed amendments to Chapter Two, Part C, it should amend other guidelines pertaining to bribery, gratuity, and extortion, and other similar offenses. For example, should the Commission increase the base offense levels for bribery and gratuity offenses in § 2E5.1 in order to maintain consistent and proportionate sentencing with respect to §§ 2C1.1 and 2C1.2? Should the Commission consider making any amendments to § 2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery), § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage), or § 2B3.3 (Blackmail and Similar Forms of Extortion)?

Proposed Amendment 5: Drugs

Synopsis of Proposed Amendment: This proposed amendment makes a number of amendments to §§ 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy), and 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy), and Appendix A (Statutory Index).

First, the proposed amendment addresses section 608 of the PROTECT Act, Public Law 108–21, by increasing the offense levels for gamma hydroxybutyric acid (''GHB''), a schedule I depressant, and gamma-butyrolactone (''GBL''), a precursor for GHB. Currently, GHB is sentenced with all other schedule I or II depressants (*i.e.*, 1 unit = 1 gram of marihuana). The proposed amendment provides two options for increasing the penalties for GHB in the Drug Equivalency Tables of Application Note 10 of § 2D1.1. The effect of Option One is that a five year term of imprisonment would be triggered by 3.785 liters (equivalent to one gallon) of GHB. The effect of Option Two is that a five year term of imprisonment would be triggered by 18.925 liters (equivalent to five gallons) of GHB. The proposed amendment provides two corresponding quantity options for increasing the penalties for GBL in § 2D1.11.

Second, the proposed amendment adds to Application Note 5 of § 2D1.1 a reference to controlled substance analogues. The note currently states that ''[a]ny reference to a particular controlled substance in these guideline includes all salts, isomers, and all salts of isomers.'' The proposed amendment modifies the rule specifically to include that any reference to a particular controlled substance also includes any analogue of that controlled substance, unless otherwise provided (*e.g.*, the Drug Quantity Table currently references fentanyl analogue).

Third, the proposed amendment corrects a technical error in the Drug Quantity Table of § 2D1.1 with respect to schedule III substances. The maximum base offense level for schedule III substances is level 20 (see § 2D1.1(c)(10)), but there is no corresponding language in the Drug Quantity Table to indicate that level 20 is the maximum base offense level for these substances. The amendment corrects this error.

Fourth, the proposed amendment updates the statutory references in § 2D1.11(b)(2) and accompanying

commentary to conform to statutory redesignations. Section 2D1.11(b)(2) currently provides a three-level reduction if the defendant was convicted of violating 21 U.S.C. 841(d)(2), (g)(1), or 960(d)(2), unless the defendant knew or believed that the listed chemical was to be used to manufacture a controlled substance unlawfully. Those statutory references should be 21 U.S.C. 841(c)(2), (f)(1), or 960(d)(2) to conform to statutory redesignations. The proposed amendment also expands application of § 2D1.11(b)(2) to include 21 U.S.C. 960(d)(3) and (d)(4) among the statutes of conviction for which the three-level reduction at subsection (b)(2) is available. Currently, the reduction applies in cases in which the defendant (convicted under 21 U.S.C. 841(c)(2), (f)(1), or 960(d)(2), as properly redesignated) did not have knowledge or actual belief that the listed chemical would be used to manufacture a controlled substance. Section 841(c)(2) of title 21, United States Code, requires a finding of either knowledge or a reasonable cause to believe that the listed chemical would be used to manufacture a controlled substance. Sections 960(d)(3) and (d)(4) of title 21, United States Code, similarly require a finding that a person who imports, exports, or serves as a broker for, a listed chemical knows or has a reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance. Appendix A (Statutory Index) currently references 21 U.S.C. 960(d)(3) and (d)(4) to § 2D1.11, but neither statute is included for purposes of the reduction. Given that the reduction applies in 21 U.S.C. 841(c)(2) cases in which the defendant had a reasonable cause to believe, but not knowledge or actual belief, that the listed chemical would be used to manufacture a controlled substance, and the mens rea in 21 U.S.C. 841(c)(2) is the same as in 21 U.S.C. 960(d)(3) and (d)(4), the proposed amendment adds 21 U.S.C. 960(d)(3) and (d)(4) to 2D1.11(b)(2).

Fifth, the proposed amendment adds white phosphorus and hypophosphorous acid to the Chemical Quantity Table in § 2D1.11(e). Both substances are List I chemicals used in the production of methamphetamine and, according to the DEA, are direct substitutes for red phosphorus. The Commission amended § 2D1.11(e) last amendment cycle to include red phosphorus but because of **Federal Register** notice issues was unable at that time to include white phosphorus and hypophosphorous acid.

Sixth, the proposed amendment also modifies Appendix A (Statutory Index) by deleting the reference to 21 U.S.C. 957, which is not a substantive criminal offense but rather a registration provision for which violations are prosecuted under 21 U.S.C. 960(a) or (b) (for controlled substances) or section 960(d)(6) (for listed chemicals).

Finally, four issues for comment follow the proposed amendment regarding (1) offenses involving anhydrous ammonia; (2) an enhancement for distribution of controlled substances and other illegal substances over the Internet; (3) drug facilitated sexual assault; and (4) a circuit conflict pertaining to Application Note 12 of § 2D1.1, which was most recently noted in *United States* v. *Smack*, _F.3d _, 2003 WL 22419914 (3rd Cir., October 24, 2003).

Proposed Amendment:

Section 2D1.1(c) is amended in subdivision (10) by striking ''or Schedule III substances'' in the thirteenth entry; and by inserting after the thirteenth entry the following:

''40,000 or more units of Schedule III substances;'';

in subdivision (11) by striking ''or Schedule III substances'' in the thirteenth entry; and by inserting after the thirteenth entry the following:

''At least 20,000 but less than 40,000 units of Schedule III substances;''

in subdivision (12) by striking ''or Schedule III substances'' in the thirteenth entry; and by inserting after the thirteenth entry the following:

''At least 10,000 but less than 20,000 units of Schedule III substances;'';

in subdivision (13) by striking ''or Schedule III substances'' in the thirteenth entry; and by inserting after the thirteenth entry the following:

''At least 5,000 but less than 10,000 units of Schedule III substances;'';

in subdivision (14) by striking ''or Schedule III substances'' in the thirteenth entry; and by inserting after the thirteenth entry the following:

''At least 2,500 but less than 5,000 units of Schedule III substances;'';

in subdivision (15) by striking ''or Schedule III substances'' in the fourth entry; and by inserting after the fourth entry the following:

''At least 1,000 but less than 2,500 units of Schedule III substances;'';

in subdivision (16) by striking ''or Schedule III substances'' in the fourth entry; and by inserting after the fourth entry the following:

''At least 250 but less than 1,000 units of Schedule III substances;'';

and in subdivision (17) by striking ''or Schedule III substances'' in the fourth entry; and by inserting after the fourth entry the following:

''Less than 250 units of Schedule III substances;''.

Section 2D1.1 is amended in the subdivision captioned ''*Notes to the Drug Quantity Table'' in Note (F) in the first sentence by inserting ''(except gamma-hydroxybutyric acid)'' after ''Depressants''; and in the second sentence by inserting ''(except gamma-hydroxybutyric acid)'' after ''substance''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 5 by striking ''and'' after ''includes all salts, isomers,''; and by inserting '', and, except as otherwise provided, any analogue of that controlled substance'' after ''all salts of isomers''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 10 in the Drug Equivalency Tables by striking the subdivision captioned ''Schedule I or II Depressants'' in its entirety and inserting the following new subdivisions:

''Schedule I or II Depressants (Except Gamma-Hydroxybutyric Acid)

1 unit of a Schedule I or II Depressant (except gamma-hydroxybutyric acid) = 1 gm of marihuana

Gamma-Hydroxybutyric Acid

[Option One: 1 liter of gamma-hydroxybutyric acid = 26,420 gm of marihuana]

[Option Two: 1 liter of gamma-hydroxybutyric acid = 5,284 gm of marihuana]''.

Section 2D1.11(b)(2) is amended by striking ''21 U.S.C. §§ 841(d)(2), (g)(1), or 960(d)(2),'' and inserting ''21 U.S.C. § 841(c)(2), (f)(1), or § 960(d)(2), (d)(3), or (d)(4),''.

Section 2D1.11(e) is amended in subdivision (1) by striking ''10,000 KG or more of Gamma-butyrolactone;'' and inserting ''[757][3785] L or more of Gamma-butyrolactone;''; and by inserting '', White Phosphorus, or Hypophosphorous Acid'' after ''Red Phosphorus'';

in subdivision (2) by striking ''At least 3,000 KG but less than 10,000 KG of Gamma-butyrolactone;'' and inserting ''At least [227.1][1135.5] L but less than [757][3785] L of Gamma-butyrolactone;''; and by inserting '', White Phosphorus, or Hypophosphorous Acid'' after ''Red Phosphorus'';

in subdivision (3) by striking ''At least 1,000 KG but less than 3,000 KG of Gamma-butyrolactone;'' and inserting ''At least [75.7][378.5] L but less than [227.1][1135.5] L of Gamma-butyrolactone;''; and by inserting '', White Phosphorus, or

Hypophosphorous Acid'' after ''Red Phosphorus'';

in subdivision (4) by striking ''At least 700 KG but less than 1,000 KG of Gamma-butyrolactone;'' and inserting ''At least [53][265] L but less than [75.7][378.5] L of Gamma-butyrolactone;''; and by inserting '', White Phosphorus, or Hypophosphorous Acid'' after ''Red Phosphorus'';

in subdivision (5) by striking ''At least 400 KG but less than 700 KG of Gamma-butyrolactone;'' and inserting ''At least [30.3][151.4] L but less than [53][265] L of Gamma-butyrolactone;''; and by inserting '', White Phosphorus, or Hypophosphorous Acid'' after ''Red Phosphorus'';

in subdivision (6) by striking ''At least 100 KG but less than 400 KG of Gamma-butyrolactone;'' and inserting ''At least [7.6][37.9] L but less than [30.3][151.4] L of Gamma-butyrolactone;''; and by inserting '', White Phosphorus, or Hypophosphorous Acid'' after ''Red Phosphorus'';

in subdivision (7) by striking ''At least 80 KG but less than 100 KG of Gamma-butyrolactone;'' and inserting ''At least [6.1][30.3] L but less than [7.6][37.9] L of Gamma-butyrolactone;''; and by inserting '', White Phosphorus, or Hypophosphorous Acid'' after ''Red Phosphorus'';

in subdivision (8) by striking ''At least 60 KG but less than 80 KG of Gamma-butyrolactone;'' and inserting ''At least [4.5][22.7] L but less than [6.1][30.3] L of Gamma-butyrolactone;''; and by inserting '', White Phosphorus, or Hypophosphorous Acid'' after ''Red Phosphorus'';

in subdivision (9) by striking ''At least 40 KG but less than 60 KG of Gamma-butyrolactone;'' and inserting ''At least [3][15.1] L but less than [4.5][22.7] L of Gamma-butyrolactone;''; and by inserting '', White Phosphorus, or Hypophosphorous Acid'' after ''Red Phosphorus''; and

in subdivision (10) by striking ''Less than 40 KG of Gamma-butyrolactone;'' and inserting ''Less than [3][15.1] L of Gamma-butyrolactone;''; and by inserting '', White Phosphorus, or Hypophosphorous Acid'' after ''Red Phosphorus''.

The Commentary to § 2D1.11 captioned ''Statutory Provisions'' is amended by inserting '', (3), (4)'' after ''(d)(1), (2)''.

The Commentary to § 2D1.11 captioned ''Application Notes'' is amended in Note 5 by striking ''21 U.S.C. 841(d)(2), (g)(1), and 960(d)(2)'' and inserting ''21 U.S.C. 841(c)(2), (f)(1), and 960(d)(2), (d)(3), and (d)(4)''; and by striking ''Where'' and inserting ''In a case in which''.

Appendix A (Statutory Index) is amended by striking the following:

''21 U.S.C. 957 2D1.1''.

Issues for Comment:

1. A concern has been expressed to the Commission regarding offenses involving anhydrous ammonia. Anhydrous ammonia is a volatile chemical generally used in farming but that can also be used in the manufacture of methamphetamine. Section 864 of title 21, United States Code, prohibits stealing anhydrous ammonia or transporting stolen anhydrous ammonia across state lines. The statutory maximum term of imprisonment for an anhydrous ammonia offense is four years, except if the offense involved the intent to manufacture methamphetamine in which case the statutory maximum term of imprisonment is ten years. (A section 864 offense committed subsequent to a specified drug trafficking conviction carries a maximum term of imprisonment of eight years, unless the offense involved the intent to manufacture methamphetamine in which case the maximum term of imprisonment is 20 years.) Appendix A (Statutory Index) references 21 U.S.C. 864 to § 2D1.12 (Unlawful Possession, Manufacture, Distribution, Transportation, Exportation, or Importation of Prohibited Flask, Equipment, Chemical, Product, or Material; Attempt or Conspiracy). The Commission requests comment regarding whether it should provide a specific offense characteristic in § 2D1.12 specifically to cover anhydrous ammonia offenses. For example, the Commission could provide an enhancement that would apply if the offense involved anhydrous ammonia, or alternatively if the defendant was convicted under 21 U.S.C. 864. If such an enhancement should be provided, what would be an appropriate offense level increase? For example, should the Commission provide an offense level increase of eight or ten levels for convictions under 21 U.S.C. 864?

2. The Commission requests comment regarding whether it should amend the drug guidelines in Chapter Two, Part D, particularly, §§ 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy), 2D1.11 (Unlawful Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy), and 2D1.12 to provide a specific offense characteristic for defendants who unlawfully distribute controlled substances, precursors, listed chemicals, and other illegal substances and items used in the manufacture of controlled substances or listed chemicals over the Internet. There is a concern with the unlawful distribution over the Internet because of the ability to reach a broader market than possible through ''traditional'' drug trafficking methods. If the Commission provides such a specific offense characteristic, what would be an appropriate offense level increase?

3. The Commission requests comment regarding whether it should amend § 2D1.1 to account more adequately for offenses that involve drug facilitated sexual assault, specifically in a case in which the victim of the sexual assault knowingly and voluntarily ingested the drug. Currently, the cross reference in § 2D1.1(d)(2) applies if the defendant was convicted under 21 U.S.C. 841(b)(7) and the victim of the sexual assault did not knowingly ingest the drug. However, if the victim of the sexual assault knowingly and voluntarily ingested the drug, neither 21 U.S.C. 841(b)(7) nor the cross reference applies. The Commission requests comment regarding whether the scope of the cross reference should be expanded to include a case in which the victim of a sexual assault knowingly and voluntarily ingested the drug, even if the defendant is not convicted under 21 U.S.C. 841(b)(7). Alternatively, would the heightened base offense levels in § 2D1.1(a)(1) and (2) apply in such a case and, if so, would they account adequately for drug facilitated sexual assaults of this nature? If not, should the heightened base offenses levels be modified or should the Commission provide a specific offense characteristic to account more adequately for drug facilitated sexual assaults?

4. The Commission has become aware of a circuit split regarding the interpretation of the last sentence in Application Note 12 of § 2D1.1. The relevant language of the note states that ''[i]f, however, the defendant establishes that he or she did not intend to provide, or was not reasonably capable of providing, the agreed-upon quantity of the controlled substance, the court shall exclude from the offense level determination the amount of controlled substance that the defendant establishes that he or she did not intend to provide or was not reasonably capable of providing.'' A conflict has arisen over whether this language is limited to a defendant who is the seller in a sting operation. See *United States* v. *Smack,* _F.3d _, 2003 WL 22419914 (3rd Cir., October 24, 2003) (opining that the language in Note 12 is ambiguous);

United States v. *Williams*, 109 F.3d 502, 511–12 (8th Cir. 1997) (same). Some circuits have concluded that the last sentence of the note is intended to apply only to sellers. See *United States* v. *Gomez*, 103 F.3d 249, 252–53 (2d Cir. 1997) (concluding that the last sentence of Note 12 applies only to sellers); *United States* v. *Perez de Dios*, 237 F.3d 1192 (10th Cir. 2001) (same); *United States* v. *Brassard*, 212 F.3d 54, 58 (1st Cir. 2000) (same). Others have concluded that the language also applies to buyers in reverse sting operations. See *United States* v. *Minore,* 40 Fed. Appx. 536, 537 (9th Cir. 2002) (mem.op.) (applying the final sentence of the new Note 12 to a buyer in reverse sting operation); *United States* v. *Estrada,* 256 F.3d 466, 476 (7th Cir. 2001) (same).

In light of the conflicting interpretations, the Commission requests comment regarding whether it should clarify the interpretation of the last sentence of § 2D1.1, Application Note 12. Specifically, should a buyer in a reverse sting operation be permitted to have excluded from the offense level determination the amount of controlled substance that the defendant establishes that he or she did not intend to purchase, or was not reasonably capable of purchasing? Should the last sentence in Application Note 12 be limited to sellers?

Proposed Amendment 6: Repeal of ''Mitigating Role Cap''

Synopsis of Proposed Amendment: This amendment proposes to repeal the current ''mitigating role cap'' at § 2D1.1(a)(3) and replace it with an alternative approach. The proposed replacement would provide a gradually increasing mitigating role reduction based on drug quantity base offense levels under §§ 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) and 2D1.11 (Unlawfully Distributing, Importing, Exporting, or Possession a Listed Chemical; Attempt or Conspiracy), beginning at level [30]. In general, the reduction both is more gradual and less generous than the current approach. Under the current ''mitigating role cap'' approach, a defendant who qualifies for a minor role adjustment and whose drug quantity would otherwise result in a base offense level of level 34 will only receive a base offense level of level 30 under § 2D1.1(a)(3). This effectively is a four-level reduction. This defendant also receives the two-level adjustment under § 3B1.2 for minor role in the offense, resulting in an offense level of 28 (assuming no other adjustments). Thus, the net reduction for this defendant under the current mitigating role cap approach is six levels. Under the proposed alternative, however, the net reduction would only be [three] [four-] levels (two-level reduction for minor role in the offense and additional [one-][two-] level reduction for having a base offense level of level 34 under § 2D1.1). This alternative approach also maintains the current distinctions among mitigating role defendants under § 3B1.2 (*i.e.*, minor, minimal, or in-between), rather than capping the drug quantity base offense level at level 30 for all qualifying defendants. Effectively, this approach ''compresses'' the effect of increasing drug quantity above level 30, rather than capping it at that level.

Proposed Amendment:

Section 2D1.1(a)(3) is amended by striking '', except that if the defendant receives an adjustment under § 3B1.2 (Mitigating Role), the base offense level under this subsection shall be not more than level 30''.

Section 3B1.2 is amended to read as follows:

''§ 3B1.2. Mitigating Role

(a) Based on the defendant's role in the offense, decrease the offense level as follows:

(1) If the defendant was a minimal participant in any criminal activity, decrease by 4 levels.

(2) If the defendant was a minor participant in any criminal activity, decrease by 2 levels.

In cases falling between subsections (a)(1) and (a)(2), decrease by 3 levels.

(b) If a downward adjustment under subsection (a) is applied and the defendant's Chapter Two offense level was determined pursuant to §§ 2D1.1 or 2D1.11, apply an additional reduction according to the following:

Base offense level from § 2D1.1 or § 2D1.11	Additional reduction
(1) level [30]	[1] level
(2) level [32–34]	[1][2] levels
(3) level [36–38]	[1][2][3] levels.''.

Issue for Comment:

The proposed amendment provides an alternative method to the mitigating role cap in § 2D1.1 for minimizing offense level severity for a certain category of drug defendants. Under this alternative approach, should the additional reduction for mitigating role defendants begin at a lower or higher base offense level? Should the reduction be scaled differently in relation to the drug quantity base offense level? Should certain offenses and/or offenders be disqualified from receiving the additional mitigating role reduction (*e.g.*, defendants convicted under 21 U.S.C. 849, 859, 860, or 861; defendants who used or threatened violence; defendants who possessed or used a weapon; defendants who involved a minor in the offense; or defendants who have a prior felony drug trafficking conviction)? Alternatively, should the Commission simply repeal the current mitigating role cap without providing any alternative method? Are there any other approaches that the Commission should consider, and if so, what are they?

Proposed Amendment 7: Homicide

Synopsis of Proposed Amendment: This amendment proposes a number of changes to the homicide and assault guidelines to address longstanding proportionality concerns and to implement the directive in section 11008(e) of the 21st Century Department of Justice Appropriations Authorization Act (the ''Act''), Public Law 107–273.

First, this amendment proposes a number of changes to the homicide guidelines. Generally, the amendment proposes increases in the base offense levels in the guidelines for second degree murder, voluntary manslaughter, and involuntary manslaughter to address proportionality issues among the homicide guidelines and between the homicide guidelines and other offense guidelines in Chapter Two, such as kidnapping and the production of child pornography.

The amendment also proposes to add a special instruction in the involuntary manslaughter guideline (§ 2A1.4), providing that if the offense involved involuntary manslaughter of more than one victim, Chapter Three, Part D (Multiple Counts) should be applied as if the involuntary manslaughter of each victim had been contained in a separate count of conviction. The purpose of the instruction is to ensure incremental punishment for multiple victims. An issue for comment follows regarding whether such an instruction should be added to each of the other homicide guidelines.

The amendment also proposes to eliminate and/or revise existing outdated commentary in some of the homicide guidelines.

Second, this amendment proposes a number of changes to the assault guidelines and the Chapter Three adjustment relating to official victims to address section 11008(e) of the Act. That section directs the Commission as follows:

''(1) IN GENERAL.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines and the policy statements of the commission, if appropriate, to provide an appropriate sentencing enhancement for offenses involving influencing, assaulting, resisting, impeding, retaliating against, or threatening a Federal judge, magistrate judge, or any other official described in section 111 or 115 of title 18, United States Code.

(2) FACTORS FOR CONSIDERATION.—In carrying out this section, the United States Sentencing Commission shall consider, with respect to each offense described in paragraph (1)—

(A) any expression of congressional intent regarding the appropriate penalties for the offense;

(B) the range of conduct covered by the offense;

(C) the existing sentences for the offense;

(D) the extent to which sentencing enhancements within the Federal guidelines and the authority of the court to impose a sentence in excess of the applicable guideline range are adequate to ensure punishment at or near the maximum penalty for the most egregious conduct covered by the offense;

(E) the extent to which the Federal sentencing guideline sentences for the offense have been constrained by statutory maximum penalties;

(F) the extent to which the Federal sentencing guidelines for the offense adequately achieve the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code;

(G) the relationship of the Federal sentencing guidelines for the offense to the Federal sentencing guidelines for other offenses of comparable seriousness; and

(H) any other factors that the Commission considers to be appropriate.''.

Section 111 of title 18, United States Code, makes it unlawful to forcibly assault, resist, oppose, impede, intimidate, or interfere with (A) any person designated in section 1114 of title 18 (*i.e.*, any officer or employee of the United States, including any member of the uniformed services in the performance of that person's official duties, or any person assisting that person in the performance of those official duties); or (B) any person who formerly served as a person designated in section 1114 on account of that person's performance of official duties during the term of service.

The Act increased the statutory maximum term of imprisonment for offenses under 18 U.S.C. 111 from three years to eight years; and for the use of a dangerous weapon or inflicting bodily injury in the commission of an offense under 18 U.S.C. 111, from ten to 20 years.

Section 115 of title 18, United States Code, makes it unlawful to (A) assault, kidnap, or murder, attempt or conspire to kidnap or murder, or threaten to assault, kidnap, or murder, a member of the immediate family of a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under 18 U.S.C. 1114; or (B) threaten to assault, kidnap, or murder a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under 18 U.S.C. 1114; in order to impede, intimidate, or interfere with the performance of the official's official duties.

Section 115 of title 18, United States Code, also makes it unlawful to assault, kidnap, or murder, attempt or conspire to kidnap or murder, or threaten to assault, kidnap, or murder, a former United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under 18 U.S.C. 1114, or a member of the former official's immediate family, in retaliation for the performance of the official's duties during the official's term of service.

The Act increased the maximum terms of imprisonment for threatened assaults under 18 U.S.C. 115 from three to six years, and for all other threats under 18 U.S.C. 115, from five to ten years.

In addition, the Act also increased the maximum term of imprisonment under 18 U.S.C. 876 from five years to ten years for mailing a communication to a United States judge, a Federal law enforcement officer, or an official covered by 18 U.S.C. 1114 containing a threat to kidnap or injure any person (the penalty remained five years for mailing such a communication to any other person).

The Act also increased the maximum term of imprisonment under 18 U.S.C. 876 from two years to ten years for mailing, with the intent to extort anything of value, a communication to a United States judge, a Federal law enforcement officer, or an official covered by 18 U.S.C. 1114 containing a threat to injure another's property or reputation or a threat to accuse another of a crime (the penalty remained two years for mailing such a communication to any other person). The other statutory maximum terms of imprisonment for offenses under 18 U.S.C. 876 were not changed by the Act. Mailing threatening communications containing a ransom demand for the release of a kidnapped person or containing a threat to kidnap with the intent to extort something of value remain punishable by up to 20 years' imprisonment.

The amendment proposes a number of changes to the assault guidelines and the Chapter Three adjustment relating to official victims to implement the directive and the changes in statutory maximum penalties. These proposed modifications to the offense levels in some of the assault guidelines complement the proposed amendments to the homicide guidelines, which are intended to address longstanding proportionality concerns. Issues for comment follow regarding whether the base offense level in the assault guideline should be reduced by [two] levels, whether the aggravated assault guideline should contain an enhancement for the involvement of a dangerous weapon, whether the assault guidelines should be consolidated, and whether the Chapter Three adjustment for official victims should provide a tiered approach, such that a [six]-level adjustment would apply if the victim was a government officer or employee (or family member thereof) and the offense was motivated by such status, and a three-level adjustment would apply if the victim was a law enforcement officer or prison employee and was assaulted in a certain manner.

Proposed Amendment:

The Commentary to § 2A1.1 captioned ''Application Notes'' is amended by striking Notes 1 and 2 in their entirety and inserting the following:

''1. Applicability of Guideline.—This guideline applies in cases of premeditated killing. This guideline also applies when death results from the commission of certain felonies. For example, this guideline may be applied as a result of a cross reference (*e.g.*, a kidnapping in which death occurs), or in cases in which the offense level of a guideline is calculated using the underlying crime (*e.g.*, murder in aid of racketeering).

2. Imposition of Life Sentence.—

(A) In General.—An offense level of 43 (*i.e.*, the base offense level under this guideline) results in a guideline sentence of life imprisonment in all criminal history categories. In cases in which a statutory mandatory minimum sentence is life imprisonment, the defendant shall be sentenced to life imprisonment, even if the defendant

received a reduction for acceptance of responsibility under § 3E1.1 (Acceptance of Responsibility).

(B) Offenses Involving Premeditated Killing.—In the absence of capital punishment, life imprisonment is the appropriate sentence in the case of premeditated killing. A downward departure would not be appropriate in such a case.

(C) Unintentional or Unknowing Killing.—If the defendant did not cause the death intentionally or knowingly, a downward departure may be warranted. For example, a downward departure may be warranted if in robbing a bank, the defendant merely passed a note to the teller, as a result of which the teller had a heart attack and died. The extent of the departure should be based upon the defendant's state of mind (*e.g.*, recklessness or negligence), the degree of risk inherent in the conduct, and the nature of the underlying offense conduct. However, departure below the offense level specified in § 2A1.2 (Second Degree Murder) is not likely to be appropriate. Also, because death obviously is an aggravating factor, it necessarily would be inappropriate to impose a sentence at a level below that which the guideline for the underlying offense requires in the absence of death. A downward departure from a mandatory statutory term of life imprisonment is permissible only in cases in which the government files a motion for a downward departure for the defendant's substantial assistance, as provided in 18 U.S.C. 3553(e).

3. Applicability of Guideline When Death Sentence Not Imposed.—If the defendant is sentenced pursuant to 18 U.S.C. 3591 *et seq.* or 21 U.S.C. 848(e), a sentence of death may be imposed under the specific provisions contained in that statute. This guideline applies when a sentence of death is not imposed under those specific provisions.''.

Section 2A1.2(a) is amended by striking ''33'' and inserting ''[37][38]''.

The Commentary to § 2A1.2 is amended by striking the Background commentary in its entirety and inserting the following:

''Application Note:

1. Upward Departure Provision.—If the defendant's conduct was exceptionally heinous, cruel, brutal, or degrading to the victim, an upward departure may be warranted. See § 5K2.8 (Extreme Conduct).''.

Section 2A1.3(a) is amended by striking ''25'' and inserting ''[26]–[30]''.

The Commentary to § 2A1.3 is amended by striking the Background commentary in its entirety.

Section 2A1.4(a) is amended in subdivision (1) by striking ''conduct was criminally negligent'' and inserting ''offense involved negligent conduct''; and by striking subdivision (2) in its entirety and inserting the following:

''(2) Apply the greater:

(A) 18, if the offense involved reckless conduct; or

(B) [20]–[26], if the offense involved the reckless operation of a means of transportation.''.

Section 2A1.4 is amended by adding at the end the following:

''(b) Special Instruction

(1) If the offense involved the involuntary manslaughter of more than one person, Chapter Three, Part D (Multiple Counts) shall be applied as if the involuntary manslaughter of each person had been contained in a separate count of conviction.''.

The Commentary to § 2A1.4 captioned ''Application Notes'' is amended in the heading by striking ''Notes'' and inserting ''Note''; by striking Notes 1 and 2 in their entirety and inserting the following:

''1. Definitions.—For purposes of this guideline:

'Criminally negligent' means conduct that involves a gross deviation from the standard of care that a reasonable person would exercise under the circumstances, but which is not reckless. Offenses with this characteristic usually will be encountered as assimilative crimes.

'Means of transportation' includes a motor vehicle (including an automobile or a boat) and a mass transportation vehicle. 'Mass transportation' has the meaning given that term in 18 U.S.C. 1993(c)(5).

'Reckless' means a situation in which the defendant was aware of the risk created by his conduct and the risk was of such a nature and degree that to disregard that risk constituted a gross deviation from the standard of care that a reasonable person would exercise in such a situation. 'Reckless' includes all, or nearly all, convictions for involuntary manslaughter under 18 U.S.C. 1112. A homicide resulting from driving, or similarly dangerous actions, while under the influence of alcohol or drugs ordinarily should be treated as reckless.''.

Section 2A1.5(a) is amended by striking ''28'' and inserting ''[32]–[37]''.

Section 2A2.1(a) is amended in subdivision (1) by striking ''28'' and inserting ''[32]–[37]''; and in subdivision (2) by striking ''22'' and inserting ''[26][28][30]''.

The Commentary to § 2A2.1 captioned ''Application Notes'' is amended by striking Notes 1 and 2 in their entirety and inserting the following:

''1. Definitions.—For purposes of this guideline:

'First degree murder,' means conduct that, if committed within the special maritime and territorial jurisdiction of the United States, would constitute first degree murder under 18 U.S.C. 1111.

'Serious bodily injury' and 'permanent or life-threatening bodily injury' have the meaning given those terms in the Commentary to § 1B1.1 (Application Instructions).'';

by redesignating Note 3 as Note 2; and in Note 2, as redesignated by this amendment, by inserting ''Upward Departure Provision.—'' before ''If the offense''.

Section 2A2.2 is amended by striking subdivision (a) in its entirety and inserting the following:

''(a) Base Offense Level (Apply the greater):

(1) 15; or

(2) [27], if the defendant is convicted under 18 U.S.C. 111(b).''.

The Commentary to § 2A2.2 captioned ''Application Notes'' is amended by striking Note 2 in its entirety; by redesignating Note 3 as Note 2; and by adding at the end the following:

''3. Application of Subsection (b)(2).—In a case involving a dangerous weapon with intent to cause bodily injury, the court shall apply both the base offense level and subsection (b)(2).

4. Application of Official Victim Adjustment.—The base offense level in subsection (a)(2) incorporates the fact (A) that the victim was a government official performing official duties; or (B) that the victim formerly was a government official and the assault occurred on account of the victim's performance of official duties during the time of the victim's official service. Accordingly, if subsection (a)(2) applies, do not apply § 3A1.2 (Official Victim).''.

Section 2A2.3 is amended in subdivision (a)(1) by striking ''6'' and inserting ''[9]''; and by striking ''conduct'' and inserting ''offense''; and in subdivision (a)(2) by striking ''3'' and inserting ''[6]''.

Section 2A2.3(b)(1) is amended by striking ''If'' and inserting ''(Apply the greater) If (A) the victim sustained bodily injury, increase by 2 levels; or (B)''.

The Commentary to § 2A2.3 captioned ''Application Notes'' is amended by striking ''Notes'' and inserting ''Note''; and by striking Notes 1, 2, and 3 in their entirety and inserting the following:

''1. Definitions.—For purposes of this guideline:

'Bodily injury', 'dangerous weapon', and 'firearm' have the meaning given those terms in the Commentary to § 1B1.1 (Application Instructions).

'Minor assault' means a misdemeanor assault, or a felonious assault not covered by § 2A2.2 (Aggravated Assault).

'Substantial bodily injury' means ''bodily injury which involves (A) a temporary but substantial disfigurement; or (B) a temporary but substantial loss or impairment of the function of any bodily member, organ, or mental faculty.'' See 18 U.S.C. 113(b)(1).''.

Section 2A2.4(a) is amended by striking ''6'' and inserting ''[12]''.

Section 2A2.4(b) is amended by striking ''Characteristic'' and inserting ''Characteristics''; in subdivision (1) by striking ''conduct'' and inserting ''offense''; and by adding at the end the following:

''(2) If the victim sustained bodily injury, increase by 2 levels.''.

The Commentary to § 2A2.4 captioned ''Application Notes'' is amended by striking Notes 1 and 2 in their entirety and inserting the following:

''1. Definitions.—For purposes of this guideline, 'bodily injury', 'dangerous weapon', and 'firearm' have the meaning given those terms in the Commentary to § 1B1.1 (Application Instructions).

2. Application of Certain Chapter Three Adjustments.—The base offense level incorporates the fact that the victim was a governmental officer performing official duties. Therefore, do not apply § 3A1.2 (Official Victim) unless, pursuant to subsection (c), the offense level is determined under § 2A2.2 (Aggravated Assault) and the base offense level under § 2A2.2(a)(2) does not apply. Conversely, the base offense level does not incorporate the possibility that the defendant may create a substantial risk of death or serious bodily injury to another person in the course of fleeing from a law enforcement official (although an offense under 18 U.S.C. 758 for fleeing or evading a law enforcement checkpoint at high speed will often, but not always, involve the creation of that risk). If the defendant creates that risk and no higher guideline adjustment is applicable for the conduct creating the risk, apply § 3C1.2 (Reckless Endangerment During Flight).''.

The Commentary to 2A2.4 captioned ''Application Notes'' is amended in Note 3 by inserting ''Upward Departure Provision.—'' before ''The base''.

Section 3A1.2 is amended to read as follows:

''§ 3A1.2. Official Victim

Increase by [6] levels if—

(1) (A) the victim was (i) a government officer or employee; (ii) a former government officer or employee; or (iii) a member of the immediate family of a person described in subdivision (i) or (ii); and (B) the offense of conviction was motivated by such status; or

(2) in a manner creating a substantial risk of serious bodily injury, the defendant or a person for whose conduct the defendant is otherwise accountable—

(A) knowing or having reasonable cause to believe that a person was a law enforcement officer, assaulted such officer during the course of the offense or immediate flight therefrom; or

(B) knowing or having reasonable cause to believe that a person was a prison official, assaulted such official while the defendant (or a person for whose conduct the defendant is otherwise accountable) was in the custody or control of a prison or other correctional facility.''.

The Commentary to § 3A1.2 captioned ''Application Notes'' is amended in Note 2 in the second sentence by striking ''subdivision (a)'' and inserting ''this adjustment''; in the third sentence by striking ''guideline'' and inserting ''guidelines''; and by striking ''is'' and inserting ''are (A) subsection (a)(2) of § 2A2.2 (Aggravated Assault); and (B)''.

The Commentary to § 3A1.2 captioned ''Application Notes'' is amended in Note 3 by striking ''Subsection (a)'' and inserting ''Subdivision (1)''; and by striking ''subsection (a)'' and inserting ''subdivision (1)''.

The Commentary to § 3A1.2 captioned ''Application Notes'' is amended in Note 4 by striking ''Subsection (b)'' each place it appears and inserting ''Subdivision (2)''; and by striking ''subsection (b)'' each place it appears and inserting ''subdivision (2)''.

The Commentary to § 3A1.2 captioned ''Application Notes'' is amended by striking Note 5 in its entirety and inserting the following:

''5. Upward Departure Provision.—If the official victim is an exceptionally high-level official, such as the President or the Vice President of the United States, an upward departure may be warranted due to the potential disruption of the governmental function.''.

Issues for Comment:

1. Instead of the proposed alternative base offense level in § 2A2.2 (Aggravated Assault) in the case of a conviction under 18 U.S.C. 111(b) and the proposed three-level increase in the Chapter Three adjustment for official victims in § 3A1.2 (Official Victims), should the Commission provide an enhancement in the assault guidelines for offenses involving influencing, assaulting, resisting, impeding, retaliating against, or threatening a Federal judge, magistrate judge, or any other official described in 18 U.S.C. 111 or 115? If so, what would be an appropriate increase for such enhancement?

Are there additional, related enhancements that the Commission should provide in the assault guidelines, particularly given the directive to consider providing sentences at or near the statutory maximum for the most egregious cases? Would such an enhancement be appropriate for other Chapter Two guidelines that cover these offenses, such as the guidelines covering attempted murder (§ 2A2.1), kidnapping (§ 2A4.1), and threatening communications (§ 2A6.1)?

Should the Commission consider providing a tiered approach in the Chapter Three adjustment for official victims (§ 3A1.2) such that a [six]-level adjustment would apply if the victim was a government officer or employee (or family member thereof) and the offense was motivated by such status, and a three-level adjustment would apply if the victim was a law enforcement officer or prison employee and was assaulted in a certain manner?

2. Do the current base offense levels in each of the assault and threatening communications guidelines provide adequate punishment for the covered conduct? If not, what would be appropriate base offense levels for §§ 2A2.2, 2A2.3, 2A2.4, and 2A6.1? For example, should the base offense level for offenses involving obstructing or impeding officers under § 2A2.4 be level 15, the same as for aggravated assault, and contain the same enhancements as the aggravated assault guideline, so that an assault of an official unaccompanied by serious bodily injury would nevertheless be severely punished?

3. Should the Commission consider more comprehensive amendments to the assault guidelines as part of, or in addition to, its response to the directives? For example, should the Commission consolidate any or all of the assault guidelines?

In addition to the two-level enhancement for bodily injury proposed in §§ 2A2.3(b)(1) and 2A2.4(b)(2), are there other aggravating or mitigating circumstances that should be incorporated into those guidelines?

Should the base offense level in the aggravated assault guideline generally be decreased by two levels? Should it be decreased by two levels in cases in which none of the specific offense characteristics apply (*i.e.,* in cases in

which there are no aggravating circumstances)?

Are there any other application issues pertaining to the assault guidelines that the Commission should address?

4. Should the base offense level in § 2A1.4 for involuntary manslaughter be increased, and if so, to what extent? Should additional specific offense characteristics be added for involuntary manslaughter offenses, including: (A) A four-level increase if death occurred while the defendant was driving intoxicated or under the influence of alcohol or drugs, or if alcohol and/or drugs otherwise were involved in the offense; (B) a two-level increase if the actions of the defendant resulted in multiple homicides; and (C) a two-level increase if the offense involved the use of a dangerous weapon?

The amendment proposes to add a special instruction in the involuntary manslaughter guideline to treat offenses involving multiple persons as if the conduct with respect to each person had been contained in a separate count of conviction. Should the Commission add this special instruction to each of the homicide guidelines?

5. Should specific offense characteristics be added in § 2A1.3 for voluntary manslaughter, including (A) a two-level increase for use of a weapon; and (B) a four-level increase for use of a firearm?

Proposed Amendment 8: Miscellaneous Amendments

Synopsis of Proposed Amendment: This proposed amendment makes changes to various sentencing guidelines as follows:

(A) Clarifies that the application of § 2B1.1(b)(7)(C) in the fraud/theft guideline, regarding a violation of a prior judicial order, is defendant based. Current Application Note 6(C) states that ''[s]ubsection (b)(7)(C) provides an enhancement if the defendant commits a fraud in contravention of a prior, official judicial or administrative warning * * *''. The note, however, seemingly conflicts with the language of the enhancement itself, at § 2B1.1(b)(7)(C), which uses a relevant conduct construct (*i.e.*, ''if the offense involved''). Given that the underlying principle of the enhancement is to provide increased punishment for an individual who demonstrates aggravated criminal intent by knowingly ignoring a prior warning not to engage in particular conduct, see USSG § 2B1.1, comment. n. 6(C), the proposed amendment restructures § 2B1.1(b)(7) to clarify that application of the prior judicial order enhancement is defendant based. The proposed amendment also makes necessary technical and conforming amendments to the commentary.

(B) Expands the special multiple victim rule in the fraud/theft guideline, § 2B1.1, Application Note 4(B)(ii), for offenses involving stolen U.S. mail to include mail collection and delivery units that serve multiple postal customers (*e.g.*, apartment bank boxes). The special rule is that any offense that involves stolen mail from a Postal Service mail box, cart, or satchel shall be considered to have involved 50 or more victims. The Commission has been informed, however, that the rule as currently written does not apply in cases in which mail is stolen from privately owned mail boxes such as those found in apartment complexes or other multiple dwelling communities. The proposed amendment uses language suggested by the Postal Service to include privately owned mail boxes within the special rule.

(C) Modifies § 2B1.1(b)(9), which provides a two-level enhancement and a minimum offense level of level 12, in response to the SAFE ID Act (section 607 of the PROTECT Act, Pub. L. 108–21). That Act created a new offense at 18 U.S.C. § 1028(a)(8) prohibiting the trafficking of authentication features (*e.g.*, a hologram or symbol used by a government agency to determine whether a document is counterfeit, altered, or otherwise falsified), and amended 18 U.S.C. 1028 to prohibit the transfer or possession of authentication features. The proposed amendment makes § 2B1.1(b)(9) applicable to offenses involving authentication features.

(D) Addresses a new offense provided at 18 U.S.C. 25 (Use of minors in crimes of violence), which was created by section 601 of the PROTECT Act. Section 25 of title 18, United States Code, prohibits any person who is 18 years of age or older from intentionally using a minor to commit a crime of violence or to assist in avoiding detection or apprehension for such offense. The penalties for committing the offense are, for the first conviction, ''subject to twice the maximum term of imprisonment * * * that would otherwise be authorized for the offense'', and for each subsequent conviction, ''subject to 3 times the maximum term of imprisonment * * * that would otherwise be authorized for the offense.''

The guidelines currently address the use of a minor to commit an offense in § 3B1.4 (Using a Minor To Commit a Crime). That guideline provides a two-level adjustment and applies to any offense in which a defendant used or attempted to use a minor to commit the offense or assist in avoiding detection of, or apprehension for, the offense. Given that the PROTECT Act created a new substantive offense for the use of a minor in crimes of violence, the proposed amendment creates a new guideline for 18 U.S.C. § 25 offenses rather than build on § 3B1.4. The proposed guideline at § 2X6.1 (Use of a Minor to Commit a Crime of Violence) directs the court to increase by [2][4][6] levels the offense level from the guideline applicable to the offense of which the defendant is convicted of using a minor. A base offense level of [2], however, would be consistent with the offense level increase currently provided by § 3B1.4. An issue for comment follows the amendment regarding whether, if the Commission were to adopt an offense level increase of [4]or [6], the Commission also should amend § 3B1.4 to provide consistent penalties.

The proposed amendment also (i) provides application notes addressing the interaction of the new guideline with § 3B1.4 and the grouping of multiple counts; and (ii) amends Appendix A (Statutory Index) to reference the new offense.

(E) Corrects typographical error in Application Note 4 of § 3C1.1 (Obstruction or Impeding the Administration of Justice).

(F) Conforms the definition of ''crime of violence'' in § 4B1.2 (Definitions of Terms Used in Section 4B1.1) to the definition provided in § 2L1.2 (Unlawfully Entering or Remaining in the United States), effective November 1, 2003, by including specific reference to statutory rape and sexual abuse of a minor.

The proposed amendment also adds to the definition of ''crime of violence'' possession of a sawed-off shotgun and other firearms of the type described in 26 U.S.C. 5845(a). Congress determined that such firearms are inherently dangerous and, when possessed unlawfully, serve only violent purposes. Accordingly, Congress passed The National Firearms Act, Public Law 90–618, which in part requires such firearms to be registered with National Firearms Registration and Transfer Record. See 26 U.S.C. 5861(d). Notwithstanding that Application Note 1 of § 4B1.2 excludes from the definition of ''crime of violence'' the offense of unlawful possession of a firearm by a felon, several circuit courts have held that possession of a sawed-off shotgun is a ''crime a violence'' because under § 4B1.2(a)(2) the offense ''otherwise involves conduct that presents a serious potential risk of physical injury to another''. *See, e.g., United States* v.

Serna, 309 F.3d 859, 864 (5th Cir. 2002) (unlawful possession of a sawed-off shotgun constitutes conduct that, by its nature, poses a serous potential risk of injury to another and is therefore a crime of violence under § 4B1.2(a)); *United States* v. *Johnson,* 246 F.3d 330 (4th Cir. 2001) (possession of a sawed-off shotgun always creates a serious risk of physical injury to another person and therefore is a crime of violence for career offender purposes); *United States* v. *Brazeau,* 237 F.3d 842, 845 (7th Cir. 2001) (sawed-off shotguns are inherently dangerous and the possession of such a firearm is a crime of violence); *see also United States* v. *Fortes*, 141 F.3d 1 (1st Cir. 1998) (possession of a sawed-off shotgun is a ''violent felony'' for purposes of 18 U.S.C. § 924(e) (the Armed Career Criminal Act)). An important distinguishing factor for these courts' holdings is that ''most weapons do not have to be registered—only those weapons that Congress found to be inherently dangerous'' must be registered. *Brazeau* at 845. ''If the weapon is not so labeled, mere possession by a felon is not a crime of violence.'' *Id.* Indeed, at the time the Commission amended § 4B1.2 to exclude the offense of felon in possession from the definition of ''crime of violence'', it was only concerned with felons possessing ordinary handguns and rifles and did not address more serious firearms.

The proposed amendment addresses the issue by adopting a categorical rule that possession of a firearm described in 26 U.S.C. 5845(a) is a crime of violence. (Besides sawed-off shotguns, section 5845(a) includes silencers, machine guns, and destructive devices). This part of the proposed amendment addresses the case in which the court has to determine whether a prior offense (state or federal) for possessing a sawed-off shot gun (or other section 5845(a) weapon) qualifies as a crime of violence, as for example, in determining the appropriate base offense level in § 2K2.1. The proposed amendment also modifies the rule that excludes felon in possession offenses from the definition of ''crime of violence'' to except from that rule possession of firearms that are of the type described in 26 U.S.C. 5845(a).

(G) Generally updates Chapter Six (Sentencing Procedures and Plea Agreements), and in particular, incorporates amendments made to Rules 11 and 32 of the Federal Rules of Criminal Procedure, effective December 1, 2002. Those amendments made some substantive changes but mostly reorganized Rules 11 and 32 as part of a general restyling of the Federal Rules of Criminal Procedure to make the rules more easily understood and to make style and terminology consistent throughout the rules. This proposed amendment reflects relevant substantive amendments and stylistic changes (including redesignations).

While much of the proposed amendment of Chapter Six is stylistic and conforming, the more significant aspects of the proposal can be summarized as follows:

- Amends § 6A1.2 (Disclosure of Presentence Report; Issues in Dispute) to set out the specific procedural requirements governing the disclosure of the presentence report and any issues in dispute as required by Rule 32. Currently, § 6A1.2 provides that the court should adopt procedures for the timely disclosure of the presentence report, the resolution of disputed issues prior to the sentencing hearing, and the identification of any unresolved issues. Rule 32 was amended in 1997 to provide particular procedural deadlines and requirements for the disclosure of the presentence report and issues in dispute and, in December 2002, those deadlines and requirements were reorganized to read more easily. This proposed amendment reflects those changes.
- Moves Application Note 1 of § 6A1.2, regarding a requirement that the court provide notice of departure, to its own policy statement. The Commission added the application note in 1997 in light of *Burns* v. *United States,* 501 U.S. 129, 138–39 (1991), in which the Court held that, before a sentencing court may depart upward on a ground not previously identified in the presentence report, Rule 32 requires the court to give the parties reasonable notice that it is contemplating such a departure. The Court also stated that because the procedural entitlements in Rule 32 apply equally to both parties, it was equally appropriate to frame the issue as whether notice is required before the sentencing court departed either upward or downward. Proposed policy statement § 6A1.4 (Notice of Possible Departure) reflects the substantive amendment that added subsection (h) to Rule 32 specifically to incorporate the *Burns* holding.
- Deletes outdated commentary regarding pre-guidelines procedures.
- Fully incorporates into § 6B1.3 the procedure set forth in Rule 11(c)(5) that the court must follow when the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C).

Please note that the PROTECT Act amendments, effective October 27, 2003, updated the references to Rule 11 in § 6B1.2.

(H) Makes conforming amendments to various guideline provisions and commentary in light of PROTECT Act departure amendments promulgated at the October meeting.

(I) Corrects error in the examples provided in Application Note 3(B)(iii) of § 5G1.2 (Sentencing on Multiple Counts of Conviction).

(J) Provides an issue for comment regarding an apparent double-counting issue in cases in which (i) the defendant is convicted of 18 U.S.C. 922(g) (felon in possession), (ii) is an armed career criminal under § 4B1.4, and (iii) is convicted of an 18 U.S.C. 924(c) (use of a firearm during a drug trafficking offense or crime of violence).

Proposed Amendment:

(A) Clarifying Application of § 2B1.1(b)(7)(C)

Section 2B1.1(b)(7) is amended by inserting ''(A)'' before ''the offense''; by striking ''involved (A)'' and inserting ''involved (i)''; by striking ''(B)'' and inserting ''(ii)''; by striking ''(C) a violation of any prior, specific judicial or administrative order, injunction, decree, or process not addressed elsewhere in the guidelines; or (D)'' and inserting ''(iii)''; and by striking the comma after ''education'' and inserting ''; or (B) the defendant violated a prior, specific judicial or administrative order, injunction, decree, or process not addressed elsewhere in the guidelines,''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 6 in subdivision (B) by inserting ''(i)'' after ''Subsection (b)(7)(A)'' each place it appears; by striking subdivision (C) in its entirety; and by redesignating subdivision (D) as subdivision (C).

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 6 in subdivision (C), as redesignated by this amendment; by striking ''subsection (b)(7)(D)'' and inserting ''subsection (b)(7)(A)(iii)''; and by inserting after subdivision (C), as redesignated by this amendment, the following:

''(D) Offenses Committed in Contravention of Prior Judicial Order.—Subsection (b)(7)(B) provides an enhancement if the defendant commits an offense in contravention of a prior, official judicial or administrative warning, in the form of an order, injunction, decree, or process, to take or not to take a specified action. A defendant who does not comply with such a prior, official judicial or administrative warning demonstrates aggravated criminal intent and deserves additional punishment. If it is

established that an entity the defendant controlled was a party to the prior proceeding that resulted in the official judicial or administrative action, and the defendant had knowledge of that prior decree or order, this enhancement applies even if the defendant was not a specifically named party in that prior case. For example, a defendant whose business previously was enjoined from selling a dangerous product, but who nonetheless engaged in fraudulent conduct to sell the product, is subject to this enhancement. This enhancement does not apply if the same conduct resulted in an enhancement pursuant to a provision found elsewhere in the guidelines (*e.g.*, a violation of a condition of release addressed in § 2J1.7 (Commission of Offense While on Release) or a violation of probation addressed in § 4A1.1 (Criminal History Category)).''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 6 in subdivision (E)(i) by inserting ''(i)'' after ''(b)(7)(A)'' each place it appears; and in subdivision (E)(ii) by striking ''(b)(7)(B) and (C)'' and inserting ''(b)(7)(A)(ii) and (B)''; and by striking ''(b)(7)(B) or (C)'' and inserting ''(b)(7)(A)(ii) or (B)''.

(B) Expanding Special Rule for Theft of Mail To Include Privately Owned Boxes

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 4 by striking subdivision (B)(ii) in its entirety and inserting:

''(ii)Special Rule.—A case described in subdivision (B)(i) of this note that involved a relay box, a collection box, a delivery vehicle, a satchel, a cart, a housing unit cluster box, an apartment box, or any other thing used or designed for use in the conveyance of [Option 1: a large volume of] United States mail [Option 2: to multiple addresses], whether such thing is privately owned or owned by the United States Postal Service, shall be considered to have involved 50 or more victims.''.

(C) SAFE ID Act

Section 2B1.1(b)(9) is amended by inserting ''(i)'' before ''device-making''; by inserting ''; or (ii) authentication feature'' after ''equipment''; by inserting ''(i)'' before ''unauthorized access''; and by inserting ''; (ii) or authentication feature'' after ''access device''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 8(A) by inserting before the paragraph that begins '''Counterfeit access device''' the following paragraph:

'' 'Authentication feature' has the meaning given that term in 18 U.S.C. § 1028(d)(1).''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 8(A) in the paragraph that begins '' 'Means of identification' '' by striking ''(4)'' and inserting ''(7)''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 8(B) by inserting ''Authentication Features and'' before ''Identification Documents''; and by inserting ''authentication features'' after ''involving''.

The Commentary to § 2B1.1 captioned ''Background'' is amended in the eleventh paragraph by inserting ''(i)'' after ''(A)''; and by inserting ''(i)'' after ''(B)''.

(D) Use of Minor To Commit Crimes of Violence (PROTECT Act)

Chapter Two, Part X is amended by adding at the end the following new subpart:

''6. OFFENSES INVOLVING USE OF A MINOR IN A CRIME OF VIOLENCE

§ 2X6.1 Use of a Minor in a Crime of Violence

(a) Base Offense Level: [2][4][6] plus the offense level from the guideline applicable to the underlying offense.

Commentary

Statutory Provision: 18 U.S.C. 25.

Application Notes:

1. Definitions.—For purposes of this guideline, 'underlying offense' means the offense of which the defendant is convicted of using a minor. Apply the base offense level plus any applicable specific offense characteristic that were known, or reasonably should have been known, by the defendant. See Application Note 10 of the Commentary to § 1B1.3 (Relevant Conduct).

2. Non-applicability of § 3B1.4.—The base offense level in subsection (a) incorporates the use of a minor in the offense; accordingly, do not apply the adjustment in § 3B1.4 (Using a Minor to Commit a Crime).

3. Grouping of Multiple Counts.—In a case in which the defendant is convicted under 18 U.S.C. 25 and the underlying crime of violence, the counts shall be grouped pursuant to subsection (c) of § 3D1.2 (Groups of Closely Related Counts).''.

Appendix A is amended by inserting after the line referenced to 18 U.S.C. 4 the following new line:

''18 U.S.C. 25 2X6.1''.

Issue for Comment: The proposed new guideline for 18 U.S.C. 25 offenses directs the court to increase by [two][four][six] levels the offense level from the guideline applicable to the offense of which the defendant is convicted of using a minor. The statutory penalties for the new offense are as follows: For the first conviction, the defendant is ''subject to twice the maximum term of imprisonment * * * that would otherwise be authorized for the offense'', and for each subsequent conviction, the defendant is ''subject to 3 times the maximum term of imprisonment * * * that would otherwise be authorized for the offense''. A base offense level of [2] (plus the offense level from the guideline applicable to the underlying offense), however, would be consistent with the offense level increase currently provided by § 3B1.4 (Using a Minor to Commit a Crime). Notwithstanding the current increase in § 3B1.4, should the Commission provide a base offense level increase of [four] or [six] levels for proposed § 2X6.1? If so, should the Commission also amend § 3B1.4 to provide a greater offense level adjustment in order to maintain consistent penalties between § 3B1.4 and the proposed new guideline? Should the Commission amend § 3B1.4 to conform the definition of ''used or attempt to use'' (''includes directing, commanding, encouraging, intimidating, counseling, training, procuring, recruiting, or soliciting'') to the definition of ''uses'' in 18 U.S.C. 25(a)(3) (defined as ''employs, hires, persuades, induces, entices, or coerces'')? Finally, are there any specific offense characteristics that the Commission should consider providing in the new guideline?

(E) Correcting Typographical Error in § 3C1.1

The Commentary to § 3C1.1 captioned ''Application Notes'' is amended in Note 5(b) by striking ''3(g)'' and inserting ''4(g)''.

(F) ''Crime of Violence'' Definition in § 4B1.2

The Commentary to § 4B1.2 captioned ''Application Notes'' is amended in Note 1 in the paragraph that begins '' 'Crime of violence' includes'' by inserting ''statutory rape, sexual abuse of a minor,'' after ''forcible sex offenses,''.

The Commentary to § 4B1.2 captioned ''Application Notes'' is amended in Note 1 in the paragraph that begins '' 'Crime of violence' does not'' by striking ''. Where'' and inserting '', unless the possession was of a firearm of a type described in 26 U.S.C. 5845(a). If ''.

The Commentary to § 4B1.2 captioned ''Application Notes'' is amended in Note 1 by inserting before the paragraph that begins ''Unlawfully possessing a prohibited flask'' the following paragraph:

''Unlawfully possessing a firearm that is of a type described in 26 U.S.C. 5845(a) (*e.g.*, a sawed-off shotgun, silencer, or machine gun) is a 'crime of violence'.''.

(G) Chapter Six Update

Section 6A1.1 is amended by striking ''A probation officer'' and all that follows through ''presentence report.'' and inserting the following:

''(a) The probation officer must conduct a presentence investigation and submit a report to the court before it imposes sentence unless—

(1) 18 U.S.C. 3593(c) or another statute requires otherwise; or

(2) the court finds that the information in the record enables it to meaningfully exercise its sentencing authority under 18 U.S.C. 3553, and the court explains its finding on the record. Rule 32(c)(1)(A), Fed. R. Crim. P.

(b) The defendant may not waive preparation of the presentence report.''.

The Commentary to § 6A1.1 is amended by striking the second sentence in its entirety; in the third sentence by striking ''Rule 32(b)(1)'' and inserting ''Rule 32(c)(1)(A)''; and by striking '', but only after explaining, on the record, why sufficient information is already available'' and inserting ''in certain limited circumstances, as when a specific statute requires or when the court finds sufficient information in the record to enable it to meaningfully exercise its statutory sentencing authority and explains its finding on the record''.

Section 6A1.2 is amended by striking ''Courts should adopt'' and all that follows through ''Fed. R. Crim. P.'' and inserting the following:

''(a) The probation officer must give the presentence report to the defendant, the defendant's attorney, and an attorney for the government at least 35 days before sentencing unless the defendant waives this minimum period. Rule 32(e)(2), Fed. R. Crim. P.

(b) Within 14 days after receiving the presentence report, the parties must state in writing any objections, including objections to material information, sentencing guideline ranges, and policy statements contained in or omitted from the report. An objecting party must provide a copy of its objections to the opposing party and to the probation officer. After receiving objections, the probation officer may meet with the parties to discuss the objections. The probation officer may then investigate further and revise the presentence report accordingly. Rule 32(f), Fed. R. Crim. P.

(c) At least 7 days before sentencing, the probation officer must submit to the court and to the parties the presentence report and an addendum containing any unresolved objections, the grounds for those objections, and the probation officer's comments on them. Rule 32(g), Fed. R. Crim. P.''.

The Commentary to § 6A1.2 is amended by striking ''Application Note:'' and all that follows through ''(1991).''.

The Commentary to § 6A1.2 captioned ''Background'' is amended by striking ''32(b)(6)(B)'' and inserting ''32(f)''.

Section 6A1.3(b) is amended by striking ''32(c)(1)'' and inserting ''32(i)''.

The Commentary to § 6A1.3 is amended by striking the first paragraph in its entirety; in the third paragraph by striking ''117 S. Ct. 633, 635'' and inserting ''519 U.S. 148, 154''; and by striking ''117 S. Ct. at 637'' and inserting ''519 U.S. at 157''.

Chapter Six, Part A, Subpart 1 is amended by adding at the end the following:

''§ 6A1.4 Notice of Possible Departure (Policy Statement)

Before the court may depart from the applicable sentencing guideline range on a ground not identified for departure either in the presentence report or in a party's prehearing submission, the court must give the parties reasonable notice that it is contemplating such a departure. The notice must specify any ground on which the court is contemplating a departure. Rule 32(h), Fed. R. Crim. P.

Commentary

Background: The Federal Rules of Criminal Procedure were amended, effective December 1, 2002, to incorporate into Rule 32(h) the holding in *Burns* v. *United States,* 501 U.S. 129, 138–39 (1991). This policy statement parallels Rule 32(h), Fed. R. Crim. P.''.

Chapter Six, Part B is amended in the ''Introductory Commentary'' by striking ''Rule 11(e)(1)'' and inserting ''Rule 11(c)''; by striking ''These policy statements are a first step toward implementing 28 U.S.C. 994(a)(2)(E).''; by striking ''shall'' and inserting ''will continue to''; [by striking ''and ultimately develop standards'' and all that follows through ''the Commission's work.'']; in the last paragraph by striking ''The present policy statements move in the desired direction in two ways. First, the'' and inserting ''These''; [by striking ''This is a reaffirmation of pre-guidelines practice.] Second, the policy statements'' and inserting ''The policy statements also''; by inserting ''continue to'' after ''Explanations will''; [and by striking ''and will pave the way for more detailed policy statements presenting substantive criteria to achieve consistency in this aspect of the sentencing process''.]

Section 6B1.1 is amended by striking subsections (a), (b), and (c) in their entirety and inserting:

''(a) The parties must disclose the plea agreement in open court when the plea is offered, unless the court for good cause allows the parties to disclose the plea agreement in camera. Rule 11(c)(2), Fed. R. Crim. P.

(b) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(B), the court must advise the defendant that the defendant has no right to withdraw the plea if the court does not follow the recommendation or request. Rule 11(c)(3)(B), Fed. R. Crim. P.

(c) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the court may accept the agreement, reject it, or defer a decision until the court has reviewed the presentence report. Rule 11(c)(3)(A).''.

The Commentary to § 6B1.1 is amended in the first paragraph in the first sentence by striking ''11(e)'' and striking the second paragraph and inserting the following:

''Section 6B1.1(c) deals with the timing of the court's decision regarding whether to accept or reject the plea agreement. Rule 11(c)(3)(A) gives the court discretion to accept or reject the plea agreement immediately or defer a decision pending consideration of the presentence report. Given that a presentence report normally will be prepared, the court may defer acceptance of the plea agreement until the court has reviewed the presentence report.''.

Section 6B1.3 is amended by striking ''If the plea'' and all that follows through ''Fed. Crim. P.'' and inserting the following:

''If the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C), the court must do the following on the record and in open court (or, for good cause, in camera):

(a) inform the parties that the court rejects the plea agreement;

(b) advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea; and

(c) advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

Rule 11(c)(5), Fed. R. Crim. P.''.

The Commentary to § 6B1.3 is amended by striking ''11(e)(4)''and inserting ''11(c)(5)''.

(H) Conforming PROTECT Act Amendments (Departures)

The Commentary to § 1B1.3 captioned ''Application Notes'' is amended in the fifth sentence of Note 5 by striking ''When'' and inserting ''In a case in which creation of risk is''; by striking ''creation of a risk may provide a ground for imposing a sentence above the applicable guideline range'' and inserting ''an upward departure may be warranted''.

The Commentary to § 1B1.4 captioned ''Background'' is amended in the fifth sentence by striking ''sentencing above the guideline range'' and inserting ''an upward departure''.

The Commentary to § 1B1.8 captioned ''Application Notes'' is amended in the third sentence of Note 1 by striking ''increase the defendant's sentence above the applicable guideline range by upward departure'' and inserting ''depart upward''; and in the last sentence by striking ''below the applicable guideline range'' and inserting ''downward''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 7 by striking ''sentence below the applicable guideline range''and inserting ''downward departure''.

The Commentary to § 2R1.1 captioned ''Application Notes'' is amended in Note 7 by striking '', or even above,'' and by inserting '', or an upward departure'' after ''guideline range''.

The Commentary to § 2T1.8 captioned ''Application Note'' is amended in Note 1 by striking ''a sentence above the guidelines'' and inserting ''an upward departure''.

Chapter Two, Part T, Subpart 3 is amended in the ''Introductory Commentary'' by striking ''imposing a sentence above that specified in the guideline in this Subpart'' and inserting ''departing upward''.

The Commentary to § 3D1.3 captioned ''Application Notes'' is amended in Note 4 by striking ''a sentence above the guideline range'' and inserting ''an upward departure''.

Section 5C1.2(a) is amended by striking ''verbatim''.

Section 5H1.1 is amended by striking ''sentence should be outside the applicable guideline range'' and inserting ''departure is warranted''; by striking ''impose a sentence below the applicable guideline range when'' and inserting ''depart downward in a case in which''; and by inserting ''; Gambling Addiction'' after ''Abuse''.

Section 5H1.2 is amended by striking ''sentence should be outside the applicable guideline range'' and inserting ''departure is warranted''.

Section 5H1.3 is amended by striking ''sentence should be outside the applicable guideline range'' and inserting ''departure is warranted''.

Section 5H1.5 is amended by striking ''sentence should be outside the applicable guideline range'' and inserting ''departure is warranted''.

Section 5H1.6 is amended by striking ''Family ties'' and inserting ''In sentencing a defendant convicted of an offense other than an offense described in the following paragraph, family ties''; by inserting after the first paragraph the following:

''In sentencing a defendant convicted of an offense involving a minor victim under section 1201, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, of title 18, United States Code, family ties and responsibilities and community ties are not relevant in determining whether a sentence should be below the applicable guideline range.'';

and by striking:

''***Note:** Section 401(b)(4) of Public Law 108–21 (the ''Protect Act'') directly amended § 5H1.6 to add the second paragraph, effective April 30, 2003. The Commission incorporated this direct amendment in the *Supplement to the 2002 Guidelines Manual* but inadvertently omitted the second paragraph in the **Federal Register** notice of amendments dated October 21, 2003. The policy statement should be read as containing the second paragraph, pursuant to the direct amendment made by Public Law 108–21.''.

The Commentary to § 5H1.6 is amended by adding at the end the following:

''Background: Section 401(b)(4) of Public Law 108–21 directly amended this policy statement to add the second paragraph, effective April 30, 2003.''.

Section 5H1.11 is amended by striking ''sentence should be outside the applicable guideline range'' and inserting ''departure is warranted''.

Section 5H1.12 is amended by striking ''grounds for imposing a sentence outside the applicable guideline range'' and inserting ''in determining whether a departure is warranted''.

Section 5K2.14 is amended by striking ''increase the sentence above the guideline range'' and inserting ''depart upward''.

Section 5K2.16 is amended by inserting ''downward'' before ''departure''; and by striking ''below the applicable guideline range for that offense''.

Section 5K2.21 is amended by striking ''increase the sentence above the guideline range'' and inserting ''depart upward''.

Section 5K2.22 is amended by striking ''impose a sentence below the applicable guideline range'' each place it place it appears and inserting ''depart downward''; and by striking ''imposing a sentence below the guidelines'' and inserting ''a downward departure''.

Section 5K2.23 is amended by striking ''sentence below the applicable guideline range'' and inserting ''downward departure''.

(I) Correction of Examples in § 5G1.2

The Commentary to § 5G1.2 captioned ''Application Notes'' is amended in Note 3(B)(iii) by striking ''2113(a) (20 year'' and inserting ''113(a)(3) (10 year''; in the second sentence by striking ''400'' and inserting ''460''; by striking ''360–life'' and inserting ''460–485''; and in the third sentence by striking ''40'' and inserting''100''; and by striking ''2113(a)'' and inserting ''113(a)(3)''.

(J) Issue for Comment Regarding ''Double Counting'' Issue in § 4B1.4 (Armed Career Criminal)

Issue for Comment: The Commission requests comment regarding application of the guidelines in cases in which the defendant (1) is convicted under 18 U.S.C. 922(g) (felon in possession); (2) is an armed career criminal under § 4B1.4; and (3) is convicted under 18 U.S.C. 924(c) (use of a firearm during a drug trafficking offense or crime of violence).

Section 2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes) provides that in cases in which a defendant is convicted of 18 U.S.C. 924(c) and of the underlying offense, the weapon enhancement in the guideline for the underlying offense is not to be applied. This rule is provided because the mandatory minimum consecutive sentence required by 18 U.S.C. 924(c) is sufficient to account for the possession or use of the weapon in the underlying offense. Section 4B1.4 (Armed Career Criminal) provides for an ''enhanced'' sentence (*i.e.*, an offense level of level 34 pursuant to § 4B1.4(b)(3)(A) and Criminal History Category VI pursuant to § 4B1.4(c)(2)) for cases in which an armed career criminal uses or possesses a firearm in connection with a crime of violence or controlled substance offense. Unlike § 2K2.4, however, § 4B1.4 does not currently contain a rule to provide an exception to application of the ''enhanced'' sentence in cases in which the defendant also is convicted under 18 U.S.C. 924(c) (or a similar offense carrying a ''flat'' mandatory

consecutive penalty *e.g.*, 18 U.S.C. 844(h) or 18 U.S.C. 929(a)). The Commission requests comment regarding whether such a rule should be provided in § 4B1.4.

For example, should the Commission add § 4B1.4 to the list of guidelines to which the special exception in § 2K2.4 applies? Should the Commission also provide an upward departure note to § 4B1.4 for the few cases in which the application of the exception may result in a guideline range that, when combined with the mandatory consecutive sentence under 18 U.S.C. 844(h), 924(c), or 929(a), produces a total maximum penalty that is less than the maximum of the guideline range that would have resulted if the enhanced offense level and criminal history category had been applied?

Proposed Amendment 9: MANPADS and Other Destructive Devices

Synopsis of Amendment: This amendment proposes to increase by [5]–[13] additional levels the existing two-level enhancement in § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) for cases in which the offense involved destructive devices that are portable rockets, missiles, or devices used for launching portable rockets or missiles, and by increasing the enhancement by up to [7] additional levels if the offense involved any other kind of destructive device. It also proposes to add certain attempts and conspiracies to the list of offenses for which the three-level reduction in § 2X1.1 (Attempt, Solicitation, or Conspiracy) is prohibited.

As defined in 26 U.S.C. 5845(f), a ''destructive device'' means (1) any explosive, incendiary, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellent charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, or (F) similar device; (2) any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellent, the barrels of which have a bore of more than one-half inch in diameter; or (3) any combination of parts designed or intended for use in converting any device into a destructive device as described above.

In its annual submission to the Commission dated August 1, 2003, the Department of Justice recommended that guideline penalties be increased if the offense involved the use or attempted use of, or conspiracy to use, a kind of destructive device known as the man-portable air defense system (MANPADS) or any similar destructive device. MANPADS are portable rockets and missiles that pose particular risks due to their portability, potential range, accuracy, and destructive power. This amendment addresses that concern by increasing the enhancement in § 2K2.1(b)(3) for involvement of these types of destructive devices from 2 levels to [7]–[15] levels, correspondingly increasing the maximum cumulative offense level in that guideline from level 29 to level [30]–[42], and increasing the enhancement for all other destructive devices from two levels to up to [9] levels. An issue for comment follows regarding whether the increase should pertain to all destructive devices within the meaning of 26 U.S.C. 5845(f) or only to MANPADS and similar weapons, or to some other subcategory of destructive devices, or whether there should be a graduated increase for different kinds of destructive devices.

Similarly, the Department of Justice also urged the Commission to increase guideline penalties for attempts and conspiracies to commit certain offenses if those offenses involved the use of a MANPADS or similar destructive device. Those offenses include 18 U.S.C. 32 (destruction of an aircraft or aircraft facilities), 18 U.S.C. 1993 (terrorist attacks and other acts of violence against mass transportation systems), and 18 U.S.C. 2332a (use of certain weapons of mass destruction). In response to this concern, the amendment proposes to amend the special instruction in § 2X1.1(d) to prohibit application of the three-level reduction for attempts and conspiracies for these offenses generally, and not just in the context of the use of a MANPADS or similar destructive device. These offenses are comparable in nature to the offenses already listed in § 2X1.1(d). Issues for comment follow regarding the appropriate Statutory Index references for these offenses the definition of ''destructive device.''

Proposed Amendment:

Section 2K2.1(b) is amended by striking subdivision (3) in its entirety and inserting the following:

''(3) If the offense involved—

(A) a portable rocket, a missile, or a device for use in launching a portable rocket or a missile, increase by [7]–[15] levels; or

(B) a destructive device other than a destructive device referred to in subdivision (A), increase by [2]–[9] levels.''.

Section 2K2.1(b) is amended in the paragraph beginning ''Provided, that'' by striking ''29'' and inserting ''[30]–[42]''.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended in Note 11 by striking ''a two-level'' and inserting ''the applicable''.

Section 2X1.1(d) is amended by striking subdivision (1) in its entirety and inserting the following:

''(1) Subsection (b) shall not apply to:

(A) Any of the following offenses, if such offense involved, or was intended to promote, a federal crime of terrorism as defined in 18 U.S.C. 2332b(g)(5):

18 U.S.C. 81;
18 U.S.C. 930(c);
18 U.S.C. 1362;
18 U.S.C. 1363;
18 U.S.C. 1992;
18 U.S.C. 2339A;
18 U.S.C. 2340A;
49 U.S.C. 46504;
49 U.S.C. 46505; and
49 U.S.C. 60123(b).

(B) Any of the following offenses:

18 U.S.C. 32;
18 U.S.C. 1993; and
18 U.S.C. 2332a.''.

Issues for Comment:

1. The Commission requests comment regarding whether the proposed increase in the enhancement in § 2K2.1(b)(3) for involvement of a destructive device should pertain to all destructive devices within the meaning of 26 U.S.C. 5845(f) or only to man-portable air defense systems (MANPADS) and similar destructive devices or to some other subcategory of destructive devices. In addition, what is the appropriate extent of such an increase? Specifically, are there types of destructive devices other than MANPADS and similar destructive devices that should receive a [7]–[15] level enhancement, as is proposed for MANPADS and similar destructive devices? Should the extent of the increase vary according to the kind of destructive device involved? Should the limitation on the cumulative offense level of level 29 in § 2K2.1(b) be amended if the extent of the enhancement in § 2K2.1(b)(3) is increased, and, if so what should the limitation on the cumulative offense level be? Alternatively, should the limitation on the cumulative offense level be eliminated?

2. The Commission also requests comment regarding whether 18 U.S.C. 1993(a)(8), relating to attempts, threats, or conspiracies, to commit any of the substantive terrorist offenses in 18 U.S.C. 1993(a), should be referenced in Appendix A (Statutory Index) to § 2A5.2 (Interference with Flight Crew Member or Flight Attendant; Interference with Dispatch, Operation, or Maintenance of

Mass Transportation Vehicle or Ferry) rather than, or in addition to, § 2A6.1 (Threatening or Harassing Communications).

Similarly, the Commission requests comment regarding whether any or all of the substantive criminal provisions of 18 U.S.C. 32 should be referenced only to § 2A5.2.

3. The Commission also requests comment regarding whether there should be a cross reference to § 2A5.2 or § 2M6.1 in any guideline to which offenses under 18 U.S.C. 32, 1993, and 2332a are referenced, if the offense involved interference or attempted interference with a flight crew, interference or attempted interference with the dispatch, operation, or maintenance of a mass transportation system (including a ferry), or the use or attempted use of weapons of mass destruction.

4. The Commission seeks comment regarding whether the ''destructive device'' definition at Application Note 4 of § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) should be amended. Practitioners have commented that it is unclear whether certain types of firearms qualify as ''destructive devices''. Should the Commission clarify the definition of ''destructive device''? If so, what issues should be addressed?

Issue for Comment 10: Aberrant Behavior

Issue for Comment: The Commission requests comment regarding whether the departure provision in § 5K2.20 (Aberrant Behavior) should be eliminated (and departures based on characteristics described in § 5K2.20 should be prohibited) and whether those characteristics instead should be incorporated into the computation of criminal history points under § 4A1.1 (Criminal History Category). Specifically, are there circumstances or characteristics, currently forming the basis for a departure under § 5K2.20, that should be treated within § 4A1.1 instead, particularly for first offenders?

Issues for Comment 11: Hazardous Materials

Issue for Comment: In its annual submission to the Commission dated August 1, 2003, the Department of Justice urged the Commission to consider revising the guideline treatment for the illegal transportation of hazardous materials. According to the Department, the sentencing guideline applicable to hazardous materials, § 2Q1.2 (Mishandling of Hazardous or Toxic Substances or Pesticides; Recordkeeping, Tampering, and Falsification; Unlawfully Transporting Hazardous Materials in Commerce), is not adequately suited to such offenses because (1) such offenses are different from more typical pollution offenses covered by that guideline and have characteristics that are not addressed by that guideline; and (2) the specific offense characteristics in that guideline are not characteristic of such offenses. As a consequence, the offense levels applicable to hazardous materials offenses often are inadequate given the severity of the offense.

Specifically, the Department stated that § 2Q1.2 originally was intended to cover the release of toxic substances and pesticides in the context of ongoing, continuous, or repetitive releases into the environment and the failure to obtain government permits to handle certain materials. Offenses involving hazardous materials, on the other hand, often involve a one-time, catastrophic occurrence that provide a ''target-rich'' environment for terrorists and that, because of the movement of these materials in commerce, could affect a large population or occur in a setting such as aboard an aircraft where corrective or preventive action is unlikely. Further aggravating the risks inherent in the transportation of hazardous materials is that, unlike other toxins, government permitting is not required.

In light of the Department of Justice's concerns, the Commission requests comment regarding whether existing guidelines should be revised, or whether a new guideline should be created, to address more adequately offenses involving hazardous materials. Specifically:

(1) How should the Commission define key terms regarding offenses involving the transportation of hazardous materials? For example, for purposes of enhanced penalties governing hazardous materials (as opposed to other toxic materials and pesticides) what hazardous materials, and/or what statutory provisions, should be covered? What activities constitute a ''release'' in the context of transportation of hazardous materials?

What is the appropriate definition of ''environment'' in the context of transportation of hazardous materials?

(2) What is an appropriate base offense level for offenses involving the transportation of hazardous materials?

(3) What aggravating and/or mitigating factors particular to such offenses should be incorporated into the guidelines as specific offense characteristics? For example, should the guidelines provide enhancements if the offense involved any of the following:

(A) The transportation of a hazardous material on a passenger-carrying or other aircraft.

(B) The transportation of a hazardous material on any passenger-carrying mode of mass transportation.

(C) The concealment of the hazardous material during its transportation, such as by misrepresentation, deception, or physical concealment.

(D) The release of a hazardous material.

(E) Disruption of, or damage to, critical infrastructure.

(F) The release of a hazardous material resulting in damage to the environment, or to public or private property.

(G) An emergency response and/or the evacuation of a community or part thereof.

(H) Repetition of the offense.

(I) The substantial likelihood of death or serious injury.

(J) Actual serious bodily injury or death.

(K) A substantial expenditure for remediation.

(L) The failure to provide, submit, file, or retain required information about a hazardous material, including the failure to notify for certain hazardous material incidents under 49 CFR 171.1.

(M) Financial gain to the defendant or the financial loss to others, excluding government costs of cleanup.

(N) The transportation of radioactive or explosive material.

(O) A terrorist motive.

(P) A controlled substance manufacturing or trafficking offense.

(Q) The failure to properly train transporters of hazardous materials (see, *e.g.,* 49 U.S.C. 5107).

(R) The procurement of a license through fraudulent means.

What should be the extent of any specific characteristic added to the guidelines for these enhancements, including gradation for seriousness of the specific offense characteristic involved?

(4) If a new guideline were to be promulgated covering only offenses involving the transportation of hazardous materials:

(A) What interaction should the new guideline covering hazardous materials transportation offenses have with the guidelines in Chapter Eight (Sentencing of Organizations)? For example, should a separate compliance program be established for persons involved in the transportation of hazardous materials, or should additional factors be added to the compliance requirements in Chapter Eight?

(B) What cross references, if any, should be included with this guideline?

(C) What impact, if any, should repeat civil penalties or regulatory infractions have on culpability under this proposed guideline?

(D) Under Chapter Three, Part D (Multiple Counts), what would be the appropriate grouping of counts involving the transportation of hazardous materials under this new guideline and counts involving environmental offenses covered under other existing guidelines, particularly § 2Q1.2?

[FR Doc. 03–31755 Filed 12–29–03; 8:45 am]

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Federal Register

Tuesday,
December 30, 2003

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 145

Repair Stations: Service Difficulty Reporting; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 145

[Docket No.: FAA–2003–16772; Amendment No. 22]

RIN 2120–AI07

Repair Stations: Service Difficulty Reporting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This final rule amends the regulations governing service difficulty reports (SDRs) submitted to the FAA by aeronautical repair stations. The FAA is clarifying which type of failures, malfunctions, and defects repair stations must report. Finally, FAA is replacing certain section references with part references. This action will eliminate the need to revise repair station regulations if the FAA revises SDR rules.

DATES: Effective January 31, 2004.

Comments for inclusion in the Rules Docket must be received on or before January 29, 2004.

ADDRESSES: You may send comments [identified by Docket Number FAA–2003–16772 using any of the following methods:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

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

FOR FURTHER INFORMATION CONTACT: Diana L. Frohn, General Aviation and Repair Station Branch, AFS—340, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7027; facsimile (202) 267–5118, e-mail *diana.frohn@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

FAA is adopting this final rule without prior notice and prior public comment. FAA finds such action necessary for good cause. Notice and comment procedures would be impracticable, unnecessary, and contrary to the public interest. This amendment presents no change in current industry practice. Further, without this amendment, repair stations will not be able to comply with a recent revision to part 145 that becomes effective January 31, 2004, because it would contain section numbers that would not be in effect. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), however, provide that, to the maximum extent possible, operating administrations for DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, we invite interested persons to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. We also invite comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment. Please include the regulatory docket or amendment number and send two copies to the address above. We will file all comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, in the public docket. The docket is available for public inspection before and after the comment closing date.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

FAA will consider all comments received on or before the closing date for comments. We will consider late comments to the extent practicable. We may amend this final rule in light of the comments received.

Commenters who want FAA to acknowledge receipt of their comments submitted in response to this final rule must include a preaddressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–2003–XXXXX.'' The postcard will be date-stamped by FAA and mailed to the commenter.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm*; or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Background

On September 8, 2000, FAA issued ''Service Difficulty Reports; Final rule, request for comments on the information collection'' (65 FR 56192; September 15, 2000). That final rule amended the requirements in 14 CFR parts 121, 125, 135, and 145 for reporting failures, malfunctions, and defects of aircraft, aircraft engines, systems, and components. In that rulemaking action, FAA amended §§ 145.63 and 145.79 to—

(1) Increase the time period for repair stations to report failures, malfunctions, or defects from 72 hours to 96 hours; and

(2) Allow a repair station to submit service difficulty reports (SDRs) on behalf of part 121, 125, and 135 certificate holders.

Section 145.63, paragraphs (c) and (d) and § 145.79, paragraphs (e)(1) through (e)(3), specified the sections of parts 121, 125, and 135 that allow certificated repair stations to submit SDRs for part 121, 125, and 135 certificate holders.

On July 30, 2001, FAA issued ''Repair Stations; Final rule with request for comments and direct final rule with request for comments,'' (66 FR 41088; August 6, 2001). In that rulemaking action, FAA further amended §§ 145.63 and 145.79 by—

(1) Combining the provisions of §§ 145.63 and 145.79 and re-designating the requirements as § 145.221, Service Difficulty Reporting;

(2) Standardizing the requirements for reporting failures, malfunctions, or defects to apply to all certificated repair stations, regardless of location;

(3) Replacing the phrases ''serious defect'' and ''other unairworthy condition'' with the phrase ''failure, malfunction, or defect''; and

(4) Including language that would allow repair stations to submit SDRs to FAA in a format acceptable to the Administrator.

That amendment to part 145 becomes effective January 31, 2004.

Statement of the Problem

After issuing the SDR final rule, FAA received extensive comments opposing the rule. To give the agency time to consider industry's concerns about the SDR final rule, the FAA previously extended the effective date of the SDR rule. The FAA is again extending the effective date of the SDR rule this time to January 30, 2006. This extension affects the July 2001 repair station reporting final rule, because that amendment to part 145 will become effective January 31, 2004, and it references sections in parts 121, 125, and 135 that will now not become effective until January 30, 2006.

Also, several repair stations have expressed concern about FAA's removal in July 2001 of the word ''serious'' to describe the type of defect that must be reported. Repair stations contend the language in § 145.221(a) requires them to report all failures, malfunctions, or defects, regardless of severity.

FAA Action

To avoid the need to amend § 145.221 to track specific sections of parts 121, 125, and 135, FAA is amending § 145.221 by removing references to specific sections in parts 121, 125, and 135. FAA is replacing the specific section references with the applicable part numbers. This amendment will require repair stations to follow whatever requirements are set out in parts 121, 125, and 135, depending on the certificate holder.

Also, FAA agrees with the repair station industry concerning the word ''serious''. It was not the agency's intent to require repair stations to report ''any'' failure, malfunction, or defect. When FAA combined §§ 145.63 and 145.79 to create § 145.221, FAA standardized language in that section to match language in parts 121, 125, and 135, which do not include the word ''serious.'' In doing so, FAA removed the word ''serious'' to describe the type of failures, malfunctions, and defects repair stations must report. Again, it was not FAA's intent to require repair stations to report *all* failures, malfunctions, and defects. Repair stations are required to report only serious failures, malfunctions, and defects. Therefore, FAA is reinserting the word ''serious'' before the word ''failure'' in § 145.211(a).

Effect of This Action

This action becomes effective on January 31, 2004, along with the new requirements for part 145 issued on July 30, 2001. Repair stations submitting SDRs for part 121, 125, or 135 certificate holders will be required to report in accordance with the requirements of the appropriate part. For example, a repair station reporting a failure, malfunction, or defect for a part 121 certificate holder would submit the report in accordance with whatever provisions of part 121 are in effect on the date the report is sent. By removing references to specific sections in parts 121, 125, and 135, FAA will be able to amend the requirements for SDRs in the future without making further amendments to part 145.

FAA notes the repair station industry should interpret the word ''serious'' the same way it is interpreted under the current rule. Repair stations should continue to report failures, malfunctions, or defects as they are currently reported. This amendment will not change current practice in determining which failures, malfunctions, or defects repair stations should report.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our site, *http://www.gov/avr/arm/sbrefa.htm*. For more information on SBREFA, e-mail us at *9-AWA-SBREFA@faa.gov*.

Paperwork Reduction Act

Information collection requirements on service difficulty reporting have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. section 3507(d)), and have been assigned OMB Control Number 2120–0682.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified some differences with these regulations.

Economic Summary, Regulatory Flexibility Act, Trade Impact Assessment, and Unfunded Mandates Assessment

Economic Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Agreements Act also requires agencies to consider international standards and, where appropriate, use them as the basis for U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

In conducting these analyses, FAA has determined that this rule: (1) Will generate benefits and will not impose any costs, is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2)

will not have a significant economic impact on a substantial number of small entities; (3) will not constitute a barrier to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

Department of Transportation (DOT) Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the rule does not warrant a full evaluation, a statement to that effect and the basis for the determination is included in the preamble to the rule. Given the reasons presented below, FAA has determined the expected impact of this rule is minimal and the final rule does not warrant a full evaluation.

This amendment will remove specific references found in 14 CFR parts 121, 125, and 135 concerning the requirements for SDRs. This change will eliminate the need to revise part 145 when revising the SDR requirements in the future. Also, the amendment will require repair stations to submit the reports for ''serious'' failures, malfunctions, and defects, as intended originally. The costs associated with these provisions were addressed in both the Service Difficulty Reports final rule (65 FR 56192; September 15, 2000) and the Repair Stations final rule (66 FR 41088; August 6, 2001).

Regarding benefits, this rule will provide repair stations some cost savings by limiting reports to serious failures, malfunctions, or defects, rather than ''any'' defect. Also, FAA finds the removal of conflicting effective dates and potential cost savings justify adoption of this rule.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This rule will have a minimal impact on repair stations since it reduces reporting and imposes no costs. FAA, therefore, certifies the rule will not have a significant economic impact on a substantial number of small operators.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. FAA has assessed the potential effect of this final rule and has determined that it will impose the same requirements on domestic and international entities and thus has a neutral trade impact.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 145

Air carriers, Air transportation, Aircraft, Aviation safety, Recordkeeping and reporting, Safety.

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends part 145 of Title 14, Code of Federal Regulations as follows:

PART 145—REPAIR STATIONS

■ 1. The authority citation for part 145 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44707, 44717.

■ 2. Section 145.221 is amended by revising paragraphs (a), (c), and (d)

§ 145.221 Reports of failures, malfunctions, or defects.

(a) A certificated repair station must report to the FAA within 96 hours after it discovers any serious failure, malfunction, or defect of an article. The report must be in a format acceptable to the FAA.

* * * * *

(c) The holder of a repair station certificate that is also the holder of a part 121, 125, or 135 certificate; type certificate (including a supplemental type certificate); parts manufacturer approval; or technical standard order

authorization, or that is the licensee of a type certificate holder, does not need to report a failure, malfunction, or defect under this section if the failure, malfunction, or defect has been reported under parts 21, 121, 125, or 135 of this chapter.

(d) A certificated repair station may submit a service difficulty report (operational or structural) for the following:

(1) A part 121 certificate holder, provided the report meets the requirements of part 121 of this chapter, as appropriate.

(2) A part 125 certificate holder, provided the report meets the requirements of part 125 of this chapter, as appropriate.

(3) A part 135 certificate holder, provided the report meets the requirements of part 135 of the chapter, as appropriate.

* * * * *

Issued in Washington, DC, on December 19, 2003.

Marion C. Blakey,

Administrator.

[FR Doc. 03–31884 Filed 12–29–03; 8:45 am]

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Note: The List of Public Laws for the first session of the 108th Congress has been completed. It will resume when bills are enacted into public law during the next session of Congress. A cumulative List of Public Laws for the first session of the 108th Congress will appear in the issue of January 30, 2004.

Last List December 24, 2003

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